

**LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
MEETING AGENDA**

Friday, June 9, 2017 - 1:00 p.m.

Town & Country Club
300 Mississippi River Boulevard North
St. Paul, Minnesota

1. Approval of Minutes of April 14, 2017, Lawyers Board Meeting (Attachment 1).
2. Update on appointment of new member.
3. 2017 Annual Report Draft (Attachment 2).
4. Committee Updates:
 - a. Rules Committee.
 - i. Rule 5.5, MSBA Memorandum (Attachment 3)
 - ii. Letter dated April 24, 2017 from SMH to MSBA Rules Committee (Attachment 4).
 - b. DEC Committee (Attachment 5).
 - c. Opinion Committee.
5. Director's Report (Attachment 6).
6. Other Business:
 - a. 2018 Meeting Dates (Attachment 7).
7. Quarterly Board Discussion (closed session).
8. Next meeting September 29, 2017, following OLPR annual Seminar.

If you have a disability and anticipate needing an accommodation, please contact Susan Humiston at lprada@courts.state.mn.us or at 651-296-3952. All requests for accommodation will be given due consideration and may require an interactive process between the requestor and the Office of Lawyers Professional Responsibility to determine the best course of action. If you believe you have been excluded from participating in, or denied benefits of, any Office of Lawyers Professional Responsibility services because of a disability, please visit www.mncourts.gov/ADAaccommodation.aspx for information on how to submit an ADA Grievance form.

**MINUTES OF THE 179TH MEETING OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

April 14, 2017

The 179th meeting of the Lawyers Professional Responsibility Board convened at 1:00 p.m. on Friday, April 14, 2017, at the Town & Country Club, St. Paul, Minnesota. Board members present were: Board Vice-Chair Terrie S. Wheeler presiding over the meeting in place of the Chair, Joseph P. Beckman, Jeanette M. Boerner, James P. Cullen, Thomas J. Evenson, Roger Gilmore, Christopher A. Grgurich, Mary L. Hilfiker, Gary M. Hird, Anne M. Honsa, Peter Ivy, Bentley R. Jackson, Virginia Klevorn, Cheryl M. Prince, Susan C. Rhode, and Robin M. Wolpert. Present from the Director's Office were Director Susan M. Humiston, Deputy Director Patrick R. Burns, and Senior Assistant Directors Craig D. Klausung and Jennifer S. Bovitz. Also present through part of the meeting was LPRB liaison Justice David Stras.

1. APPROVAL OF MINUTES

The minutes of the January 20, 2017, Board meeting were approved.

2. NEW BOARD MEMBER WELCOME AND UPDATED PANEL ROSTERS

Terrie Wheeler welcomed new Board members Jeanette Boerner, Peter Ivy, Virginia Klevorn, and Susan Rhode. Justice Stras also welcomed the new members, reiterating the important service to the bar and public that Board members serve. The new members each gave a brief introduction of themselves. Justice Stras also commented favorably on the recent progress made by the OLPR, and noted the Court continues to have high expectations for the Board and Office for the future. New OLPR Senior Assistant Director Jennifer Bovitz introduced herself to the Board. Susan Humiston noted the revised Panel assignments and committee rosters. She also reviewed the deadlines in Panel probable cause proceedings and noted that when motions are made to Panels for hearings or other relief, the opposing party should be given an opportunity to respond to those motions before a decision is made on them. She noted that the Rules on Lawyers Professional Responsibility (RLPR) do not address the timelines for responses to motions and, going forward, motions made by the Director will include a suggested response time for respondent's response. James Cullen suggested that an amendment to the RLPR should be considered to address this issue. Joe Beckman noted that submission by email is an efficient method of serving and responding to motions.

3. PROPOSED BUDGET FOR NEXT BIENNIUM

Susan Humiston presented the proposed budget as an informational item. She noted the budget presented is in draft form and that she is working with Judicial Finance to finalize the budget. She discussed funds held in reserve and noted that Judicial Finance would like to keep the reserve amount to approximately one year of budgeted funds. She anticipates that funds from lawyer registration fees will be reduced in future years because of a decline in typical year-over-year increase of fee-paying lawyers. This will mean that revenue will remain flat for the near future while costs are increasing, and will likely require going into the reserve next year and in future years. She noted that IT costs will increase in the future because the judiciary wants payment for IT services previously provided at no charge. Additionally, she noted that there will be a need to rebuild the OLPR and CSB websites in FY'19 which will result in additional IT costs. She also noted that the cost of translation services is increasing. Mary Hilfiker asked where the costs of the security upgrades appeared in the budget. Susan replied that much of this expense is included in the current year's budget and in the \$10,000 in "other operating costs" for FY'18. She also noted that there is allocated a \$20,000 cost for upgrading the MJC courtroom audio in FY'18. Roger Gilmore asked about the amounts collected in judgments and efforts to collect on those judgments. Susan noted that the amounts collected were higher last year given the larger number of public disciplines and that efforts to collect on the judgments are ongoing. Cheryl Prince asked if the Director is comfortable with the reductions in the reserve. Susan said she is not and that there may be a need in the future to ask the Court to reallocate the amount of the registration fees distributed to the OLPR and the CSB. She then discussed the budget process, noting that the proposed budget has been sent to Judicial Finance for review, and they will advise of any further needed revisions in May. The final budget will be presented to the Board at the June meeting as well as to the Court in June.

4. COMMITTEE UPDATES

Cheryl Prince reported on the Rules Committee. She noted that proposed amendments to Rule 5.5, MRPC, are being considered by the MSBA Rules of Professional Conduct Committee. Those proposed amendments will be considered by the Rules Committee with the goal of providing input to the MSBA process. Susan Humiston noted a letter recently received from U.S. Representative Goodlatte raising concerns with lawyer advertising pertaining to actions against drug companies. She also noted that she will be asking the Rules Committee to consider amendments to Rule 20, RLPR, to permit sharing of information with Lawyers Concerned for Lawyers

and to Rule 9, RLPR, to make clear that a live hearing on an admonition appeal is not always required.

Anne Honsa reported that the Opinion Committee does not currently have any opinions under consideration. She noted concerns that have been raised with LPRB Opinion 24. Chris Grgurich asked whether Opinion 24 abrogates the "controversy" clause of Rule 1.6(b)(8), Minnesota Rules of Professional Conduct. Pat Burns advised the Board that the language regarding a potential controversy was originally included in the rule to ensure that lawyers could make disclosures to their malpractice carriers for the purpose of claims mitigation. Robin Wolpert suggested responding to the concerns with an article or CLE that would include a discussion of best practices when responding to an on-line review. James Cullen suggested this would be a good topic for the September District Ethics Committee (DEC) seminar.

Terrie Wheeler reported on the DEC Committee's activity, noting the planning and agenda for the May 5 DEC Chairs Symposium. Susan Humiston discussed the fall seminar and asked for suggestions as to topics to include in that seminar.

5. DIRECTOR'S REPORT

Susan Humiston asked OLPR Senior Assistant Director Craig Klausing to introduce himself to the Board. She noted that Patrick Burns will be receiving a Professionalism Award from the Hennepin County Bar Association. She then discussed case statistics, noting that the Office is close to meeting the goals of no more than 500 open files with no more than 100 files more than one year old. She noted that the number of case filings is down and the number of advisory opinion requests is up. James Cullen asked if the number of complainant appeals is tracked on a monthly basis. Susan noted that she gets reports on this on a quarterly basis but will pull the requested information. Susan noted that Siana Brand has returned to the Office full-time after a period of family leave and this puts the Office at a full staff level. She noted that the Office will be doing a number of webinars through MNCLE in the next couple of months. She discussed her one year review conducted by Justice Stras and noted he gave her high marks. Justice Stras would like her to develop a strategic five-year plan for the Office. She is considering putting together a small task force of both internal and external stakeholders to work on this. There was discussion of creating and posting training videos to the Office website and SharePoint. She noted that the Office will be working on FAQs regarding retainer agreements to post to the website.

6. OTHER BUSINESS

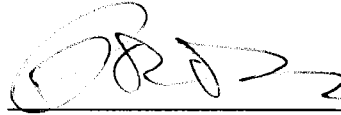
The dates for upcoming meetings and the DEC Seminar were noted.

7. **QUARTERLY BOARD DISCUSSION**

The Board, in a closed session, conducted its quarterly Board discussion.

Thereafter, the meeting adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Burns", written over a horizontal line.

Patrick R. Burns

Deputy Director

DRAFT

ANNUAL REPORT OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

ANNUAL REPORT OF THE
OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY

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July 2017

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I. INTRODUCTION AND HIGHLIGHTS.

Pursuant to Rules 4(c) and 5(b), Rules on Lawyers Professional Responsibility (RLPR), the Lawyers Professional Responsibility Board (LPRB) and the Director of the Office of Lawyers Professional Responsibility (OLPR) report annually on the operation of the professional responsibility system in Minnesota. This report is made for the period from July 2016 to June 2017 (FY2017), which represents the Board's and the Office's fiscal year. The majority of the statistical information, however, is based upon calendar year 2016, unless otherwise noted.

Highlights.

Fiscal year 2017 was a year of transition for the LPRB and OLPR as Stacy Vinberg completed her first year as Chair of the LPRB, Susan Humiston completed her first year as Director of the OLPR, and Justice Stras completed his first full year as the Minnesota Supreme Court's liaison to the LPRB and OLPR. Pursuant to the direction of the Court, the LPRB and OLPR focused primarily on case processing times. With the hard work of everyone involved, the OLPR significantly improved overall case processing times, including resolution of a significant number of files that were more than a year old at the start of the fiscal year.

Specifically, as of July 1, 2016, the OLPR had 151 files over one year old out of a total file population of 516 files. Of those 151 files, 60 files were still under investigation by the OLPR after one year, and a few were under investigation despite being more than two years old. The remaining files (91) were pending with the Court in various stages of the litigation process. As of May 30, 2017, the year-old files were decreased to _____, with _____ under investigation with the OLPR, and the remaining _____ pending with the Court. The OLPR made this progress while still remaining current with new files. While the OLPR has not yet met the goal of all cases charged out or otherwise dispositioned within one year, great strides have been made.

Moreover, the Office is close to meeting the Board-established target of no more than 500 open files, and no more than 100 open files more than one year old. In fact, several times this fiscal year, overall file inventory fell below 500. Thank you to everyone who has worked so hard to ensure better case processing times within the attorney disciplinary system. Timely case processing is an important factor in a well-regarded regulation system.

Statistics.

Calendar 2016 was also a year for higher than average public discipline with 44 attorneys receiving public discipline, down from the prior year record high of 65 attorneys receiving public discipline. An “average” year for public discipline is 36 (Table IX at A. 10). Suspensions remained high at 28, the second highest number after 2015. Private discipline was very similar to 2015, with 115 admonitions and 17 private probations.

A review of attorney demographics in 2016 shows that the average years of practice for an attorney receiving public discipline was 25 years, and private discipline was 23 years. These numbers were very similar for 2015: 24 years (public) and 23 years (private). Attorneys with 11 – 20 years of practice were subject to the most discipline (Table VII at A. 8). In 2016, 82% of private discipline was issued to male attorneys; 18% to female attorneys. Ninety-one percent of public discipline was received by male attorneys; 9% by female attorneys.

Substantively, diligence (Rule 1.3) and communication (Rule 1.4) continue to be the most frequently violated rules, clients continue to submit by far the greatest number of complaints, and the most frequent areas of practice generating complaints remain criminal law and family law.

The first half of 2017 remains steady in matters of attorney discipline. As of June 16, 2017, _____ attorneys have been disciplined: _____ disbarred, _____ suspended, _____ reprimanded and placed on probation and _____ reprimanded. An additional

_____ matters are pending with the Supreme Court, and a total of _____ files are open as of that date.

Complaint Filings.

The number of complaints received in 2016 was 1,216, essentially the same number as received in 2015 (1,210). Closings were down year-over-year (1,264 vs. 1,332), for a calendar year-end file inventory of 480. Tables outlining these and related statistics are at A. 3 - A. 10.

Files open at start of 2016:	528
Complaints received in 2016:	1,216
Files closed in 2016:	1,264
Files open at end of 2016:	480

Complaint filings for the first five months of 2017 are similar to the first five months of 2016. Closings year-to-date for 2017 continue to trend down from the 2016 number (_____ vs. _____). The OLPR met the Board target of less than 500 open files during three months this fiscal year.

Public and Private Discipline.

As mentioned, 2016 was a “high average” year for public disciplines. Forty-four lawyers were publicly disciplined: 6 attorneys were disbarred, 28 were suspended, 4 were reprimanded and placed on probation and 6 were reprimanded. The six disbarred attorneys were Paul Jody Edlund, Pamela L. Green, Dale Allen Hansen, Timothy J. Oliver, Paul Roland Rambow and Ronald Resnik.

The attorneys disbarred in 2016 were disbarred for a variety of professional misconduct including predominantly misappropriation of client funds. Two attorneys received the next most serious discipline, five-year suspensions: one for felony conviction for first degree assault; and the other for the unauthorized practice of law after disciplinary suspension, and misappropriation of client funds. A third attorney

received a four-year suspension for frivolous litigation, and multiple false statements in multiple forums. Two public cases were dismissed.

During 2016, 115 admonitions were issued, the same number issued in 2015. Please note that last year's annual report noted 112 admonitions were issued in 2015, which did not include panel admonitions or admonitions affirmed on appeal, bringing the total for 2015 admonitions to 115. Pursuant to Rule 8(d)(2), RLPR, if "the Director concludes that a lawyer's conduct was unprofessional but of an isolated and non-serious nature, the Director may issue an admonition." Prior year totals are as follows:

	2009	2010	2011	2012	2013	2014	2015	2016
Admonitions	117	120	113	122	143	143	115	115
Total Files Closed	1229	1252	1386	1287	1279	1248	1332	1264
%	10%	10%	8%	9%	11%	11%	8%	9%

The areas of misconduct involved in the admonitions are set forth in Table V at A. 6. Seventeen attorneys were placed on private probation, compared to 12 attorneys in 2015.

Other Highlights.

Significant bar interest was generated by the Minnesota Supreme Court's 4-3 decision affirming a panel admonition in *In re Charges of Unprofessional Conduct in Panel File No. 39302*, 884 N.W.2d 661 (Minn. 2015). In that opinion, the Court affirmed an admonition for a Colorado lawyer who engaged in the unauthorized practice of law in Minnesota in representing his in-laws in a judgment collection matter. The Court was split on whether the attorney's unauthorized practice in Minnesota fell within one of several safe harbor provisions within Rule 5.5 relating to the unauthorized practice of law. The majority held that the judgment representation did not "arise out of" or "reasonably relate" to his environmental law practice in Colorado. The Rules Committee of the Minnesota State Bar Association is currently reviewing proposed amendments to Rule 5.5, Minnesota Rules of Professional Conduct.

Some bar interest was also generated by the LPRB's issuance of Opinion No. 24 relating to the ability of an attorney to share confidential information when responding to a negative on-line review. Consistent with almost all jurisdictions reviewing the matter, the Board opined that an attorney may not disclose confidential information under Rule 1.6(b)(8) as a negative review is neither an actual or potential "proceeding" or "controversy" within the meaning of the rule's language, but may disclose confidential information if it falls within another exception within Rule 1.6(b), MRPC.

Annual Professional Responsibility Seminar and Continuing Legal Education Presentations.

On September 30, 2016, the Board and the Director's Office hosted their 31st annual professional responsibility seminar. Presentations included sessions on technology, social media and lawyer ethics, stipulations for discipline to the court, departures from DEC determinations, and tips for dealing with mental health and dependency issues in investigations. Justice Stras also presented on key Court ethics decisions in a well-received presentation.

During the seminar, Justice Stras presented the Volunteer of the Year Award to Kevin Kolosky. Mr. Kolosky has served on the Fourth District Ethics Committee since 2006. He is the eldest of nine children, served three years in the U.S. Navy, the majority of the time on an aircraft carrier in the Atlantic Ocean and Mediterranean Sea. He graduated from Mankato State University and from William Mitchell College of Law. His primary areas of practice are criminal defense and family law. In addition to his volunteer work with the Hennepin County DEC, he also devotes time to The Legal Aid Society of Minneapolis, Volunteer Lawyers Network and Dakota County Legal Assistance.

Each year, attorneys in the Office devote substantial time to CLE presentations and other public speaking opportunities in an effort to proactively educate the bar about

professional responsibility issues. A full list of those engagements can be found at A. 18 – A. 20.

II. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Board Members.

The Lawyers Professional Responsibility Board is composed of 23 volunteer members, which includes the Chair, 13 lawyers, and 9 nonlawyers. The terms of Board members are staggered so that there is roughly equal turnover in members each year. Board members are eligible to serve two three-year terms (plus any stub term if applicable). Terms expire on January 31.

This year, Board Chair Stacy Vinberg was appointed in May 2016. Board members Nancy Helmich and Todd Wind completed their second and final terms on the Board. Paul Carlson completed one term on the Board and declined to be reappointed due to career commitments. In January, Timothy Churchwell resigned from the Board after his appointment to the Seventh District bench. In March, Susan Rhode was appointed to fill Judge Churchwell's stub term through January 31, 2018. Virginia Klevorn, Jeanette Boernes and Peter Ivy were appointed to full-terms expiring January 31, 2020. In May 2017, Lisa Radzak resigned from the Board due to a career change. The Court is in the process of replacing Ms. Radzak.

MSBA nominees Joseph Beckman and James Cullen together with Roger Gilmore, Mary Hilfiker and Bentley Jackson, were reappointed to second terms, to expire in 2020. Allan Witz, who was originally appointed in May 2016 to fill a stub term, was appointed to his first full three-year term. A complete listing of Board members as of June 1, 2017, is attached at A. 1 – A. 2.

Executive Committee.

The Board has a five-member Executive Committee, charged with oversight of the Director's Office and the Rules on Lawyers Professional Responsibility. The

committee now consists of Chair Stacy Vinberg, Vice-Chair Terrie Wheeler, Robin Wolpert, Roger Gilmore and Bentley Jackson. Three members of the Executive Committee are public members, demonstrating the significant contribution public members make to the Minnesota disciplinary system.

Each member of the Executive Committee has assigned tasks. The Chair directly oversees panel assignments pursuant to Rule 4(f), RLPR, and oversees the Director's review and reappointment process. The Vice-Chair oversees the timely determination of complainant appeals by Board members, reviews dispositions by the Director that vary from DEC recommendations, and reviews complaints against the Director or staff. One member, Bentley Jackson, is the liaison to the OLPR staff; another member, Roger Gilmore, oversees the review of file statistics and aging of files; and one member, Robin Wolpert, is responsible for addressing any former employee disqualification matters that arise.

Panels.

All members of the Board, other than Executive Committee members, serve on one of six panels which make discipline probable cause and reinstatement determinations. The Board members who act as Panel Chairs are currently: Joseph Beckman, James Cullen, Thomas Evenson, Christopher Grgurich, Anne Honsa and Cheryl Prince. All are experienced Board members.

Standing Committees.

The Board has three standing committees. The Opinion Committee, chaired by Anne Honsa, makes recommendations regarding the Board's issuance of opinions on issues of professional conduct pursuant to Rule 4(c), RLPR. The Rules Committee, chaired by Cheryl Prince, makes recommendations regarding possible amendments to the MRPC and the RLPR. The DEC Committee, chaired by Terrie Wheeler, works with

the DEC's to facilitate prompt and thorough consideration of complaints assigned to them and assists the DEC's in recruitment and training of volunteers.

During this fiscal year, the Opinion Committee recommended and the Board approved Opinion No. 24, which articulated the Board's position that an attorney may not disclose confidential information when responding to an on-line review, as such a review is neither an actual or potential "proceeding" or "controversy" under Rule 1.6(b)(8), MRPC.

Pursuant to the request of the Minnesota Supreme Court for its opinion, the Board responded to a public petition filed to amend Rule 6(a), RLPR, which petition aimed to prohibit DEC investigators from conducting investigations within their subject matter expertise. The Board, upon recommendation of the Rules Committee, recommended against the proposed amendment. By order dated November 17, 2016, the Court denied the petition. Separately, the Court granted the petition of the Board to amend Rule 18(c), RLPR, to establish a ten-day time period to order a transcript when challenging a panel recommendation on reinstatement.

The DEC Committee focused on public member recruitment as well as recruitment of attorney members in districts where term limits have been met. The DEC Committee also focused its efforts on supporting the DEC Chairs, and hosted a very successful DEC Chairs Symposium in May 2017 at the Earle Brown Center in Minneapolis.

III. DIRECTOR'S OFFICE.

A. Budget.

Expenditures for the fiscal year ending June 30, 2017, are projected to be approximately \$3,470,000. The projected reserve balance at the end of FY17 is projected to be a healthy \$3,159,000. In June 2017, the Court approved the OLPR budgets for FY18 and FY19. The FY18 budget, which begins July 1, 2017, and runs through June 30,

2018, projects anticipated expenditures of \$4,237,000. This annual amount is higher than the norm due to several items including two special projects: (1) upgrading the LPRB Courtroom at the Judicial Center to improve ADA facilitation; and (2) new service charges for Judicial IT support. The later costs were previously absorbed by the Branch; however, due to advances in technology and the demand for tech support, Judicial ITD is no longer fiscally able to handle these services without contribution. These costs will be ongoing. Lastly, the amount includes remaining funds for the completion of the LDMS database project.

The Director's Office budget is funded primarily by lawyer registration fees, and therefore is not dependent upon legislative dollars. FY18 projected revenue is essentially flat at \$3,281,600. Accordingly, it is anticipated that the Office will utilize a portion of its reserve to fund the revenue shortfall.

In FY17, the Court provided for merit increases for Court employees from a merit pool equal to 4% of salaries. All employee salary increases are performance based. In FY18, merit increases will be awarded based on performance appraisals completed in May 2017 for the previous fiscal year. The merit pool for FY18 is anticipated to be equal to 2.5% of salaries.

B. Personnel.

The Director's Office employs 12 attorneys including the Director, 6.5 paralegals, an office administrator, 10 support staff and one law clerk (*see* organizational chart at A. 21).

- In July 2016, Casey Brown was hired to fill the position of DEC coordinator/SharePoint clerk.
- In September 2016, Nicholas Ryan was hired to fill the position of law clerk.
- In October 2016, Julie Bennett resigned her position as attorney.

- In February 2017, attorney Jennifer Bovitz was hired to fill the position vacated by Ms. Bennett.
- In February 2017, Tracy Plunkett resigned her position as receptionist/clerk.
- In March 2017, Laurie Johnson was hired to fill the position vacated by Ms. Plunkett.
- Several personnel celebrated service awards due to their tenure in the Office. Josh Brand, Megan Engelhardt, Wenda Mason and Kevin Slator celebrated ten years of service; Jean Capecchi celebrated 30 years of service; and Cindy Peerman celebrated 35 years of service with the Office! Congratulations and thank you to these team members for their years of service to the public.

C. Website and Lawyers Professional Responsibility Board Intranet.

The OLPR website continues to be updated regularly to ensure it remains current. While the site contains a substantial amount of useful information regarding the discipline system, as well as services provided by the Director's Office, it is almost ten years old and needs to be updated. This project is expected to begin in 2018.

Attached at [A. 22](#) is a recent printout of the home page for the website.

The LPRB and DEC intranet (SharePoint) sites are widely used by volunteer Lawyers Board members, DEC chairs and investigators. More volunteers are using the sites as they come to see the sites are convenient. The Director's Office provides regular training to new and current Board members and DEC volunteers on the use and navigation of the sites. The Office also employs a DEC/SharePoint coordinator as the main contact for volunteers regarding questions about the sites.

D. Complainant Appeals.

Under Rule 8(e), RLPR, a dissatisfied complainant has the right to appeal most dismissals and all private discipline dispositions. Complainant appeals are reviewed by a Board member, other than members of the Board's Executive Committee, selected in

rotation. During 2016, the Director's Office received 175 complainant appeals, compared to 193 appeals received in 2015. The breakdown of the 175 determinations made by reviewing Board members in 2016 is as follows:

		<u>%</u>
Approve Director's Disposition	164	93.0
Direct Further Investigation	7	4.0
Instruct Director to Issue an Admonition	2	1.1
Instruct Director to Issue Charges	2	1.1

Approximately 159 clerical hours were spent in 2016 processing and routing appeal files. A limited amount of attorney time was expended in reviewing appeal letters and responding to complainants.

E. Probation.

The probation department administers two types of attorney disciplinary probation: private and public. Private probation is agreed to as part of the resolution of a complaint against a lawyer, and is subject to approval by the Lawyers Board Chair. Public probation is imposed by the Minnesota Supreme Court.

In 2016, 37 new probations were opened, which was an increase from the 30 new probations in 2015. Of the new probations, 20 were public and the remaining 17 were private. Of the public probations, four were ordered by the Court as a condition of reinstatement to the practice of law. Seven of the new probations in 2016 involved lawyers with mental health issues, two involved alcohol dependency and 12 resulted from a lawyer's failure to properly maintain his or her trust account. With the exception of eight probationers who were in practice less than 10 years, almost half (17) of the new probations in 2016 were for lawyers with 20 or more years of experience. Nine probationers had practiced 30 or more years, including four lawyers with 40 or more years of practice.

The Court revoked one probation in 2016 based on a stipulation for additional discipline. The Court also revoked the law licenses of three lawyers conditionally reinstated and placed on probation for failing to timely file with the Clerk of the Appellate Courts proof of their successful completion of the professional responsibility portion of the state bar examination.

In 2016, the Director began an overhaul of the probation department with a renewed focus on providing more resources to both probationers and supervisors. Upcoming initiatives will include the creation of a trust account school for those probations that include the submission and monitoring of trust account books and records.

During 2016, 31 Minnesota attorneys served as volunteer probation supervisors. Three attorneys and two paralegals staff the probation department, and commit a combined total of 40 hours per week. Additional probation statistics can be found at A. 16–A. 17.

F. Advisory Opinions.

Advisory opinions are available to all licensed Minnesota lawyers and judges. Advisory opinions are limited to prospective conduct. Questions or inquiries relating to past conduct, third-party conduct (i.e., conduct of another lawyer) or questions of substantive law are not answered. Advisory opinions are not binding upon the Lawyers Board or the Supreme Court; nevertheless, if the facts provided by the lawyer requesting the opinion are accurate and complete, compliance with the opinion would likely constitute evidence of a good faith attempt to comply with the professional regulations. As a part of most Continuing Legal Education presentations by members of the Director's Office, attorneys are reminded of the advisory opinion service and encouraged to make use of it.

The number of advisory opinions requested by Minnesota lawyers and judges decreased in 2016. In 2016, the Director's Office received 1,888 requests for advisory

opinions, compared to 2,012 in 2015. This represents a 6% decrease over last year.

(A. 11 - A. 12.) Table XII, at A. 13 shows the areas of inquiry of opinions.

In 2016, the Director's Office expended 300 assistant director hours in issuing advisory opinions. This compares with 303 hours in 2015. Dissolution/custody was the most frequently inquired about area of law. Conflicts of interest was the most frequent area of specific inquiry, along with client confidentiality, withdrawal from representation and trust account compliance.

G. Overdraft Notification.

Pursuant to Rule 1.15(j) – (o) of the MRPC, lawyer trust accounts, including IOLTA accounts, must be maintained in eligible financial institutions approved by the Director's Office, and the bank must agree to report all overdrafts on trust accounts to the Director's Office.

There were 52 trust account overdraft notices reported to the Director in 2016, fewer than the 75 notices received in 2015. Of those 52 overdraft notices, 21 resulted in disciplinary files being opened. The most common reasons for commencing an investigation are shortages found, significant record-keeping deficiencies noted, commingling of client and attorney funds and failure to cooperate. There were 66 overdraft inquiries closed by the Director in 2016, nearly identical to the 67 closed in 2015. Oftentimes, these closures involve the Director making recommendations to the attorney's record-keeping practices. The most common deficiencies were a lack of proper books and records and a failure to properly reconcile the account.

In 2016, the overdraft inquiries closed without a disciplinary investigation were closed for the following reasons:

Overdraft Cause	No. of Closings
Check written in error on TA	13
Mathematical/clerical error	11
Bank error	7

Service or check charges	5
Late deposit	4
Deposit to wrong account	2
Bank hold on funds drawn	1
Third party check bounced	0
Reporting error	0
Improper/lacking endorsements	0
Other	2

A total of 255.50 hours – 80.75 hours of attorney time and 174.75 of paralegal/staff time – was spent administering the overdraft program in 2016.

H. Judgments and Collections.

In 2016, judgments totaling \$43,111.84 were entered in 39 disciplinary matters. The Director’s Office collected a total of \$44,489.43 from judgments entered during or prior to 2016. The Director’s Office collected slightly more in 2016 than in 2015, despite the fact that 11 fewer judgments were issued in 2016. In fact, the Director collected more in 2016 than the yearly amount collected in at least the past 16 years. The Director collected \$2,614 in judgments prior to 2016 through the revenue recapture program.

I. Disclosures.

The disclosure department responds to written requests for attorney disciplinary records. Public discipline is always disclosed. Private discipline is disclosed only with an executed authorization from the affected attorney. In addition, the Director’s Office responds to telephone requests for attorney public discipline records. Public discipline information also is available through the OLPR website. Informal telephone requests and responses are not tabulated. The following requests were received in 2016:

	<u>No. of Requests</u>	<u>No. of Attorneys</u>	<u>Discipline Disclosed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	178	178	6	1
B. Individual Attorneys	343	343	20	0

C. Local Referral Services				
1. RCBA	16	51	2	0
2. Hennepin County	2	2	1	0
D. Governor's Office	21	61	4	1
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	65	65	1	2
F. F.B.I.	19	21	0	0
G. MSBA: Specialist Certification Program	29	107	5	1
H. Miscellaneous Requests	36	155	5	2
TOTAL	709	983	44	7
(2015 Totals for comparison)	(760)	(1203)	(55)	(9)

J. Trusteeships.

Rule 27(a), RLPR, authorizes the Supreme Court to appoint the Director as trustee of an attorney's files or trust account when no one else is available to protect the clients of a deceased, disabled or otherwise unavailable lawyer. In FY16, the Director was appointed trustee of the client files belonging to four deceased attorneys: John Wade Tackett, Michael Joseph Keogh, Roger Lincourt Belfay and Michael J. Corbin, an unusually high number in a short period of time. Typically, the Office sees one a year. In each of these matters, the Director has inventoried the client files and attempted to contact each client whose file is less than seven years old.

The Director was appointed trustee of the client trust accounts of six deceased attorneys: Donna Rae Johnson, John Wade Tackett, Michael Joseph Keogh, Roger Lincourt Belfay, Access Justice (Thomas Handorff), and William J. Aase. The trusteeship for Ms. Johnson has been closed. With regard to the Keogh, Access Justice and Aase trust accounts, the Director has completed her audit of those accounts and issued checks to the clients in accordance with those audits. The balances in the Tackett and Belfay trust accounts are nominal. The Director expects to complete her review of those accounts in the near future.

The Director continues to retain the following files:

- George C. Riggs trusteeship—753 files which are eligible for expunction in October 2017.
- Rudolph G. Maurine trusteeship—244 files which are eligible for expunction in October 2017.
- Hugh P. Markley trusteeship—19 files and 574 wills which are eligible for expunction in December 2017 and December 2019, respectively.
- Joseph Awah Fru trusteeship—596 files which are eligible for expunction in June 2018.

K. Professional Firms.

Under the Minnesota Professional Firms Act, Minn. Stat. § 319B.01 to 319B.12, professional firms engaged in the practice of law must file an initial report and annual reports thereafter demonstrating compliance with the Act. The Director's Office has handled the reporting requirements under this statute since 1973. Annual reports are sought from all known legal professional firms, which include professional corporations, professional limited liability corporations and professional limited liability partnerships. The filing requirements for professional firms are described on the OLPR website.

Professional firms pay a filing fee of \$100 for the first report and a \$25 filing fee each year thereafter. In reporting year 2015 (December 1, 2015 – November 30, 2016), there were 171 new professional firm filings. Fees collected from professional firm filings are included in the Board's annual budget. As of April 30, 2017, the Director's Office received \$60,800 from 2,267 professional firm filings. There were 53 new professional firm filings for the current reporting year. The Director's Office received \$89,725 during fiscal year 2016.

An assistant director, paralegal, and administrative clerk staff the professional firms department. For fiscal year 2017 (as of April 30, 2017), the total attorney work time for overseeing the professional firms department was 47 hours. The total non-attorney work time was 724.75 hours.

IV. DISTRICT ETHICS COMMITTEES (DECs).

Minnesota is one of a few jurisdictions that continue to extensively use local DECs to conduct the preliminary investigation of the majority of ethics complaints. The Supreme Court Advisory Committee considered the continued vitality of the DEC system in 2008 and determined that the Minnesota system continues to work well, and strongly urged its continuation. Each DEC corresponds to the MSBA bar districts, and each is assigned a staff lawyer from the OLPR as a liaison to that DEC. Currently, there are approximately 270 DEC volunteers.

Initial review of complaints by practitioners and nonlawyers is valuable in reinforcing confidence in the system. The overall quantity and quality of the DEC investigative reports remain high. For calendar year 2016, the Director's Office followed DEC recommendations in 80% of investigated matters that were closed during the year. Many of the matters in which the recommendation was not followed involved situations in which the DEC recommended a particular level of discipline, but the Director's Office sought an increased level of discipline. This typically involved attorneys with substantial prior relevant discipline that was not considered by the DEC in making its recommendation. These matters are counted as not following the DEC recommendation.

In 2016, the monthly average number of files under DEC consideration was 99, fluctuating between a low of 94 and a high of 127. The year-to-date average for 2017 is 99 as of April 30, 2017. Rule 7(c), RLPR, provides a 90-day goal for completing the DEC portion of the investigation. For calendar year 2016, the DECs completed 323 investigations, taking an average of four months to complete each investigation.

For calendar year 2016, of the completed DEC investigations statewide, the following dispositions were made (measured by number of files rather than lawyers):

Determination discipline not warranted	192
Admonition	54
Private probation	6

The annual seminar for DEC members, hosted by the Office and the Board, will be held this year on Friday, September 29, 2017. All DEC members, plus select members of the bench and bar with some connection to the discipline system, are invited. The seminar will be held at the Earle Brown Heritage Center in Minneapolis. Active DEC members attend the annual DEC Seminar at no cost.

Rule 3(a)(2), RLPR, requires that at least 20% of each DEC be nonlawyers. The rule's 20% requirement is crucial to the integrity of the disciplinary system and to the public's perception that the system is fair and not biased in favor of lawyers. Compliance with that requirement has improved since 2011, when 11 of the 21 DECs did not have 20% non-lawyer membership. As of May 1, 2017, three districts are not in full compliance. The Office and Board continue to work with these districts to bring them into compliance.

V. FY2018 GOALS AND OBJECTIVES.

The Court has requested a Strategic Plan for the Office, so the primary objective for the first half of FY18 is the completion of a plan. One of the components of this plan will likely be implementation of several aspects of the Proactive Regulation model developed by and currently being implemented by a number of innovative state jurisdictions; a systematic approach to attorney regulation focused on preventing ethics issues in the first instance. Additionally, the Office will continue to work towards its goal of all cases being closed or charged out within one year, excepting only cases on hold pending resolution of collateral proceedings. Finally, the Office expects to launch its new case management database in early 2018.

As noted last year, substantively, the Board and Office remain cognizant of the significant impact chemical dependency and mental health issues have on the profession, particularly as it relates to violations of the rules and cooperation with the Director. Increased resources within the Office have been dedicated to the probation

department as part of our effort to assist such attorneys. Effective partnerships with Lawyers Concerned for Lawyers and the MSBA remain important to tackling this issue as well. Effective succession planning for small firm and solo practitioners, particularly in outstate Minnesota, is also an area of interest for the Board to ensure appropriate protection of client interest.

Dated: July ____, 2017.

Respectfully submitted,

SUSAN M. HUMISTON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

and

STACY L. VINBERG
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Stacy L. Vinberg, Granite Falls - Chair. Attorney member. Term expires January 31, 2019. Assistant County Attorney for the Yellow Medicine County Attorney's Office. Served on Twelfth District Ethics Committee for 10 years, including one year as Chair. Areas of law: Real estate transactions, criminal prosecution, family law and probate.

Terrie S. Wheeler, Rush City - Public member. Term expires January 31, 2018. Serves on LPRB Executive Committee and DEC Committee. Served on Hennepin County District Ethics Committee for two years. President of Professional Services Marketing, Inc. for over 20 years. Areas of law: Strong background in ethical marketing practices for lawyers, marketing consulting and coaching for lawyers, marketing CLE presenter.

Joseph P. Beckman, Edina - Attorney member. MSBA nominee. Term expires January 31, 2020. Partner in the law firm of Hellmuth & Johnson. Areas of law: Current - Business Transactions (corporate governance, commercial transactions, technology); Past - Civil Litigation (contract disputes, business breakups, insurance coverage).

Jeanette M. Boerner - Attorney member. First term expires January 31, 2020. Hennepin County First Assistant Public Defender. Area of law: 25 years' experience in criminal defense work.

James P. Cullen, Minneapolis - Attorney member. MSBA nominee. Term expires January 31, 2020. Served on Hennepin County District Ethics Committee for eight years. Owner of Cullen Law Firm, Ltd. Areas of legal experience: Commercial and individual client litigation in state and federal courts; personal injury and professional liability civil actions; representation of medical professionals in civil, criminal and peer review matters and proceedings; criminal defense in state and federal courts; and service as an arbitrator in American Arbitration Association commercial and no-fault arbitration proceedings.

Norina Jo Dove, Minneapolis - Public member. Term expires January 31, 2019. Employed as a Senior Paralegal and Business Manager at Marilyn J. Michales & Associates, P.A. Areas of expertise: Family Law, Debtor/Creditor, Real Estate and Business Litigation.

Thomas J. Evenson, Minneapolis - Attorney member. MSBA nominee. Term expires January 31, 2018. Shareholder at Lind, Jensen, Sullivan & Peterson, PA. Participant in Minnesota Automobile Assigned Claims Bureau, MSBA Assembly, and Hamline University School of Law Alumni Association Board. Areas of law: General litigation, with an emphasis on products liability, wrongful death, construction defects, and fraud.

Roger Gilmore, Brooklyn Park - Public member. Term expires January 31, 2020. Served 10 years on Hennepin County District Ethics Committee. Served as member of the Supreme Court Advisory Committee to Review Lawyer Discipline System 2007-2008. Retired Captain, U.S. Navy Supply Corps., and retired Manager, FMC Corporation, Fridley. Areas of expertise: Defense Department contracting; contract administration and claims resolution; logistic support; program management; community mediation.

Christopher A. Grgurich, Minneapolis - Attorney member. MSBA nominee. First term expires January 31, 2019. Partner at Lindquist & Vennum. Focus on securities and commercial litigation. Also serves as General Counsel to assist partners and associates in meeting and understanding their ethical obligations under the MRPC. Served three years on Fourth District Ethics Committee. Chair of Hennepin County Bar Assn. Professionalism and Ethics Section.

Mary L. Hilfiker, St. Paul - Public member. Term expires January 31, 2020. Served on Second District Ethics Committee. Consultant for Indian Education for University of Wisconsin and DOE. Areas of expertise: Special education, mediation, arbitration, investigation.

Gary M. Hird, St. Paul - Attorney member. MSBA Nominee. Term expires January 31, 2018. Serves on the LPRB Rules Committee. Served on Tenth District Ethics Committees. Chief Operating Officer, Southern Minnesota Regional Legal Services, Inc. (SMRLS). Areas of law: Family, real estate, bankruptcy, juvenile, criminal and corporate law as well as labor relations.

Anne M. Honsa, Minneapolis - Attorney member. Term expires January 31, 2019. Served on the Fourth District Ethics Committee for 12 years - four years as Vice-Chair. Founder of Honsa & Associates, P.A. Area of law: Family Law.

Peter Ivy, Chaska - Attorney member. First term expires February 1, 2020. Serves as Chief Deputy Carver County Attorney. Has prosecuted all levels of crime since 1988. Continues to currently carry a felony caseload but also provides timely and accurate legal advice to all Carver County officials and divisions on procedural and substantive legal matters. Under direction of County Attorney, manages and directs activities of office including overseeing legal and policy interpretation and development, and the handling of all personnel matters directly or through designated supervisory personnel. Contemporaneous with his appointment to the LPRB, serves as Co-Chair of Minnesota County Attorney's Ethics Committee. Area of practice: Currently involves conducting internal investigations for Carver County.

Bentley R. Jackson, St. Paul - Public member. Term expires January 31, 2020. Adjunct Instructor at Rasmussen College - Law Enforcement Skills Program and Mankato State University. Retired Burnsville police officer. Areas of expertise: Criminal, internal, and forensic investigations.

Shawn Judge, Minneapolis - Public member. Term expires January 31, 2018. President and founder of The Speaker's Edge, LLC. Areas of expertise: Strategic-communications consultant and certified Qualified Administrator of the Intercultural Discovery Inventory, experienced in leading small-group and individual training sessions to develop confident speakers who get results. Clients include attorneys from major law firms and corporate executives.

Virginia Klevorn, Plymouth - Public member. First term expires February 1, 2020. Served on Fourth District Ethics Committee for three years. Business management consultant specializing in alternative dispute solution services.

Michael J. Leary, Burnsville - Public member. Term expires January 31, 2019. Serves on LPRB DEC Committee. Served on the First District Ethics Committee for two years and the Second District Ethics Committee for three years. Retired as Executive Vice President of International Dairy Queen, Inc. Areas of expertise: Mediation and arbitration; management and contract issues.

Cheryl M. Prince, Duluth - Attorney member. Term expires January 31, 2019. Chair of LPRB Rules Committee. Serves on LPRB DEC Committee. Shareholder in the Duluth firm of Hanft Fride, P.A. Served on Eleventh District Ethics Committee for many years, including six years as Chair. Areas of law: Family law and mediation.

Susan C. Rhode, Minneapolis - Attorney member. Partial term expires January 31, 2018. Served as Fourth District Ethics Committee Chair for six years. Partner at Moss & Barnett. Area of practice: Family law focusing on complex financial issues in dissolution matters.

Gail Stremel, St. Paul - Public member. Term expires January 31, 2018. Served on Ramsey County District Ethics Committee for six years. Served as division director of public assistance programs at Ramsey County Community Human Services. Areas of expertise: Social work and public administration.

Allan Witz, Rochester - Attorney member. Term expires January 31, 2020. Attorney, mediator and arbitrator who practices in the Rochester, Minnesota office of Witz Law P.A. Licensed to practice law in Minnesota, Florida, Michigan, and South Africa (inactive), and has a Minnesota Real Estate license. Principal practice areas: Business law, estate planning and immigration law.

Robin M. Wolpert, St. Paul - Attorney member. MSBA nominee. Term expires January 31, 2020. Serves on LPRB Executive Committee. Served on Nineteenth District Ethics Committee for seven years. Employed as Assistant County Attorney, Washington County Attorney's Office.

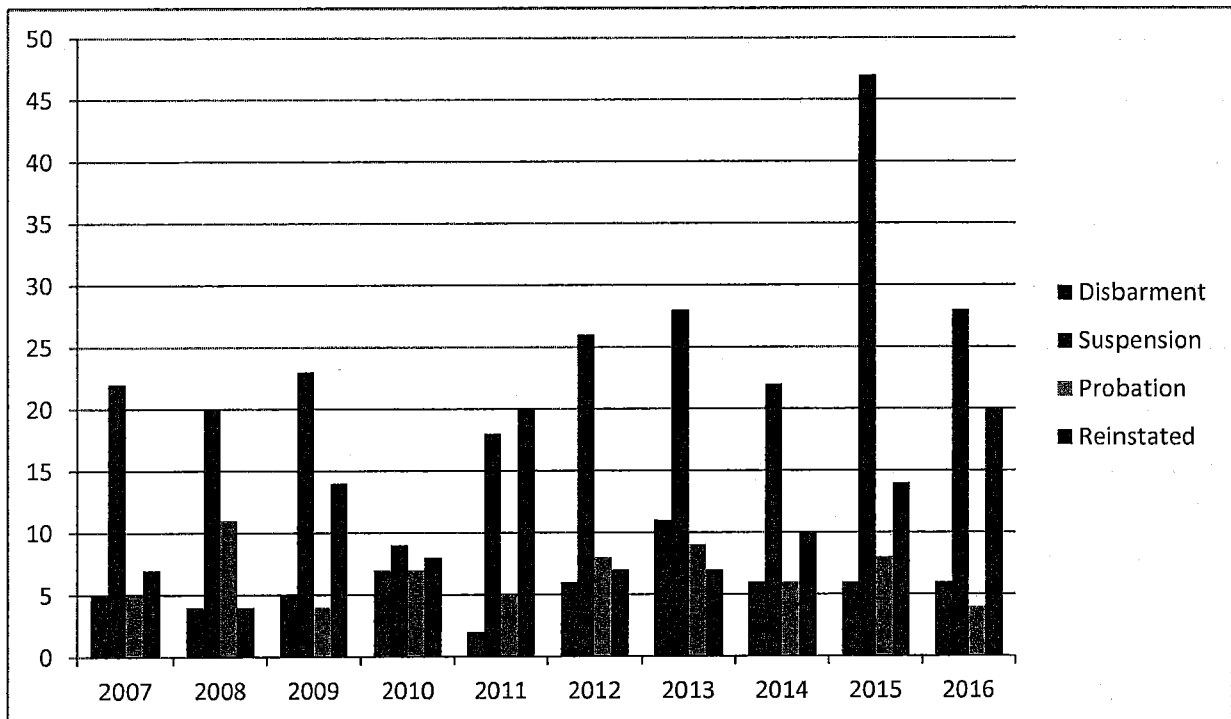
Table I
Complaint Statistics 2000–2016

<u>Year</u>	<u>Files Opened</u>	<u>Files Closed</u>
2000	1362	1288
2001	1246	1277
2002	1165	1226
2003	1168	1143
2004	1147	1109
2005	1150	1148
2006	1222	1171
2007	1226	1304
2008	1258	1161
2009	1206	1229
2010	1366	1252
2011	1341	1386
2012	1287	1287
2013	1256	1279
2014	1293	1248
2015	1210	1332
2016	1216	1264

TABLE II
Supreme Court Dispositions and Reinstatements 2007-2016
Number of Lawyers

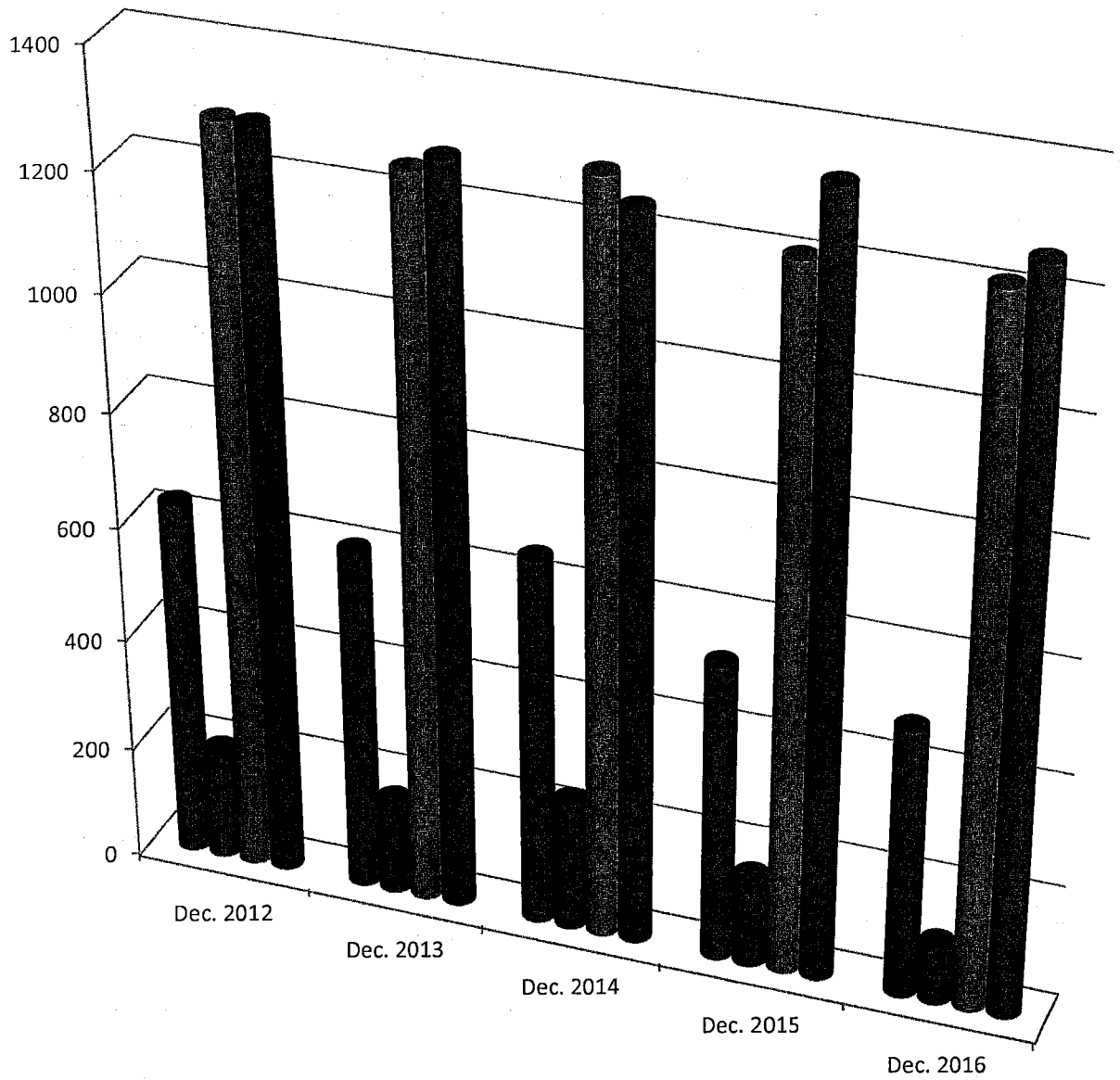
	Disbar.	Susp.	Probation	Reprimand	Dismissal	Reinstated	Reinstated Denied	Disability	SC AD/Aff	Other	Total
2007	5	22	6	-	-	7	2	-	1	-	43
2008	4	20	11	2	-	4	2	2	-	-	45
2009	5	23	4	6	-	14	1	1	-	-	54
2010	7	9	7	3	1	8	2	4	-	-	41
2011	2	18	5	2	-	20	-	1	-	-	48
2012	6	26	8	1	1	7	-	-	-	-	49
2013	11	28	9	4	-	14	-	2	-	-	68
2014	6	22	6	5	-	10	1	0	0	1**	51
2015	6	47	8	4	-	14	-	1	-	-	80
2016	6	28	4	6	2	20	2	2	1	1**	72

TABLE III
Disbarments, Suspensions, Probations and Reinstatements 2007-2016



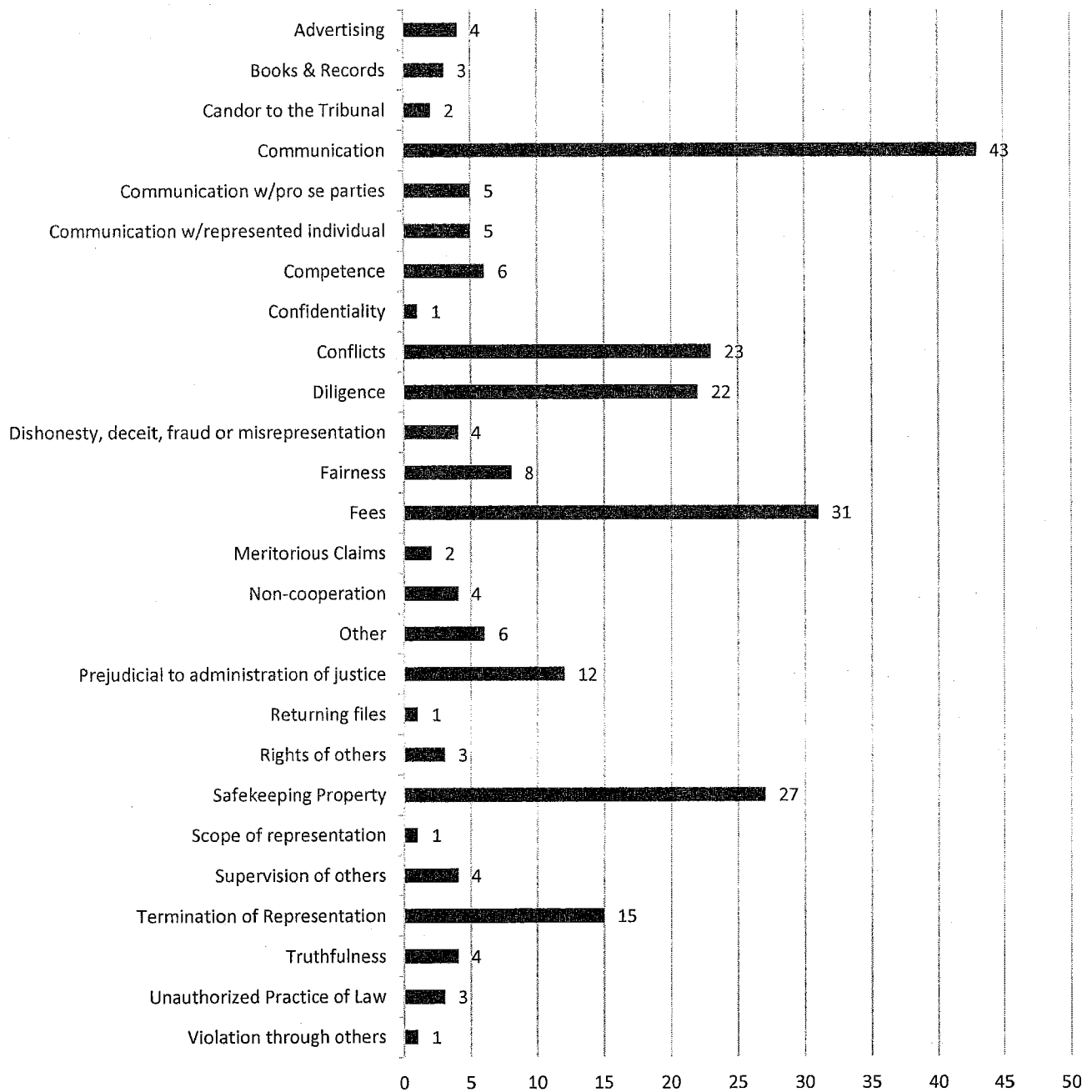
** Reinstatement dismissed.

TABLE IV
File Openings, Closings and Year Old Files 2012-Present



	Dec. 2012	Dec. 2013	Dec. 2014	Dec. 2015	Dec. 2016
■ Total Open Files	632	605	650	528	480
■ Cases at Least One Year Old	197	168	231	161	108
■ Complaints Received YTD	1,287	1,253	1,293	1,210	1,216
■ Files Closed YTD	1,287	1,279	1,248	1,332	1,264

TABLE V
AREAS OF MISCONDUCT-ADMONITIONS (2016)*



*In 2015, the Office issued 112 admonitions involving 240 rule violations. This chart reflects the number of rule violations involved in those 112 admonitions, organized by area of misconduct.

TABLE VI
Percentage of Files Closed

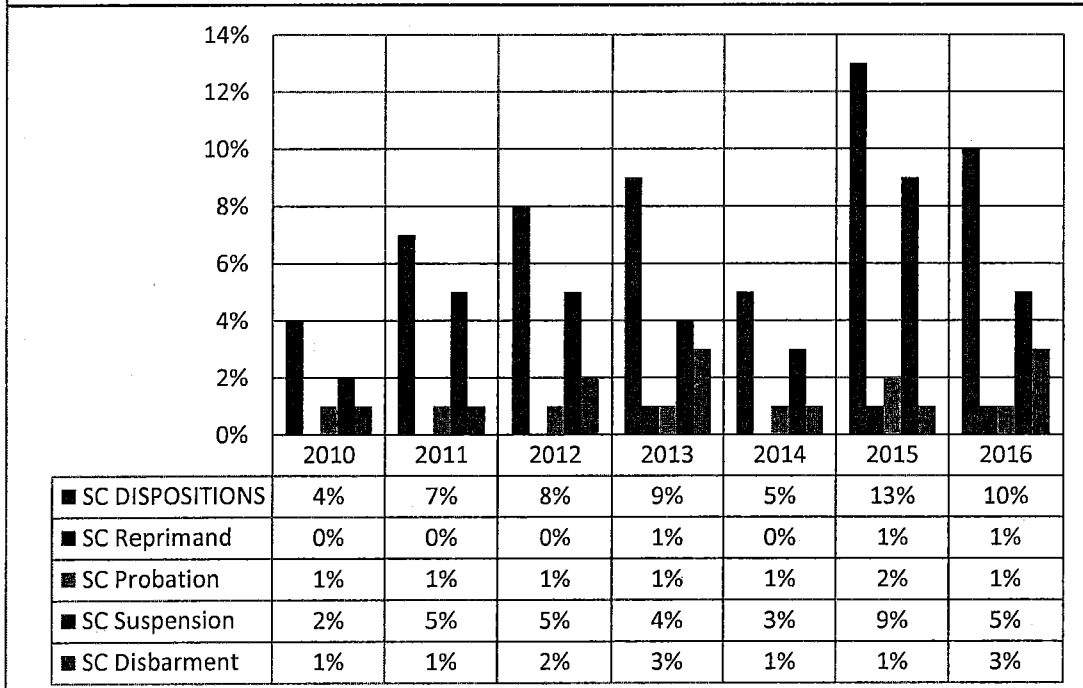
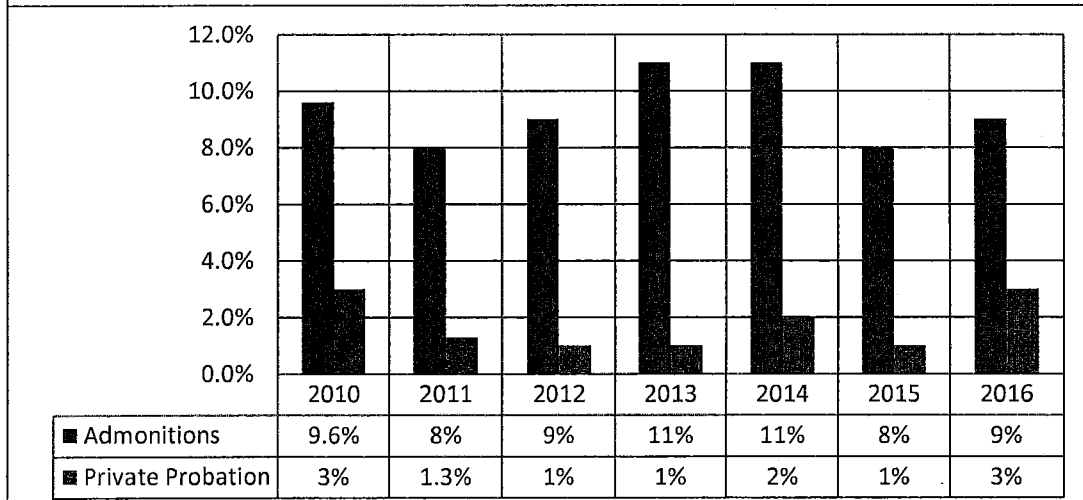
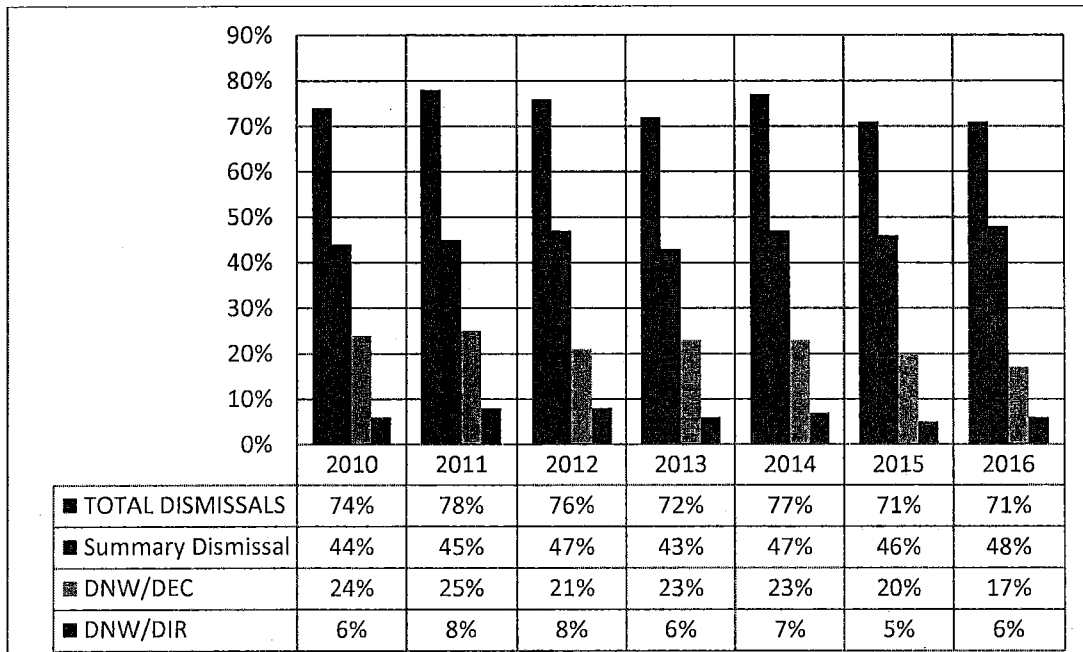


TABLE VII

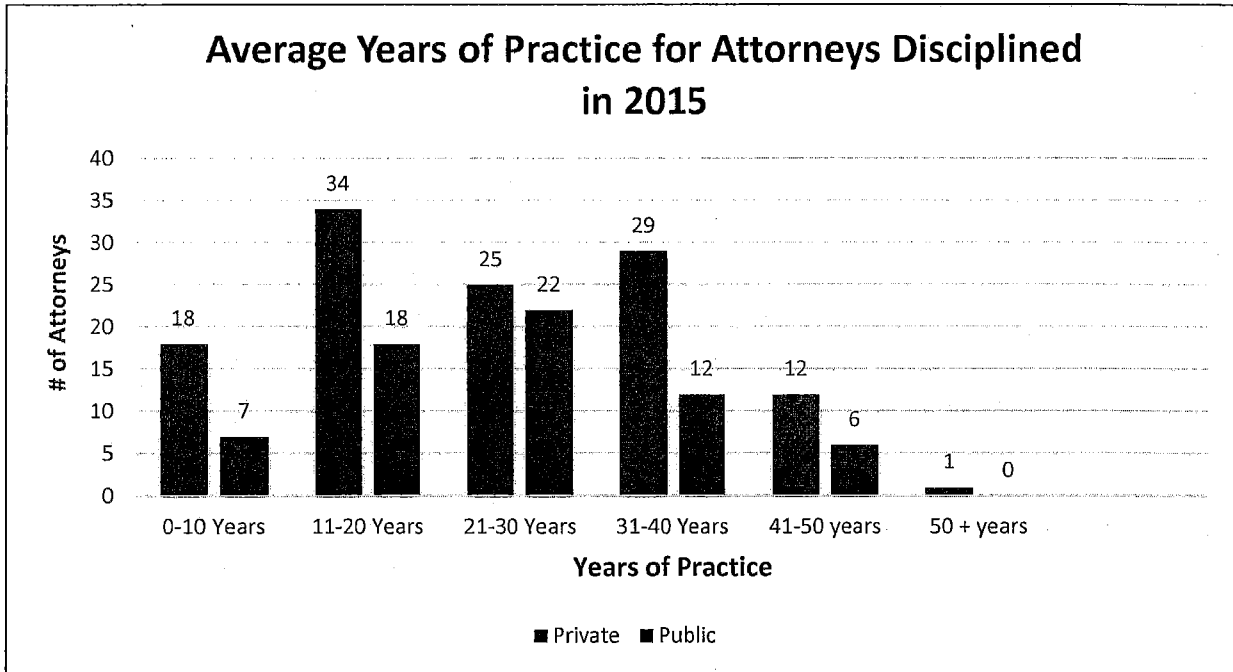


TABLE VIII

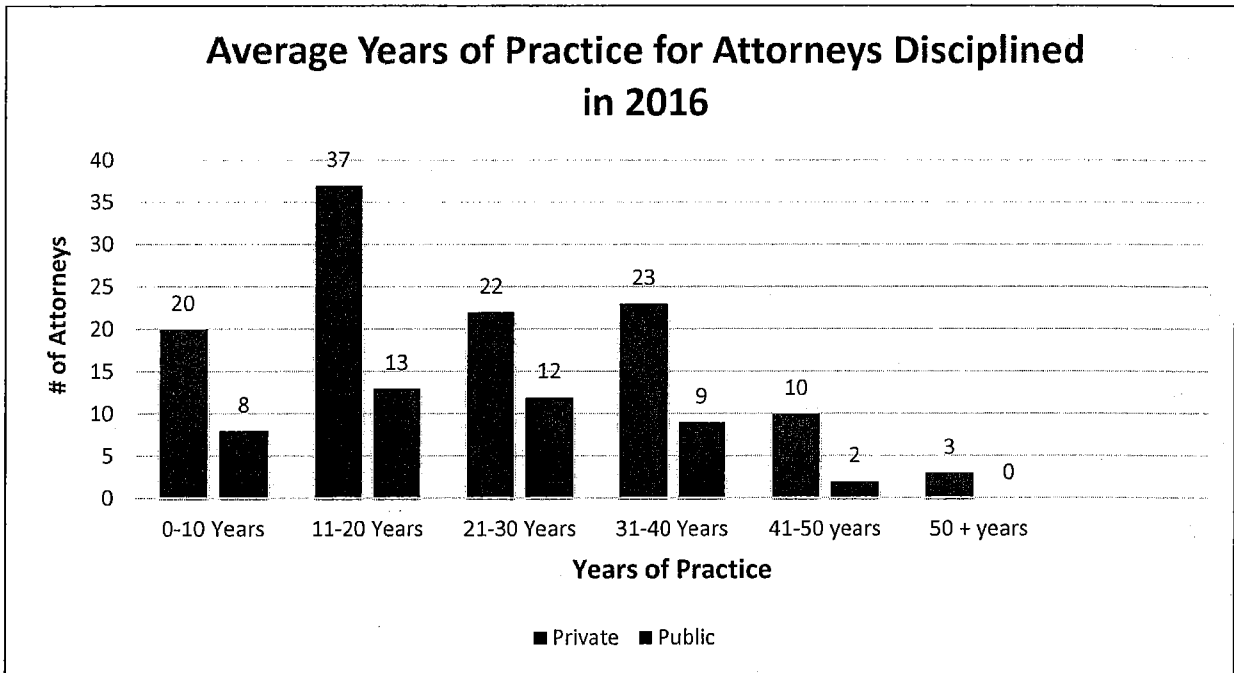
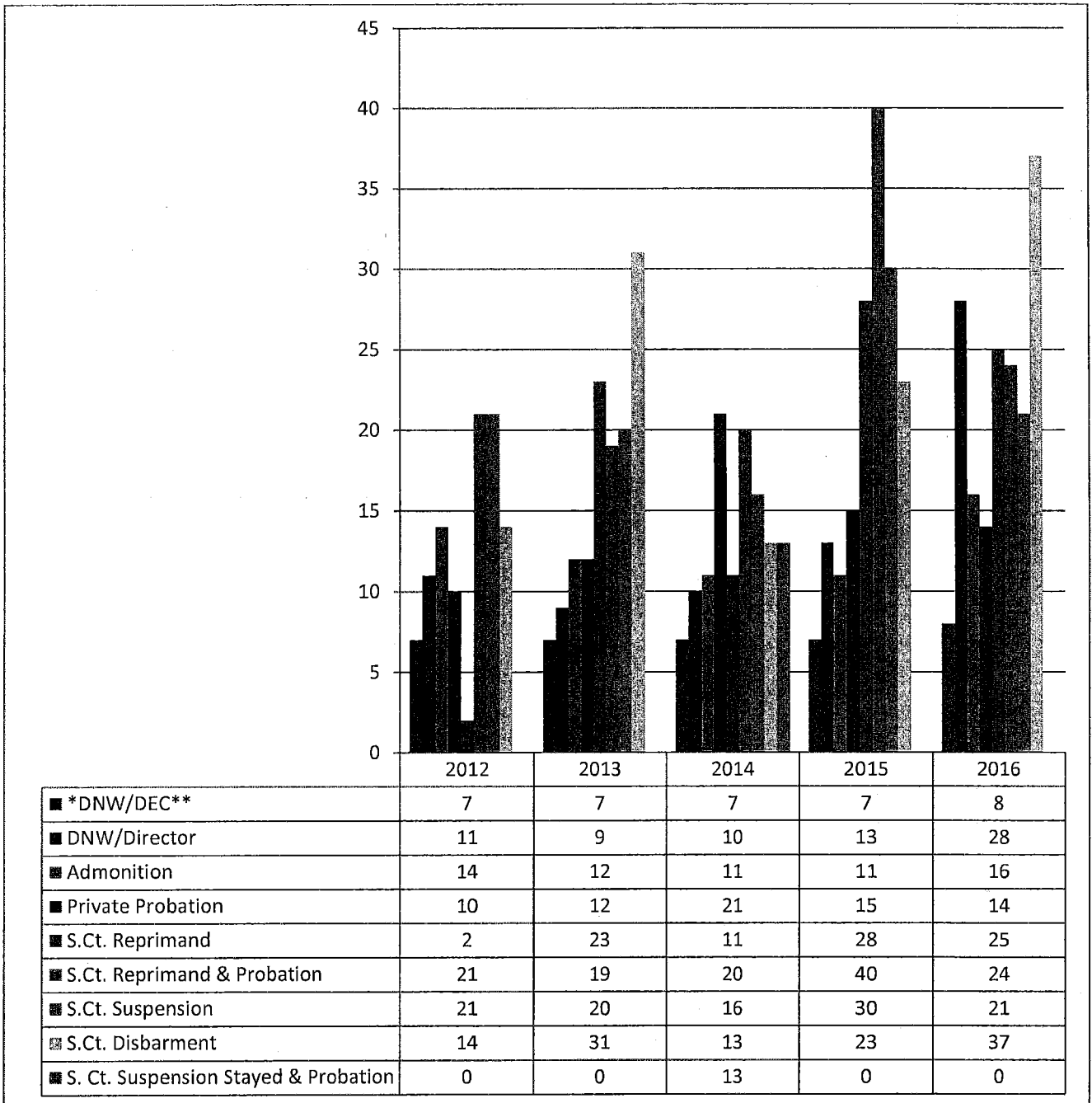


TABLE IX
Average Number of Months File was Open at Disposition

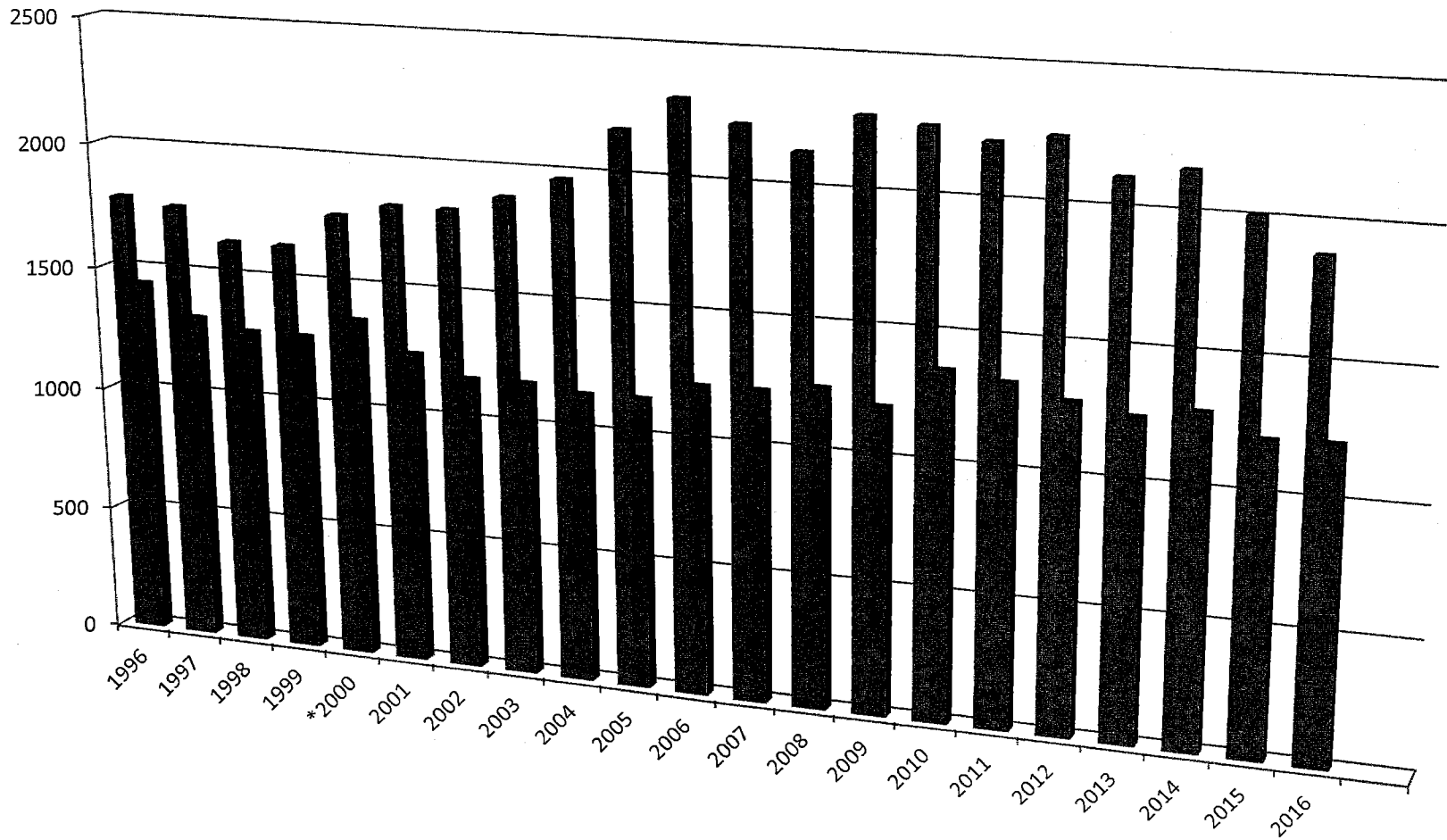


*Discipline Not Warranted
**District Ethics Committee

TABLE X
PUBLIC DISCIPLINE DECISIONS 1985-2016

Year	Disbarments	Suspensions (all)	Probations	Reprimands	Total
1985	4	13	13	12	42
1986	7	17	2	4	30
1987	5	18	4	7	34
1988	4	22	7	5	38
1989	5	19	8	3	35
1990	8	27	10	10	55
1991	8	14	10	6	38
1992	7	16	7	5	35
1993	5	15	12	3	35
1994	8	5	7	0	20
1995	6	27	8	4	45
1996	4	27	5	0	36
1997	10	16	7	2	35
1998	15	18	10	2	45
1999	3	12	6	0	21
2000	6	19	10	2	37
2001	3	15	9	2	29
2002	4	18	6	1	29
2003	6	14	4	0	24
2004	5	10	3	1	19
2005	6	22	6	1	35
2006	8	26	9	5	48
2007	5	21	5	0	31
2008	4	20	11	2	37
2009	5	23	4	6	38
2010	7	9	7	3	26
2011	2	17	5	2	26
2012	6	24	8	1	39
2013	11	23	8	5	47
2014	6	19	5	5	35
2015	6	47	8	4	65
2016	6	28	4	6	44
TOTALS	195	621	228	109	1153

TABLE XI
Advisory Opinion Requests Received
and
Number of Complaints Opened
1996 - 2016



	1996	1997	1998	1999	*2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	
■ Advisory Opinions Received	1783	1757	1632	1635	1770	1824	1825	1889	1974	2177	2307	2223	2135	2282	2258	2215	2249	2116	2156	2012	1888	
■ Complaints Opened	1438	1314	1275	1278	1362	1246	1165	1168	1147	1150	1222	1226	1257	1206	1365	1337	1287	1253	1293	1210	1216	

* 2000 total advisory opinions (AO) received was revised to reflect additional AO's not previously included.

TABLE XII
Advisory Opinions 1991-2016

YEAR	OPINIONS GIVEN BY TELEPHONE	OPINIONS GIVEN IN WRITING	TOTAL OPINIONS GIVEN	OPINIONS DECLINED	TOTAL
1991	1083 (84%)	23 (2%)	1106 (86%)	186 (14%)	1292
1992	1201 (86%)	15 (1%)	1216 (87%)	182 (13%)	1398
1993	1410 (87%)	16 (1%)	1426 (88%)	201 (12%)	1627
1994	1489 (84%)	10 (1%)	1499 (85%)	266 (15%)	1765
1995	1567 (87%)	22 (1%)	1589 (88%)	206 (12%)	1795
1996	1568 (88%)	16 (1%)	1584 (89%)	199 (11%)	1783
1997	1577 (90%)	15 (1%)	1592 (91%)	165 (9%)	1757
1998	1478 (91%)	23 (1%)	1501 (92%)	131 (8%)	1632
1999	1464 (90%)	17 (1%)	1481 (91%)	154 (9%)	1635
2000	1600 (90%)**	28 (2%)	1628 (92%)**	142 (8%)	1770*
2001	1682 (92%)	9 (.5%)	1691 (93%)	133 (7%)	1824
2002	1695 (93%)	15 (.8%)	1710 (94%)	115 (6%)	1825
2003	1758 (93%)	9 (.5%)	1767 (94%)	122 (6%)**	1889
2004	1840 (93%)	3 (.2%)	1843 (93%)	131 (7%)	1974
2005	2041 (94%)	1 (.5%)	2042 (94%)	135 (6%)	2177
2006	2119 (92%)	2 (.8%)	2121 (92%)	186 (8%)	2307
2007	2080 (94%)	2 (.9%)	2082 (94%)	141 (6%)	2223
2008	1982 (93%)	2 (.9%)	1984 (93%)	151 (7%)	2135
2009	2137 (94%)	1 (.4%)	2138 (94%)	144 (6%)	2282
2010	2134 (95%)	2 (.0%)	2136 (95%)	122 (5%)	2258
2011	2080 (99%)	2 (.0%)	2082 (94%)	133 (6%)	2215
2012	2137 (99%)	4 (.0%)	2141 (95%)	108 (5%)	2249
2013	1976 (93%)	3 (.0%)	1979 (94%)	137 (6%)	2116
2014	2020 (94%)	1 (.0%)	2021 (94%)	135 (6%)	2156
2015	1866 (93%)	3 (.0%)	1869 (93%)	143 (7%)	2012
2016	1770 (94%)	2 (.0%)	1772 (94%)	116 (6%)	1888

* 2000 totals revised to reflect additional AOs that were not previously included.

** Percentage amount corrected.

Table XIII			
Advisory Opinions Subject Matter by Rule			
Rule	Description	2015	2016
1.1	Competence	16	17
1.2	Scope of Representation	55	52
1.3	Diligence	8	7
1.4	Communication	31	50
1.5	Fee Agreements and Fees - Generally	104	119
1.6	Client Confidentiality	245	271
1.7	Conflict of Interest - Generally	246	279
1.8	Conflict of Interest - Transactions	62	69
1.9	Conflict - Former Clients Generally	169	193
1.10	Imputed Disqualification - Generally	57	41
1.11	Government Lawyer Conflicts Generally	15	13
1.12	Former Judges & Law Clerks	8	8
1.13	Organization as Client	11	25
1.14	Disabled Client - Generally	50	38
1.15	Trust Accounts - Generally	174	162
1.16	Withdrawal from Representation	232	281
1.17	Sale or Termination of Law Practice	34	50
1.18	Prospective Clients	55	43
2.1	Advisor	1	0
2.4	Lawyer Serving as 3rd Party Neutral	0	4
3.1	Meritorius Claims	16	10
3.2	Expediting Litigation	1	2
3.3	Candor Toward the Tribunal	41	49
3.4	Fairness to Opposing Counsel	37	30
3.5	Contact with jurors or venire	8	2
3.6	Trial Publicity	1	0
3.7	Attorney as Witness	16	15
3.8	Special Prosecutor Duties	5	5
4.1	Candor to Others	2	7
4.2	Contact with Represented Party	81	72
4.3	Contact with Unrepresented Party	18	30
4.4	Respect for Third Persons' Rights	24	26
5.1	Supervisory Lawyers	1	2
5.2	Subordinate Lawyers	4	1
5.3	Non-Lawyer Employees	5	8
5.4	Professional Independence	13	13
5.5	Unauthorized Practice	87	76
5.6	Covenants Not to Compete	7	7
5.7	Responsibilities Regarding Law Related Services	4	3
5.8	Employment of Suspended Attorney	4	8
6.1	Voluntary Pro Bono	0	1
6.3	Legal Services Organizations	1	0
6.5	Pro Bono Limited Legal Services Programs	2	2
7.1	Advertising Generally	38	25
7.2	Technical Requirements	22	16
7.3	Solicitation Generally	35	29
7.4	Specialization	3	0
7.5	Letterhead & Firm Name	49	25
8.1	Admission and Discipline	1	2
8.2	Legal Officials	0	1
8.3	Duty to Report Attorney Misconduct	56	69
8.4	Misconduct	50	47
99	Dormant File Procedures	167	100
	Totals	2372	2405

OLPR Summary of Public Matters Decided

January - December 2016

71 Decisions Involving 143 Files

Disbarment	40 files	6 attorneys
EDLUND, PAUL JODY	A16-914	1
GREEN, PAMELA L	A15-682	1
HANSEN, DALE ALLEN	A16-1413	5
OLIVER, TIMOTHY J	A15-1285	1
RAMBOW, PAUL ROLAND	A14-804	19
RESNIK, RONALD	A16-1026	13
Suspension	60 files	27 attorneys
AKWUBA, JOHN NWABUWANE	A15-1316	1
BECKER, SCOTT ALAN	A15-1877	1
BOSMAN, PAUL JOSEPH	A15-1930	5
BRANTINGHAM, JEREMY LLOYD	A16-674	2
BULL, ERIC DAVID	A16-324	1
DUCHON, JAMES CARL	A16-1274	5
GILLETTE, ADAM ANDREW	A16-1195	1
GREEN, KEVIN O'CONNOR	A16-1685	1
HANSMEIER, PAUL ROBERT	A15-1855	4
JOHNSON, JAREN LEE	A16-240	1
KENNEDY, DUANE A	A15-1390	2
LEWIS, JONATHAN C	A15-999	1
MAYER, JAMES RICHARD	A15-1274	1
OBASI, CHRISTOPHER OZIOMA	A16-1132	1
OBASI, CHRISTOPHER OZIOMA	A16-1718	1
OLSON, DAVID WALTER	A16-1374	1
PENDLETON, ALAN F	A15-1996	1
PETRY, RICKIE LEONARD	A16-366	14
POPPE MACKENZIE, JILL ALANE	A15-1888	4
PRICE, CHARLES A	A16-921	1
RIEHM, MICHAEL JOHN	A13-1786	3
RUFFING, AMANDA LYN	A15-1243	1
SANCHEZ, JORGE LUIS	A16-66	1
SMITH, VICTOR HARLAN	A16-409	1
SWANSON, RICHARD LEE	A14-1589	1

THOMAS, DARRYL CHARLES II	A15-1901	3
WANDLING, DAVID EDWIN	A15-1946	1
Suspension/Reprimand	1 files	1 attorneys
GREENMAN, MARK ALAN	A16-491	1
Reprimand & Probation	6 files	4 attorneys
KRAUS, THOMAS J	A16-688	2
LEE, FONG ERIC	A16-228	1
PEARSON, TODD CURTIS	A15-1818	1
ROBINSON, MITCHELL ALAN	A15-1357	2
Reprimand	9 files	6 attorneys
ALTSCHULER, DEBRA ELISE	A16-193	1
DUGAS, MICHAEL KEVIN	A16-1204	2
KENNEDY, DANIEL L M	A15-1698	2
SMALL, ANDREW MARC	A16-1832	1
STONEBURNER, ROBERT D	A15-441	1
VAN BEEK, TROY ALLEN	A15-536	2
Dismissal	2 files	2 attorneys
IGBANUGO, HERBERT AZUBUIKE	A15-1319	1
OLSON, DANIELLE HEATHER	A16-280	1
Disability Inactive Status	2 files	2 attorneys
CARTER, RALPH F	A16-435	1
KOEPKE, KEVIN MICHAEL	A16-791	1
Reinstatement	5 files	5 attorneys
OLSON, DAVID WALTER	A16-1374	1
PENDLETON, ALAN F	A15-1996	1
RUFFING, AMANDA LYN	A15-1243	1
SHEYS, KEVIN MICHAEL	A15-1867	1
TIEN, WENDY SLOANE	A16-319	1

Reinstatement & Probation **15 files** **15 attorneys**

AKWUBA , JOHN NWABUWANE	A15-1316	1
BECKER , SCOTT ALAN	A15-1877	1
BOSMAN , PAUL JOSEPH	A15-1930	1
GILLETTE , ADAM ANDREW	A16-1195	1
GREEN , KEVIN O'CONNOR	A16-1685	1
JOHNSON , JAREN LEE	A16-240	1
KENNEDY , DUANE A	A15-1390	1
KUNZ , BRUCE ANTHONY	A15-178	1
KURZMAN , MARC G	A14-1416	1
NYBERG , KENT E	A15-1632	1
O'GARA , CAROL LYNN	A16-671	1
OYEN , KRISTIAN LEE	A14-1384	1
SWANSON , SCOTT WILLIAM	A15-1011	1
SWANSON , RICHARD LEE	A14-1589	1
ZITNICK , KARA JANE JENSEN	A15-743	1

Reinstatement Denied **2 files** **2 attorneys**

GRIFFITH , CLARK CALVIN II	A15-1186	1
SEVERSON , LARRY S	A16-596	1

Reinstatement Dismissed **1 files** **1 attorneys**

TOBERMAN , RACHEL LAUREN	A16-67	1
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PROBATION STATISTICS

TOTAL PROBATION FILES OPEN DURING 2016

Public Supervised Probation Files (38.4%)	38	
Public Unsupervised Probation Files (18.2%)	<u>18</u>	
Total Public Probation Files (56.6%)		56
Private Supervised Probation Files (15.1%)	15	
Private Unsupervised Probation Files (28.3%)	<u>28</u>	
Total Private Probation Files (43.4%)		<u>43</u>
Total Probation Files Open During 2016		99

TOTAL PROBATION FILES

Total probation files as of 1/1/16	71
Probation files opened during 2016	36
Private probation extended during 2016	1
Probation files closed during 2016	<u>(36)</u>
Total Open Probation Files as of 12/31/16	72

PROBATIONS OPENED IN 2016

Public Probation Files

Court-ordered Probation Files		
Supervised	12	
Unsupervised	<u>4</u>	
		16

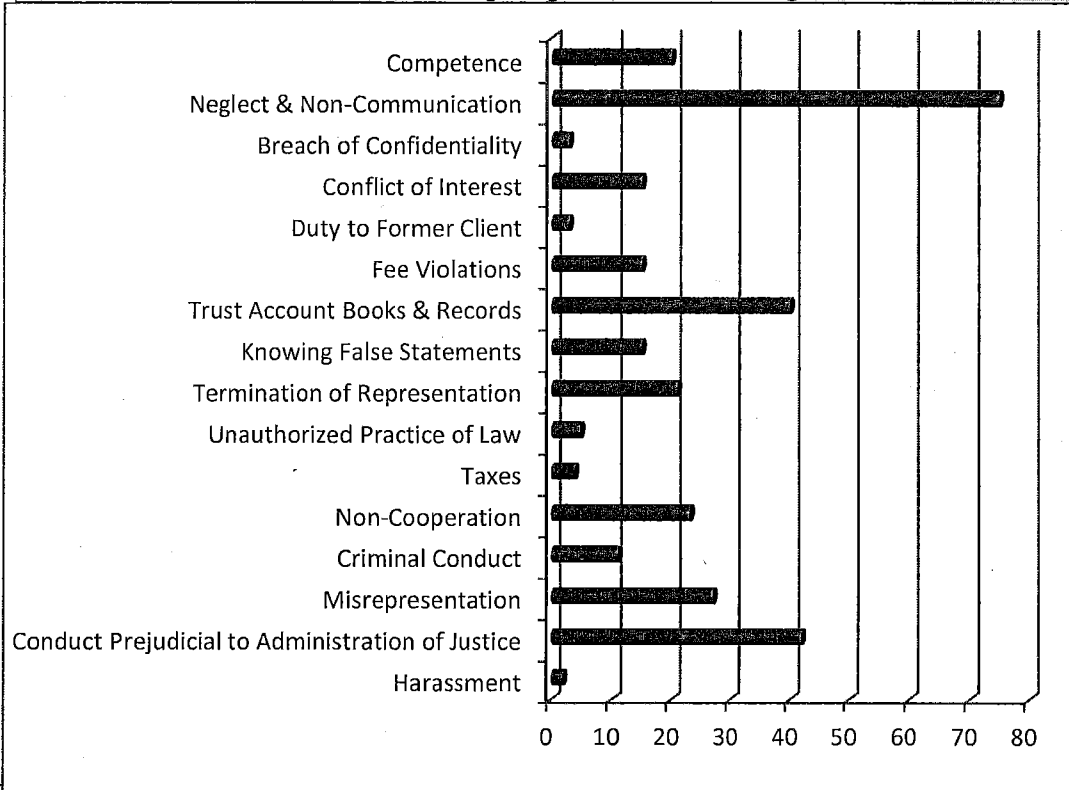
Reinstatements

Supervised	1	
Unsupervised	<u>3</u>	
		<u>4</u>
Total Public Probation Files		20

Private Probation Files

Supervised	9	
Unsupervised	<u>8</u>	
		<u>17</u>
Total Private Probation Files		17
Total New Probation Files in 2016		37

AREAS OF MISCONDUCT-PROBATION
As reflected in 99 open probations during 2016¹



Competence (Violation of Rules 1.1 and 1.2, MRPC)	20
Neglect & Non-Communication (Violation of Rules 1.3 and 1.4, MRPC)	75
Breach of Confidentiality (Violation of Rule 1.6, MRPC)	3
Conflict of Interest (Violation of Rules 1.7 and 1.8, MRPC)	15
Duty to Former Client (Violation of Rule 1.9, MRPC)	3
Fee Violations (Violation of Rule 1.5, MRPC)	15
Trust Account Books and Records (Violation of Rule 1.15, MRPC)	40
Termination of Representation (Violation of Rule 1.16, MRPC)	21
Knowing False Statements to Others (Violation of Rule 4.1, MRPC)	15
Unauthorized Practice of Law (Violation of Rule 5.5, MRPC)	5
Taxes	4
Non-Cooperation (Violation of Rule 8.1, MRPC)	23
Criminal Conduct (Violation of Rule 8.4(b), MRPC)	11
Misrepresentation (Violation of Rule 8.4(c), MRPC)	27
Conduct Prejudicial to the Administration of Justice (Violation of Rule 8.4(d), MRPC)	42
Harassment (Violation of Rule 8.4(g), MRPC)	2

¹ A file may involve more than one area of misconduct.

**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2016 – June 2017**

Date	Topic	Location	Organization	Initials
7/29/16	CLE for Law Clerks	Rochester	MNCLE	CBH
8/18/16	Pro Se Litigants and Professional Responsibility	Hastings	Minnesota Judicial Branch	SMH
9/8/16	“Good” Attorneys, Bad Decisions	Minneapolis	University of St. Thomas School of Law	JHB
9/14/16	New Law Series–Vision of OLPR	Webcast	MNCLE	SMH
9/17/16	Ethical Pitfalls for Family Law Attorneys	Minneapolis	MSBA	SMH
9/30/16	Technology, Social Media & Ethics	Minneapolis	Office of Lawyers Professional Responsibility	TMB
9/30/16	Stipulations for Discipline and the Court	Minneapolis	Office of Lawyers Professional Responsibility	CDK
9/30/16	Practical Tips for Dealing with Mental Health and Chemical Dependency Issues in Investigations	Minneapolis	Office of Lawyers Professional Responsibility	CBH
9/30/16	Case Studies: When the OLPR Departs from DEC Recommendations	Minneapolis	Office of Lawyers Professional Responsibility	BTT
9/30/16	District Ethics Committees Workshop	Minneapolis	Office of Lawyers Professional Responsibility	PRB
10/10/16	Ethical Issues in Pro Bono Work	Alexandria	MNCLE	AMM
10/21/16	Ethics for Law Librarians and Legal Advice Clinics	West St. Paul	Minnesota Judicial Branch	SMH
11/2/16	Unbundled Legal Services	Minneapolis	MNCLE	MDE
11/3/16	Behind the Scenes Look at a Case Study Complaint Involving Real Estate Issues	St. Paul	Real Estate Institute	AMM
11/3/16	Anoka County Bar Association Seminar	Anoka	Anoka County Bar Association	TMB
11/4/16	Conflicts in Real Estate	St. Paul	MNCLE	SMH
11/5/16	Topics in Ethics	St. Paul	Air National Guard	KTS
11/9/16	Ethics Issues in Lawyers’ Use of Social Media	Excelsior	West Metro CLE Seminars	JHB
11/17/16	Professional Responsibility	Minneapolis	University of St. Thomas School of Law	PRB
12/14/16	MSBA Seminar on Rule 5.5	Minneapolis	MSBA/CLE	PRB
12/19/16	IOLTA Seminar	Minneapolis	MSBA/CLE	PRB
1/12/17	Ethics Issues in Lawyers’ Use of Social Media	Anoka	Tenth Judicial District	CDK
1/13/17	Year in Review		First District Ethics Committee	CBH

**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2016 – June 2017**

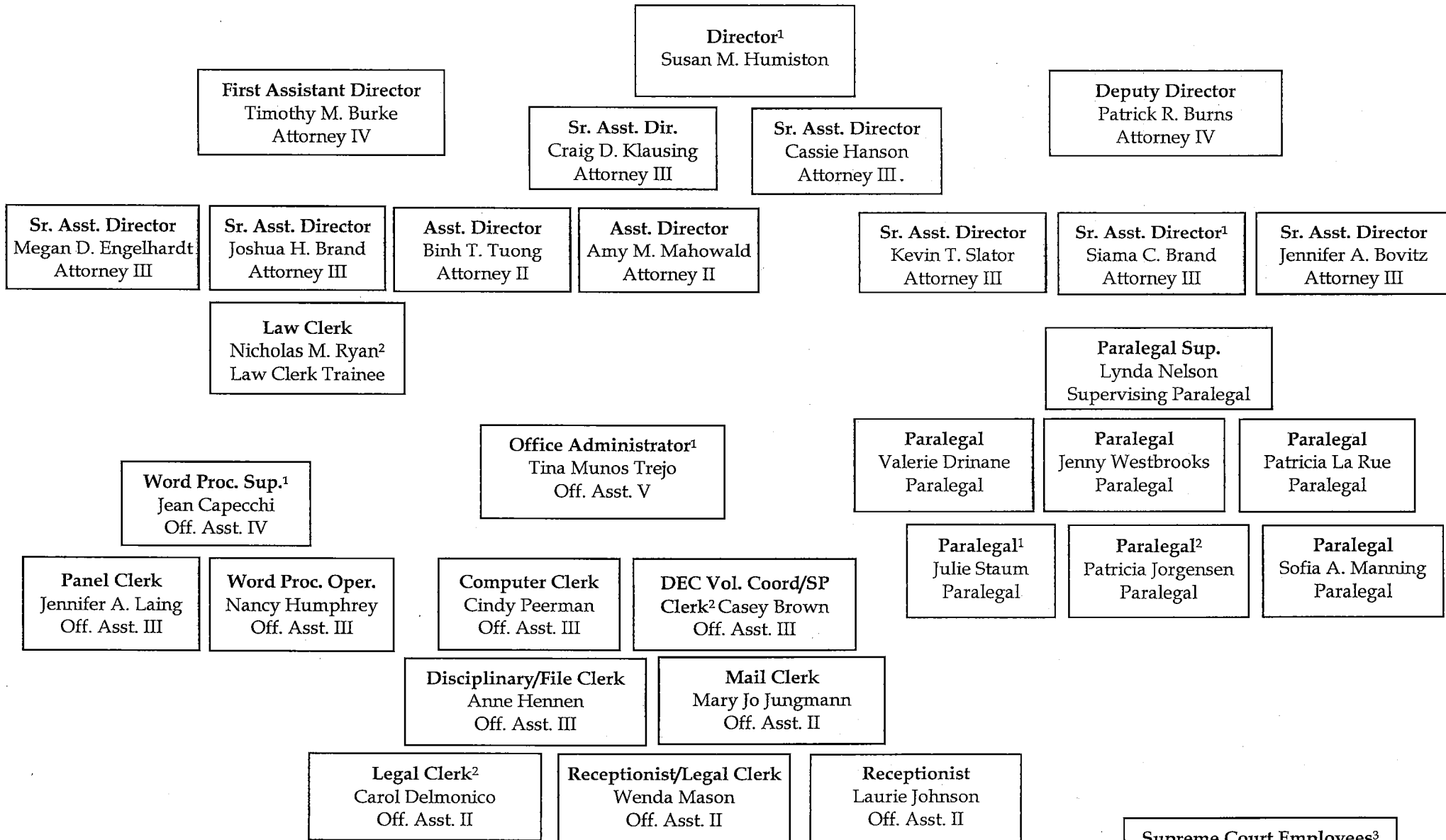
Date	Topic	Location	Organization	Initials
1/13/17	Year in Review	Benson	12th District Bar Association	SMH
2/15/17	Ethics for Civil Litigators	Minneapolis	MNCLE	MDE
2/24/17	Where Malpractice and Ethics Converge	Duluth	Minnesota Association for Justice	SMH
2/28/17	Volunteer Lawyers Network Seminar	Minneapolis	HCBA	PRB
3/2/17	Dorsey Seminar - WI & MN Recent Developments	Minneapolis	Dorsey & Whitney	PRB
3/8/17	MPA Probate & Tax Sectional, "Ethics for Paralegals"	Minneapolis	Minnesota Paralegal Association	LJN
3/10/17	Year in Review	Minneapolis	Hennepin County Bar Association	SMH
3/16/17	Major Case Developments in Ethics & Professional Responsibility	Minneapolis	Hennepin County Law Clerks	CBH
3/21/17	Family Law Institute	St. Paul	MNCLE	CBH TMB
3/21/17	Professional Responsibility Class	St. Paul	Mitchell Hamline School of Law	PRB
3/23/17	Volunteer Lawyers Network Annual Housing Seminar	Minneapolis	Faegre Baker Daniels	MDE
3/24/17	Ethics & the Criminal Lawyer	Minneapolis	University of Minnesota Law School	JSB SMH
3/29/17	Advising the Disadvantaged Seminar	Minneapolis	MNCLE	PRB
4/13/17	Estate Planning and Administration Seminar	St. Paul	RCBA	PRB
4/18/17	Client Threatening Self Harm	Webcast	MNCLE	TMB
4/19/17	Conflicts of Interest Basics	Webcast	MNCLE	SMH PRB
4/19/17	Life of a Complaint	Webcast	MNCLE	JSB CDK
4/20/17	NOBC Receiverships Webinar Organizer	Webinar	NOBC	JHB
4/27/17	Workers Compensation Ethics	Minneapolis	MNCLE	SMH
5/5/16	DEC Chairs Symposium	Brooklyn Center	LPRB	SMH PRB CB
5/5/17	Ethics of Civil Trial Specialist	Minneapolis		SMH
5/9/17	Alternative Dispute Resolution Seminar	Minneapolis	MSBA	PRB
5/11/17	Unbundling	Webcast	MSBA	PRB

**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2016 – June 2017**

Date	Topic	Location	Organization	Initials
5/17/17	Trust Account CLE	Minneapolis	MNCLE	CBH MDE LJN
5/18/17	Presentation in Dakota County	Hastings	MNCLE	AMM
5/19/17	Cross-Border Ethics	Grand Forks, North Dakota	MSBA/SBND	SMH
5/24/17	Issues & Trends in the Ethical Use of Social Media & Technology	St. Paul	RCBA	AMM
5/25/17	PR Topics for the PI Lawyer	Minneapolis	Minnesota Association for Justice	SMH
6/16/17	DWI Ethics	St. Paul	MN County Attorneys Association	JSB
6/21/17	Retainer Agreements & Fees and Termination of Representation	Webcast	MNCLE	KTS AMM
6/21/17	From the Director's Office: Putting Yourself Out There— You and Social Media	Webcast	MNCLE	SCB JHB
6/23/17	Ethics Issues for Prosecutors- Year in Review	St. Paul	MN County Attorneys Association	SMH
6/30/17	Year in Review	Webcast	MNCLE	PRB

Office of Lawyers Professional Responsibility

FY'17 Organizational Chart



¹ Also Client Security Board Staff

² Part time position

³ Not administratively subject to Director's Office.
Office pays percentage of their salary

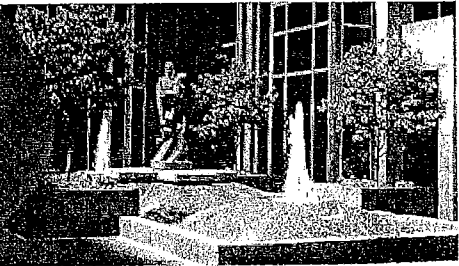
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Office of Lawyers Professional Responsibility

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Announcements

Court Announces One Attorney Member Vacancy on Lawyers Professional Responsibility Board
Draft April 14, 2017, LPRB Meeting Minutes
Court Announces One Attorney and One Public Member Vacancies on Client Security Board
April 14, 2017, Board Meeting Agenda and Materials
Attention Attorneys - Scam Alert!
Court Amends Rule 18, Rules on Lawyers Professional Responsibility, Effective January 1, 2017
Board adopts new Opinion No. 24 regarding Confidentiality of Information
Congratulations to Kevin Kolosky 2016 Volunteer of the Year
Lawyers Board Meetings 2017
LPRB and OLPR File Annual Report July 1, 2016

What's New

"Congressional interest in lawyer advertising," MN Bench and Bar, April 2017
"Your duty to report," MN Bench and Bar, March 2017
"Private discipline in 2016," MN Bench and Bar, February 2017
"2016 year in review: Public discipline," MN Bench and Bar, January 2017
"Client confidentiality and client criticisms," MN Bench and Bar, December 2016
"What happens to clients upon your death or disability?" MN Bench and Bar, November 2016
"Multijurisdictional practice and UPL risk," MN Bench and Bar, October 2016
"Is your trust account in order?" MN Bench and Bar, September 2016
"'Reply all' and some thoughts on flat fees," MN Bench and Bar, August 2016

Quick Links

Legal References

Professional Responsibility Seminar

Trust Accounts

Professional Firms

LPRB Opinions

Disciplinary History Request

Proposed and Pending Rules & Opinions

Contact

Lawyers Professional Responsibility Board
Office of Lawyers Professional Responsibility

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St. Paul, MN 55102-1218

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1-800-657-3601
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Resources

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MN Lawyer Registration Office
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MN Board of Continuing Legal Education
MN Board of Law Examiners
MN Board of Legal Certification
MN Judicial Branch

Links

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OLPR Lawyer Directory
Annual Reports
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MEMORANDUM

To: MSBA Rules of Professional Conduct Committee
From: Eric Cooperstein, on behalf of Rule 5.5 Subcommittee
Date: May 21, 2017
Re: **Amendments to Rule 5.5, Minnesota Rules of Professional Conduct (MRPC)**

This memo, updated after initial discussions at the March 28 and April 25, 2017 MSBA Rules of Professional Conduct Committee meetings, details three subcommittee proposals to amend Rule 5.5, all of which were approved by the RPC committee at its April 25, 2017 meeting. As an overview:

- The amendment to Rule 5.5(c)(4) is intended to respond directly to the Court's invitation in *In re Panel File 39302*, 884 N.W.2d 661 (Minn. 2016) to amend and expand that rule to better reflect the bar's understanding of the meaning of fields of practice that are "reasonably related" to a lawyer's practice in a jurisdiction in which the lawyer is licensed.
- Proposed new section 5.5(e) is intended to remove certain client relationships from the purview of Rule 5.5—including current and former clients, family members, close friends, and other professional relationships-- to both reflect the common current practices of lawyers and allow client selection of lawyers and client trust to take priority over the geographic restrictions that may otherwise be imposed by Rule 5.5.
- The proposed amendments to Rule 5.5(b) and (d) are intended to allow lawyers to continue to practice the law of the jurisdictions in which they are licensed when they relocate to Minnesota. This proposal follows recent similar amendments in Arizona and New Hampshire.

Each of the suggested amendments is explained below, followed by a full text, redline version of the Rule. The amendments are all offered in the context of trying to ensure that Rule 5.5 is not interpreted to proscribe conduct that would otherwise be thought of by the practicing bar as "what good lawyers do."

I. Background.

In August, the Minnesota Supreme Court decided a private admonition appeal, *In re Panel File 39302*, 884 N.W.2d 661 (Minn. 2016). The case concerned a Colorado lawyer, not admitted in Minnesota, who was contacted by his mother and father-in-law regarding efforts to collect a judgment from them. The in-laws were Minnesota

residents and the opposing party, the underlying lawsuit, and the opposing party's counsel were all in Minnesota.

The Colorado lawyer agreed to help his in-laws negotiate a resolution. The Colorado lawyer, from his office in Colorado, exchanged about two dozen e-mails with the opposing party's Minnesota lawyer over a three-month period. The Minnesota lawyer became frustrated with the process and filed an ethics complaint against him with the Minnesota Office of Lawyers Professional Responsibility (OLPR). OLPR issued the lawyer a private admonition for violating Rule 5.5 by practicing law in Minnesota. The Colorado lawyer appealed to a three-person panel of the Lawyers Professional Responsibility Board (LPRB). After a hearing, the Panel affirmed the admonition, focusing predominately on the location of the parties to the matter. I represented the Colorado lawyer in an appeal to the Minnesota Supreme Court.

Two primary issues were presented to the Court: 1) whether a lawyer practices "in" a jurisdiction by sending e-mails to a lawyer in that jurisdiction and 2) whether the Colorado lawyer's conduct was permitted under the "temporary practice" provision of Rule 5.5(c)(4), which allows a lawyer to practice temporarily in a jurisdiction if the legal services provided "arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice."

The Court ruled, 4-3, that the Colorado lawyer had engaged in the unauthorized practice of law in Minnesota. The Court stated that a lawyer could practice in a jurisdiction solely by sending e-mail communications to someone in that jurisdiction. The Court relied heavily on dicta in a 1998 California decision, *In re Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 949 P.2d 1 (Cal. 1998), a fee dispute in which both physical and virtual presence in California were at issue. Ironically, *Birbrower* inspired significant changes to Rule 5.5 of the Model Rules of Professional Conduct, which changes were mostly adopted in Minnesota in 2005.

The Court also ruled that the Colorado lawyer's conduct was not permitted by Rule 5.5(c)(4) because although the lawyer did some collections work, that work was not part of a "particular body of federal, nationally-uniform, foreign, or international law. See Rule 5.5, cmt. 14. Hence, the Court determined that the representation of his in-laws was not "reasonably related" to his practice in Colorado. The Court stated in a footnote, however, that "If there are concerns that these [Rule 5.5(c)] exceptions do not adequately meet client needs, the better way to address such concerns would be through filing a petition to amend Rule 5.5(c)."

II. Rationale for Seeking Amendments to Rule 5.5.

Rule 5.5, which mostly follows the ABA Model Rule, presently enforces geographic restrictions on the practice of law. In the years since the present version of the rule was adopted in 2005, lawyers and clients have become increasingly mobile. Both lawyers' practices and their clients' legal matters routinely cross state lines. *Panel File 39302* highlights some of the unintended consequences of the present rule and draws

attention to how confusing it may be for lawyers to determine whether their conduct runs afoul of the rule.

For example, although the Minnesota Supreme Court has broadly defined when a lawyer may be practicing “in” a jurisdiction under Rule 5.5(a), the provisions of 5.5(c) are intended to allow a lawyer to practice “on a temporary basis” in a jurisdiction in which the lawyer is not licensed. The present rule leaves several questions unanswered:

- A MN lawyer represents a MN corporate client for many years. The client moves its main operations to another state where the lawyer is not licensed. Rule 5.5(c)(4) allows the lawyer to continue to represent the client, including meeting with the client in the other state, conducting transactions for and advising client, communicating with the client by phone and e-mail, etc. The legal work is essentially the same work that the lawyer performed while the client was in MN. However, the exception in 5.5(c)(4) applies only on a temporary basis. May the lawyer continue representing the lawyer indefinitely? If not, how long will the “temporary exception” apply? What interest would be protected by forcing the lawyer to cease representing the client?
- A MN lawyer with an office in MN purchases a home outside MN, such as in Hudson, Wisconsin or Fargo, North Dakota. The lawyer finds that he or she is more productive working from home on occasion. Working at home on a temporary basis would be permitted by Rule 5.5(c)(4). How many days a week may a lawyer work from home and still fall within rule 5.5(c)(4), rather than the prohibition in Rule 5.5(b) on establishing a “systematic and continuous presence” in a jurisdiction in which the lawyer is not licensed? A similar problem confronts lawyers who want to spend winters in other jurisdictions but continue working remotely during their time away.
- A MN lawyer represents several long-time MN clients in a variety of matters. The lawyer’s spouse obtains a “dream job” in another jurisdiction. The lawyer could easily continue all of the work for the MN clients from outside the state, except for the prohibition in Rule 5.5(b) on establishing a “systematic and continuous presence” in a jurisdiction in which the lawyer is not licensed.

Note that for each of these examples, the issue could be presented in the opposite way, i.e. when a lawyer licensed in another state encounters one of these situations. The proposed amendments below would protect non-Minnesota lawyers from discipline by the Minnesota Office of Lawyers Professional Responsibility (OLPR); those lawyers could conceivably violate rules in their own states. Conversely, Rule 5.5(a) includes a safe harbor that states that a Minnesota lawyer does not violate the rule if his or her conduct in another jurisdiction conforms to what would be permissible for a lawyer licensed in another state who conducts business in Minnesota. Hence, these Rule amendments will protect Minnesota lawyers from

Minnesota discipline, even if another jurisdiction attempted to take disciplinary action against the Minnesota lawyer.

III. Proposed Amendments

A. Clarification of “reasonably related” in Rule 5.5(c)(4).

As noted above, Rule 5.5(c)(4) provides an exception that allows lawyers to practice in another jurisdiction temporarily, if the legal services “arise out of or are reasonably related to the lawyer’s practice” in a jurisdiction in which the lawyer is licensed. In 39302, the Minnesota Supreme Court interpreted the scope of the term “reasonably related” by relying on a portion of a comment to Rule 5.5 that limits the reach of the exception to legal services that are part of a “particular body of federal, nationally-uniform, foreign, or international law. *See* Rule 5.5, cmt. 14. As noted above, the Court invited an amendment to Rule 5.5(c).

“Reasonably” is defined in the MRPC as describing “the conduct of a reasonably prudent and competent lawyer.” Rule 1.0(i), R. Prof. Conduct. The proposed amendment is intended to codify what the subcommittee believes that prudent and competent lawyers currently recognize as the scope of what is “reasonably related” to their practices: those areas that are within the lawyer’s regular field or fields of practice. A lawyer’s expertise in an particular area, whether it be shopping-center leases, nonprofit financing, transgender rights, restaurant franchises, etc., may attract clients regionally or nationally even where the practice area is not subject to a nationally uniform or federal body of law. Clients may seek out lawyers for this expertise and the public is well-served by allowing clients to hire lawyers with subject-matter expertise that suits the client’s matter. A lawyer’s expertise, gained through regular practice in a field of law provides reasonable assurance of client protection in a temporary practice context.

During the subcommittee’s discussions, several committee members described their experiences with prudent and competent lawyers who have been offering services in their fields of practice across state borders on a regular basis. Such conduct was noted in the practices of large firms, corporate law departments, small boutique firms, and others.

The subcommittee, with one dissent, believes that people in Minnesota will be better served and protected by being able to choose among lawyers who regularly practice in a field of law, even without a Minnesota license, rather than by a lawyer who is licensed in Minnesota but has very little experience in the field of practice relevant to the client’s matter. The growing complexity of law often makes field of law a better indicator of competence than local licensure. Current comment 14 to Rule 5.5 recognizes “nationally-uniform” law as “reasonably related.” Many areas of law could be termed “nationally-similar,” without being uniform. For example, the ABA Model Rules of Conduct have been adopted in almost all states, but Minnesota, like many states, has variations that make the law marginally less than “uniform.” A Minnesota resident with issues relating to these Rules would be well-served by retaining, for

example, Geoffrey Hazzard or Ronald Rotunda – both nationally-recognized ethics experts, who do not have Minnesota licenses.

The proposed amendment finds support in the 39302 dissent. The 39302 dissent, discussing the appropriate scope of Rule 5.5(c)(4), stated, “One factor provided in Rule 5.5, comment 14, relates to whether the lawyer’s temporary services draw on the lawyer’s ‘expertise developed through the regular practice of law.’” To the extent that Rule 5.5 seeks to protect the public by ensuring competence, experience that arises from a lawyer’s regular practice is more likely to accomplish that goal than a lawyer who has little experience in a federal or “nationally-uniform” area of law. Trying to determine what characteristics of a body of law make it “nationally-uniform” but still distinct from federal law would perpetuate uncertainty about when lawyers fall within the protection of Rule 5.5(c)(4).

The proposed amendment uses the term “field or fields of practice.” This term has been used in Rule 7.4 for over thirty years, without any reported difficulty in definition or enforcement.

During the subcommittee meetings, Pat Burns expressed his personal reservations that the amendment was too broad in its expansion of the rule and his concerns regarding how the Director’s Office would determine what a lawyer’s “regular” fields of practice include. Director Susan Humiston has written a letter to RPC committee chair Michael McCarthy, expressing disagreement with several aspects of the proposed amendments. Those arguments are discussed in Section IV, below.

Along with the proposed amendment, we recommend amending comment 14 by deleting a phrase from the final sentence, as follows: “In addition, the services may draw on the lawyer’s recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.” Rule 5.5 cmt. 14 (cmt. 15 as renumbered below). This is intended to avoid confusion between the amended rule and the comment.

B. New section 5.5(e): representation of relatives and other personal referrals.

This new section is intended to directly address the *Panel 39302* decision and other potential problems related to the continuous (as opposed to temporary) representation of current or former clients that are located in other jurisdictions. The proposal would add a new provision allowing a lawyer to perform legal services in a jurisdiction if the services:

are performed on behalf of a person who has a family, close personal, or prior professional relationship with the lawyer.

This amendment accomplishes two purposes. First, it addresses the conundrum in 39302 that the present language of the rule provides no mechanism by which lawyers may provide legal services to family members and friends who happen to reside in other jurisdictions and where the subject matter of the legal issue is not within the

lawyer's usual field of practice. The subcommittee believes that there are many situations in which family members and close friends would turn to a lawyer with whom they have a personal relationship to seek assistance in a legal matter rather than be forced to hire a stranger in their own jurisdiction. This could apply, for example, to a lawyer whose child had a dispute in another jurisdiction with a landlord or a lawyer whose aged parent had a dispute regarding the care provided by a nursing home. In these situations, there is little or no risk of harm to the public of the lawyer conducting the representation because the lawyer is well-known to the client, even if the lawyer has not previously represented that person and even if the lawyer does not have experience in that area of the law.

Second, this amendment would address the scenarios discussed above in which lawyers seek to continue work for clients who have relocated to other jurisdictions or who themselves seek to work from homes in bordering jurisdictions or take extended vacations in other jurisdictions. It is in the public interest to allow clients, including Minnesota clients, to continue working with their lawyers despite changes in the lawyers' geographic locations.

The amendment follows the Court's footnote suggestion that it might entertain a petition to expand the coverage of Rule 5.5(c). In reviewing the rules, the subcommittee determined that the clearest amendment would remove certain trusted relationships from the prohibitions of Rule 5.5(a) entirely. The language "family, close personal, or prior professional relationship" is taken from Rule 7.3, which allows direct solicitation of legal business from persons in those categories, also under the theory that there is little risk of abuse in those situations. The language of Rule 7.3 has been in place for several decades and has not presented enforcement problems for OLPR. A new comment 16 addresses the new language.

C. Amendments to Rules 5.5(b) and (d) to allow a lawyer to continue to serve existing clients from another jurisdiction.

Although not raised directly by 39302, the issues surrounding when lawyers may practice in other jurisdictions provides an appropriate occasion for Minnesota to consider following the efforts of Arizona and New Hampshire to relax the prohibitions in Rule 5.5(b) against establishing offices in other jurisdictions where the lawyer would only practice the law of the jurisdiction in which the lawyer is licensed.

The amendments would allow a lawyer to move to another state but continue representing clients from the lawyer's licensed state. This is important, for example, when a lawyer moves to another jurisdiction because of a spouse's new job, to be closer to ailing parents, etc. The risk to the public in these situations is very small because the lawyer is simply continuing to do the exact same work that the lawyer did before, just from a different location. Much like the existing exemption in Rule 5.5(d) for lawyers who practice Federal law, such as immigration, this amendment would allow lawyers from other jurisdictions to practice only the law of that jurisdiction. Because the lawyer may not hold out as being licensed in the new jurisdiction, the

lawyer therefore does not compete with the lawyers licensed in the new jurisdiction for clients with matters related to the law of that jurisdiction.

These amendments are found in Rule 5.5(b) and (d) and new comment 5 in the attached version of Rule 5.5. The amendments follow the structure of the rule in Arizona, with the exception that the amendments do not adopt Arizona's provision that the lawyer must advise "the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's informed consent to such representation." Minnesota did not adopt these provisions in the 2005 amendments, including Rule 5.5(c). It would be inconsistent to adopt these notice and consent provisions only for the amendments that are now proposed. New Hampshire adopted slightly different amendments in October 2016 that implement the same policy change.

IV. Response to OLPR Director Humiston's Substantive Concerns

In her April 24, 2017 letter to RPC Committee chair Michael McCarthy, Ms. Humiston raises several concerns that merit additional discussion.

Regarding the proposed amendment to Rule 5.5(c)(4) (fields of practice), the Director notes that the majority opinion in *Panel File 39302* rejected the dissent's argument that a field of practice need not be nationally-uniform to qualify as "reasonably related." The Director suggests that the proposed amendment is a "nonstarter" for a majority of the Court. We believe that the Court was interpreting the rule as written to the facts before the Court. The Court's footnote invited amendments and we believe the Court will be open-minded in considering the concerns of the practicing bar.

The Director letter states that the proposed amendments would benefit lawyers in other states, but expresses doubt that the amendments will benefit Minnesota lawyers while increasing risk to Minnesota consumers of legal services. The Director may have overlooked that the safe-harbor provision in Rule 5.5(a) protects Minnesota lawyers from discipline in Minnesota. The amendments, by clarifying the scope of Rule 5.5, protect Minnesota lawyers. Moreover, the amendments benefit Minnesota consumers of legal service, by increasing their range of choices of counsel without exposing them to the primary danger that unauthorized practice regulation seeks to prevent – incompetent representation. If there are harms to consumers arising from these proposed amendments the Director's letter does not identify them.

Ms. Humiston's letter states that the amendments would "enhance a conundrum that already exists in Minnesota for non-Minnesota lawyers, because Minn. Stat. § 481.02, subdiv. 1, would currently prohibit the conduct even if Rule 5.5 would allow it." The subcommittee does not believe there is a "conundrum." If this concern had substance, it would have weighed against the adoption of Rule 5.5(c), in 2005. We are similarly unaware of any policy by the Director's Office to refuse to apply Rule 5.5(c) because of a conflict with § 481.02. The Minnesota Supreme Court has long held that it, rather than the Legislature, has the ultimate authority to define the unauthorized practice of law. *Cardinal v. Merrill Lynch Realty/Burnet, Inc.*, 433 N.W.2d

864, 867 (Minn. 1988), *citing Cowern v. Nelson*, 207 Minn. 642, 647, 290 N.W. 795, 797 (1940). Although Minn. Stat. § 481.02 was mentioned by Justice Lillehaug in the oral argument in *39302*, the Court did not address it in their opinion.

The Director's letter states that other states are already less permissive in multi-jurisdictional practice rules than Minnesota, citing as an example a North Carolina rule. Our intent has been to enhance benefits to Minnesota clients, by increasing their choices of counsel, without increasing their risk. That some other states have stricter rules does not indicate that the restrictions were adopted to benefit the public, rather than to protect local lawyers' interests.

**RULE 5.5: UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so, except that a lawyer admitted to practice in Minnesota does not violate this rule by conduct in another jurisdiction that is permitted in Minnesota under Rule 5.5 (c), ~~and (d), and (e)~~ for lawyers not admitted to practice in Minnesota.

(b) A lawyer who is not admitted to practice in ~~this jurisdiction~~ **Minnesota** shall not:

(1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of **Minnesota** law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice **Minnesota** law ~~in this jurisdiction~~.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in the proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. **Such reasonably-related services include services which are within the lawyer's regular field or fields of practice in a jurisdiction in which the lawyer is licensed to practice law.**

d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in ~~this jurisdiction~~ **Minnesota** that are services that the lawyer is authorized to provide ~~by~~ **exclusively involve federal law or the other law of this another jurisdiction in which the lawyer is licensed to practice law.**

(e) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are performed on behalf of a person who has a family, close personal, or prior professional relationship with the lawyer.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. The exception is intended to permit a Minnesota lawyer, without violating this rule, to engage in practice in another jurisdiction as Rule 5.5 (c) and (d) permit a lawyer admitted to practice in another jurisdiction to engage in practice in Minnesota. A lawyer who does so in another jurisdiction in violation of its law or rules may be subject to discipline or other sanctions in that jurisdiction.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the **general practice of the law of this jurisdiction**. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5(b).

[5] **Prior versions of Rule 5.5 and prior interpretations of the Rule assumed that attorneys practice in fixed physical offices and only deal with legal issues related to the States in which their offices are located. The increased mobility of attorneys, and, in particular, the ability of attorneys to continue to communicate with and represent their clients from anywhere in the world, are circumstances that were never contemplated by the Rule. The adoption of Rules 5.5(b) and (c) in 2005 reflected the State's growing recognition that multi-jurisdictional practice is a modern reality that must be accommodated by the Rules.**

The assumption that a lawyer must be licensed in Minnesota simply because he or she happens to be present in Minnesota no longer makes sense in all instances. Rather than focusing on where a lawyer is physically located, Minnesota's modifications of Rule 5.5(b)(1) and Rule 5.5(d) clarify that a lawyer who is licensed in

another jurisdiction but does not practice Minnesota law need not obtain a Minnesota license to practice law solely because the lawyer is present in Minnesota.

Notwithstanding the Minnesota amendments to Rule 5.5(b)(1) and (2) and Rule 5.5(d)(2), Rule 8.5(a) still provides that a lawyer who is admitted in another jurisdiction, but not in Minnesota, “is also subject to the disciplinary authority of ... [Minnesota] if the lawyer provides or offers to provide any legal services in” Minnesota. In particular, such a lawyer will be subject to the provisions of Rules 7.1 through 7.5 regarding the disclosure of the jurisdictional limitations of the lawyer’s practice. In addition, Rule 5.5(b)(2) continues to prohibit such a lawyer from holding out to the public or otherwise representing that the lawyer is admitted to practice Minnesota law.

[56] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public, or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraph (d), this rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[67] There is no single test to determine whether a lawyer’s services are provided on a “temporary basis” in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be “temporary” even though the lawyer provides services in this jurisdiction on a recurring basis or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[78] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia, and any state, territory, or commonwealth of the United States. The word “admitted” in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice because, for example, the lawyer is on inactive status.

[89] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[910] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this rule requires the lawyer to obtain that authority.

[110] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such

conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[124] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[123] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[1314] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[415] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally uniform, foreign, or international law.

[16] Paragraph (e) recognizes that lawyers are often sought out by former clients, family members, personal friends, and other professional relationships for legal advice and assistance, even though the person is domiciled in a jurisdiction in which the lawyer is not licensed. The risk of harm to the public in such situations is very low and is outweighed by the value inherent in clients being able to choose lawyers they trust.

[1517] Paragraph (d) identifies a circumstance in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraph (d), a lawyer who is admitted to practice law in another

jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[1618] Paragraph (d) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation, or judicial precedent.

[1719] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[1820] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, such notice may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[1921] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

[2022] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, such notice may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b). **An attorney who is not licensed in Minnesota but who limits his or her practice in Minnesota to federal law or the law of another jurisdiction in which the lawyer is licensed pursuant to Rule 5.5(d), must note the lawyer's jurisdictional limitations when identifying the lawyer on letterhead, on a website, or in other manners. See Rule 7.5(b).**

[2123] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY

Attachment 4

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345 ST. PETER STREET
ST. PAUL, MINNESOTA 55102-1218

TELEPHONE (651) 296-3952
TOLL-FREE 1-800-657-3601

FAX (651) 297-5801

April 24, 2017

Mr. Michael C. McCarthy
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

VIA U.S. MAIL AND EMAIL
mike.mccarthy@maslon.com

Re: Proposed Rule 5.5 Amendments

Dear Mr. McCarthy:

I understand from Pat Burns that the MSBA Rules of Professional Conduct Committee wishes to hear from me personally whether statements I made in an October 2016 *Bench & Bar* article support the proposed subcommittee amendment to Rule 5.5(c)(4), MRPC.

As Pat has already reported, I do not believe my statements can or should be read to support the committee's proposed amendment, and I am happy to comment further on the reasons why.

The first reference cited from my article is actually drawn directly from the 2002 ABA Report 201B discussing the intent behind and proposed scope of the current iteration of Rule 5.5(c)(4), as is evidenced by the footnote reference that immediately follows the text cited by Mr. Cooperstein. The relevant paragraph from the 2002 report that I was referring to states, in part:

Third, this provision [Rule 5.5(c)(4)] would authorize legal services to be provided on a temporary basis outside the lawyer's home state by a lawyer who, through the course of regular practice in the lawyer's home state, has developed a recognized expertise in a body of law that is applicable to the client's particular matter. This could include expertise regarding nationally applicable bodies of law, such as federal, international or foreign law. A client has an interest in retaining a specialist in federal tax, securities or antitrust law, or the law of a foreign jurisdiction, regardless of where the lawyer has been admitted to practice law.

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ABA Commission on Multijurisdictional Practice, Report to the House of Delegates (“Report 201B”), 2002 at 8. As the Comments to Rule 5.5(c) make clear, the “regular practice” language has usually been read to refer to nationally-uniform bodies of law, as the Minnesota Supreme Court held in its recent decision.

The second reference from the article cited was just my attempt to identify times when practitioners are at greatest risk to engage in UPL, so as to get them thinking about their practice and what they are doing, not to suggest a different interpretation of the rule than provided by the Court.

One of the most troubling things to me about the proposed Rule 5.5(c)(4) amendment arguably designed to “clarify” the rule is that it appears to be an attempt to codify an interpretation of the language that has already been expressly rejected by the majority of the Minnesota Supreme Court, something that is not mentioned anywhere in the memorandum. The Court could have easily interpreted the present text of Rule 5.5(c)(4)—arise out of or reasonably related to the lawyer’s practice—to include any areas where an attorney has developed expertise (as advocated by the dissent) but it expressly refused to do so:

Instead, the dissent argues, without citing any legal support for its claim, that the subject on which an attorney has expertise does not need to be nationally uniform in order for legal services provided outside the attorney’s home jurisdiction to reasonably relate to the attorney’s practice in his or her home jurisdiction. We disagree. Rule 5.5(c) is an exception to the general prohibition on the unauthorized practice of law. By interpreting the exception to apply to expertise in any subject matter, the dissent allows the exception to swallow the general rule.

In re Charges of Unprofessional Conduct in Panel File No. 39302, 884 N.W.2d 661, 669 fn. 4 (Minn. 2016). Accordingly, the position advocated by the subcommittee appears to be a non-starter with a majority of the Court.

To the extent that it might be helpful, I had several additional concerns from my review of the memorandum. Another troubling aspect to me is the repeated references throughout the memorandum to the effect that these amendments somehow protect

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Minnesota lawyers, without expressly highlighting the fact that these amendments primarily help non-Minnesota lawyers coming into Minnesota, and the only "help" provided to Minnesota lawyers is protection from reciprocal discipline once another state has already disciplined the lawyer for engaging in UPL.

The memorandum states: "Hence, these Rule amendments will protect Minnesota lawyers from Minnesota discipline, even if another jurisdiction attempted to take action against the Minnesota lawyer." (Memo at 3.) No mention is made that these amendments have absolutely no impact on the position of other states, and that Minnesota lawyers will in every instance still need to review the rules in other states to ascertain if what they are doing outside of Minnesota is permitted. Lawyers already seem to have mistaken beliefs regarding permissible conduct outside their licensed jurisdiction, without the subcommittee lulling Minnesota lawyers into a false sense of security.

The memorandum goes on to state, in reference to the proposed amendment to Rule 5.5(e), that "this amendment would address the scenarios discussed above in which lawyers seek to continue work for clients who have relocated to other jurisdictions or who themselves seek to work from home in bordering jurisdictions or take extended vacations in other jurisdictions." (Memo at 5.) The amendment does no such thing for Minnesota lawyers, who are the ones described in the scenarios. It is only applicable to non-Minnesota lawyers who wish to come into Minnesota for the extended vacation or the North Dakota attorney who wishes to represent her North Dakota clients from her home office in Moorhead. It does nothing to address the opposite. The memo also does not note that the Supreme Court, in discussing this potential "friends and family" exception, did so in the context of a much narrower scope: "family members or friends in minor matters involving only Minnesota and Minnesota law." *Panel File No. 39302*, 884 N.W.2d at 668 fn. 1.

As it relates to the Rule 5.5(b) and 5.5(d) proposed amendments, the memo suggests that it is following the structure of the rule in Arizona (Memo at 6), but fails to note that in Arizona, while a lawyer may practice the law of another jurisdiction in Arizona, without being licensed in Arizona, she can only do so if she advises "the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's

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informed consent to such representation.” Arizona ER 5.5(f). So, in fact, the proposed amendment only follows Arizona’s rule in part, and omits a material consumer protection aspect of that rule without explanation.

The main effect of each of the amendments is to materially expand the circumstances where non-Minnesota licensed lawyers can come into Minnesota and practice law, without effectuating the same benefit for Minnesota lawyers in other states. I am not sure why that is of benefit to members of the Minnesota bar, and, as I am sure Pat has articulated, it does so while creating greater risk for Minnesota consumers of legal services. The proposed amendments also enhance a conundrum that already exists in Minnesota for non-Minnesota lawyers, because Minn. Stat. § 481.02, subdiv. 1, would currently prohibit the conduct even if Rule 5.5 would allow it. Section 481.02 clearly only allows members of the Minnesota bar to provide legal advice in Minnesota, and only one of the Rule 5.5(c) exceptions is currently codified in the statute, namely *pro hac vice* status. Minn. Stat. § 481.02, subdiv. 6 (2016). Violation of the statute is a misdemeanor. Minn. Stat. § 481.02, subdiv. 8 (2016).

I do worry about the need to continue to address the increasing mobility of lawyers, recognize that practices continue to involve interstate components, and understand the pressure to have a nationwide practice. However, we are currently regulated by a multi-state system that very much respects each state’s right to regulate the profession (even putting aside issues of trade protection), and which does not have uniform reciprocity rules. As the Committee is no doubt aware, many states have stricter UPL rules than Minnesota to the extent that they do not even have the safe harbor provisions in Minnesota Rule 5.5, or have further narrowed the reasonably-related language to only apply to matters for existing clients, and/or the client must be in the jurisdiction in which the lawyer is licensed. For example, North Carolina’s version of Rule 5.5(c)(4) reads:

[T]he lawyer acts with respect to a matter that arises out of or is otherwise reasonably related to the lawyer’s representation of a client in a jurisdiction in which the lawyer is admitted to practice and the lawyer’s services are not services for which *pro hac vice* admission is required.

N.C. Rule 5.5(c)(2) (emphasis supplied).

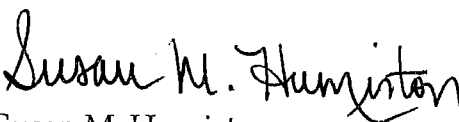
Mr. Michael C. McCarthy
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These are the concerns that occurred to me as I reviewed the memorandum dated March 31, 2017. The comments are my own. Neither the Office of Lawyers Professional Responsibility nor the Board's Rules Committee have completed its analysis of the proposed changes such as to form a final position.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

MAILED APR 24 2017



Susan M. Humiston
Director

jmc

cc: Nancy Mischel (by email only to Nancy.Mischel@statebar.gen.mn.us)
Pat Burns (by email only to Pat.Burns@courts.state.mn.us)
Timothy M. Burke (by email only to Tim.Burke@courts.state.mn.us)
Cheryl M. Prince (by email only to cmp@hanftlaw.com)

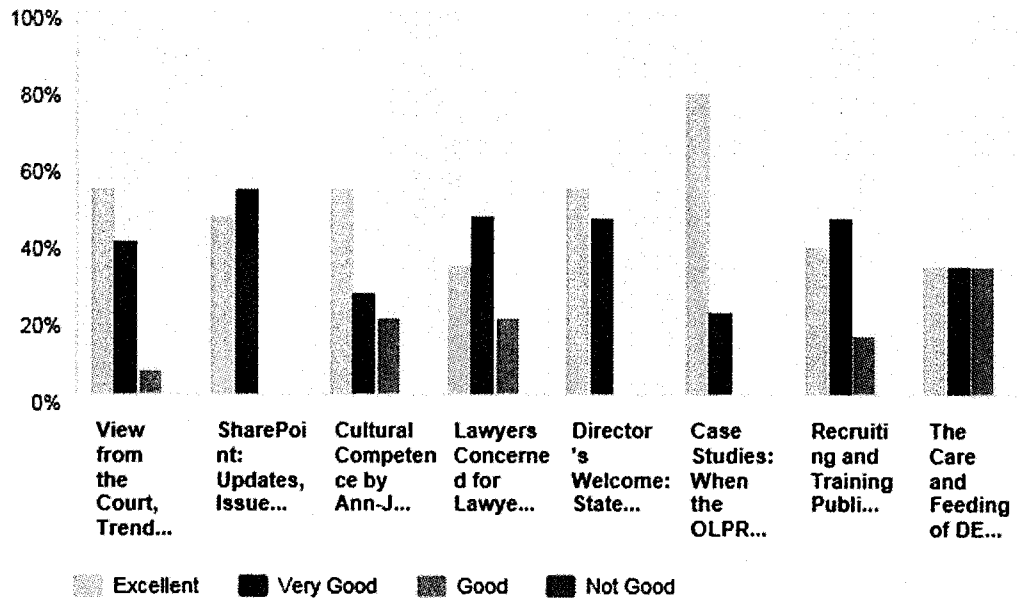
2017 DEC Symposium Survey Results

DEC Chairs and LPRB Responses:

1. Please rate the following presentations:

Please rate the following presentations:

Answered: 15 Skipped: 0

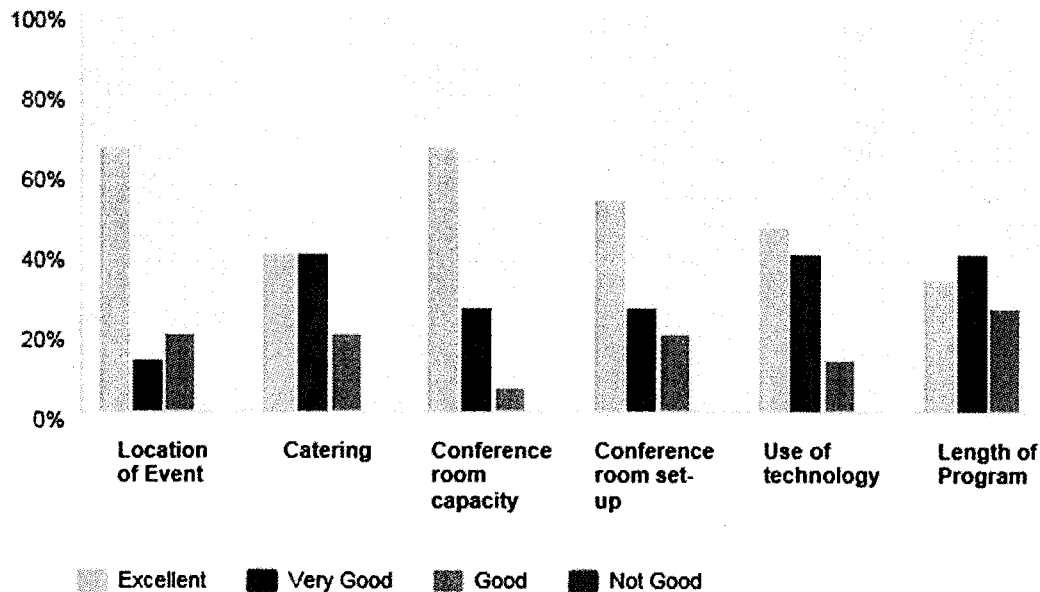


2. What topics would you suggest for the next symposium:
- I liked the Cultural Competence presentation and really liked Bukata Hayes presentation last year. I'd like to see him present again.
 - An open forum where the chairs are allowed to share concerns or issues with the group.
 - It is always interesting to discuss departures, and it would be fun next time to talk about upward departures by the OLPR from DEC recommendations. I also like to hear about trending new issues and interesting or difficult cases.
 - I particularly enjoyed the presentation on downward departures. I would enjoy a presentation on upward departures. I also would enjoy a presentation addressing one of the hot issues. For instance, I think it would be helpful to receive an overview of significant case law, and then a presentation of the application of that case law to a case in the OLPR. I find the cases in which the OLPR internally discusses/ debates the level of discipline to be especially interesting.
 - I found the analysis of case studies the most interesting. I would suggest expounding on that and the interplay/ tension between DEC / OLPR / LBPR
 - FYI - I thought Ann's presentation was pretty basic. I feel like people were ready to leave before the last presentation. We may want to look at a 9:00 a.m. to 2:00 p.m. timeslot. Next year Introduction from our next Supreme Court liaison since Justice Stras is moving on. I think a panel of OLPR lawyers would be interesting. What they look for, how they conduct additional investigations - the overall prosecutorial process from the OLPR side
 - How the office chooses which complaints to send and which to investigate themselves

3. Please rate your satisfaction level with:

Please rate your satisfaction level with:

Answered: 15 Skipped: 0



Comments:

- I liked the location but I really liked the Duluth location last year much better. It would be nice to see it in outstate MN more often.
- I thought the location was easy to access. The staff was courteous and attentive. The lunch was healthy and delicious. The length and the substance of the event was appropriate.
- I hope we can go back to Duluth next year. This venue was good, but I think there is a value in going out of the twin cities.
- Sharepoint presentation was very useful.
- We need another mic or two. I heard people could not hear audience comments - OLPR staff should sit at different tables Many slides across all presentations were impossible to read - too much information and too small the font size MANY attendees were multi-tasking on phones and iPads.
- round table format works better for this, as would limiting attendance to DEC Chairs, the LPRB DEC committee, and members of the office presenting

4. Please let us know how we can improve the next year's DEC Symposium:

- a. Have the attorneys from the LOPR sit at various tables and not together. Have them get to know the chairs and members they work with.
- b. I have heard several presentations from Lawyers Concerned for Lawyers (LCL) over the years. Similar to western medicine, LCL seems to respond to problems which might have been prevented with education and changed behaviors. I wish LCL would occasionally present information on what causes the high rate of substance misuse,

and depression and anxiety in the legal profession, and educate the legal profession on what it could do to prevent such problems from arising.

- c. How do we get more representation from the DEC's there? It seems that we had about 1/2 OLPR Staff, One third lawyer board, and only about 1/3 DEC's. I don't have the answer and this was just an observation of the crowd.

5. Other comments about the event:

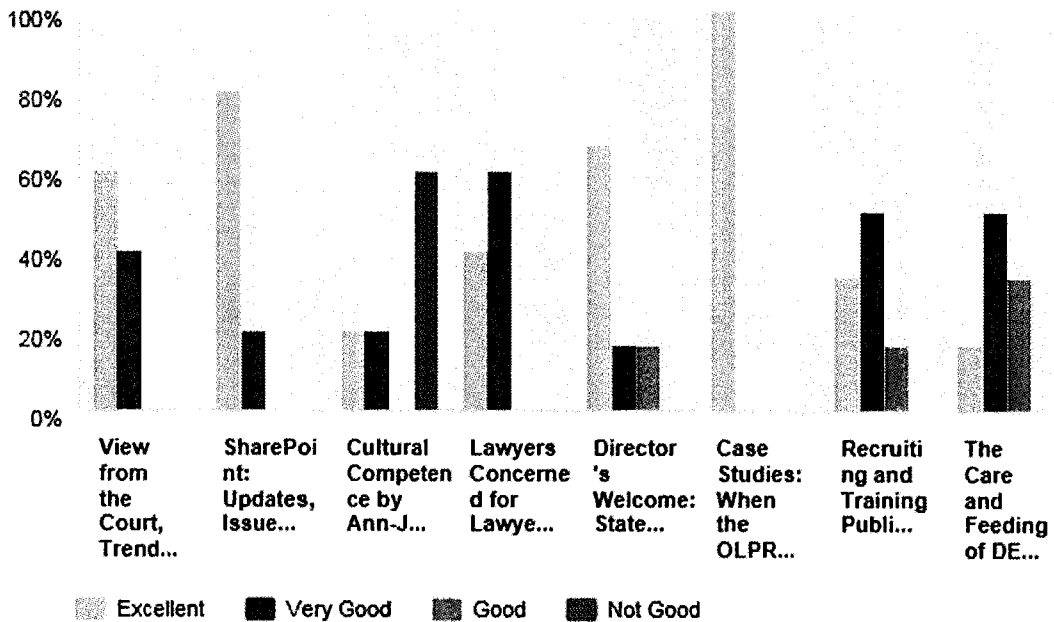
- a. I'd like to see it in the outstate more. Really liked the Duluth locale and I was able to take a trip with my family up the North Shore afterwards.
- b. The location was outstanding.
- c. I continue to be impressed by the professionalism of the members of the OLPR.
- d. Thank you -- always nice to meet new people and network.
- e. I love that we have this event to bring everyone together.
- f. Next year, keep it at the same venue, if possible.
- g. I thought the event was wonderful. I wish we would have had more DEC members. Casey's presentation on SharePoint was great!

OLPR Responses:

- 1. Please rate the following presentations:

Please rate the following presentations:

Answered: 6 Skipped: 0



- 2. What topics would you suggest for the next symposium?

- a. How to maintain engagement and competence if your DEC is inactive (few or no complaints); DEC work product development and management- collaboratively via DEC

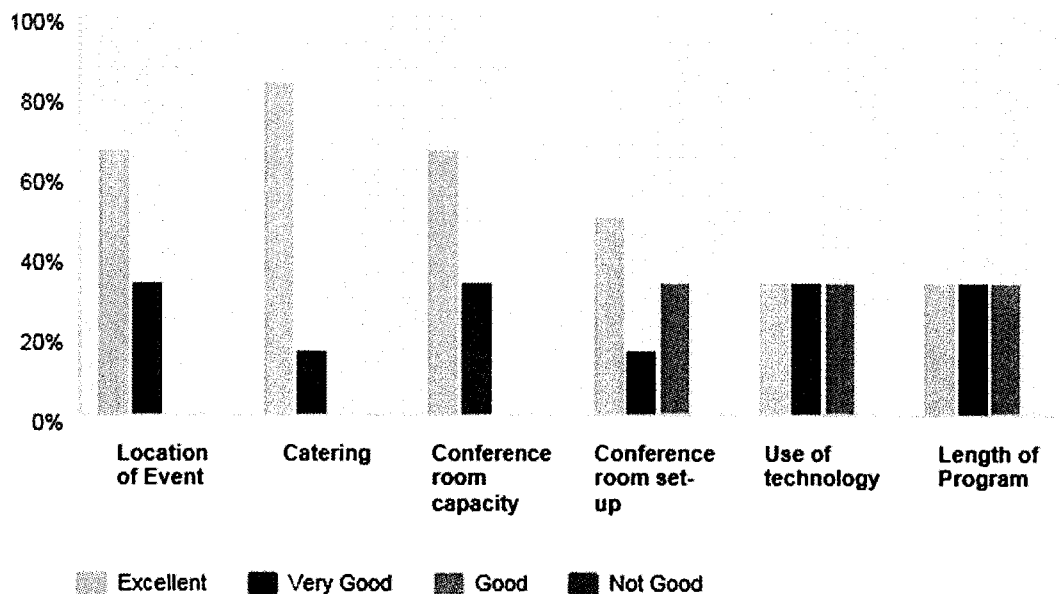
chairs and OLPR; training development, utilizing the chairs to assist in identifying areas of substantive training

- b. Keep doing departure session-- lots of lessons there. Dealing with the aging attorney or perhaps generational issues.

3. Please rate your satisfaction level with:

Please rate your satisfaction level with:

Answered: 6 Skipped: 0



Comments:

- A roaming microphone may have been helpful and may have allowed for speakers to be more interactive.
- Very good homemade chips and very uncomfortable chairs

4. Please let us know how we can improve the next year's symposium:

- a. I think more of a "round table" symposium would be better than a seminar. It felt like a smaller version of the DEC Seminar that we host in September.

5. Other comments about the event:

- a. Honestly, the cultural competence program was not very good--I am sure we can find someone better for next year. Her answer regarding resources she uses being "I google" was terrible. She basically pulled a bunch of stuff off the internet and presented it in a disorganized fashion and did not tailor it to our needs.
- b. Felt cultural competence segment was poorly researched and poorly presented.

OLPR Dashboard			
6/1/2017			
	Total Files	Total Lawyers	
Total Open Matters	503	374	
New Files YTD	447		
Closed Files YTD	423		
Files Opened in May 2017	89		
Files Closed in May 2017	93		
Public Matters Pending	33		
Panel Matters Pending	10		
Matters Pending with the DEC's	93		
Advisory Opinion Requests YTD	895		
Advisory Opinion Requests Declined YTD	50		
Total Files Over 1 Year Old	127	83	
Matters Pending Over 1 Year Old w/o Charges	46	36	
Matters Pending Over 2 Years Old w/o Charges	3	3	
Matters Pending Over 3 Years Old w/o Charges	0	0	
		Discipline YTD	Total # Lawyers
		Disbarred	2
		Suspended	8
		Reprimand & Probation	1
		Reprimand	1
			Total # Files
		Private Probation	8
		Admonition	37

All Files Pending as of 6/1/17

Year/Month	SD	DEC	REV	OLPR	AD	ADAP	PROB	PAN	SUP	S12C	SCUA	REIN	RESG	TRUS	Total
2013-05											1				1
2014-01									1						1
2014-05									1						1
2014-06											1				1
2014-07									1	2	1				4
2014-08									2						2
2014-09									1						1
2014-11									1						1
2015-01				1					2	2	1				6
2015-02									1	1	1				3
2015-03				1	1			4	2						8
2015-04				0					2	1	2				5
2015-05				1			2	1	2						6
2015-06				1					2		1			2	6
2015-07				1					1		1				3
2015-08				1			1	1							3
2015-09				2					3						5
2015-10				1	1				2		1				5
2015-11				4					2		1				7
2015-12				2										1	3
2016-01				1											1
2016-02				4			1	2	3		4			2	16
2016-03				10					3						13
2016-04				9					1						10
2016-05				9		1	1		2					1	14
2016-06				11	1			1	2						15
2016-07				19			1		2						22
2016-08				28	1				1						30
2016-09				14			1		1						16
2016-10			1	23											24
2016-11		5	1	26							1	2			35
2016-12		6	2	23											31
2017-01		8		22					1						31
2017-02		16	6	21											43
2017-03		21		17							1				39
2017-04		14		16	1										31
2017-05	22	23		11								2	1	1	60
Total	22	93	10	279	5	1	7	9	42	6	17	4	1	7	503

Pending Files Over 1 Year Old as of 6/1/17

Year/Month	OLPR	AD	ADAP	PROB	PAN	SUP	S12C	SCUA	TRUS	Total
2013-05								1		1
2014-01						1				1
2014-05						1				1
2014-06								1		1
2014-07						1	2	1		4
2014-08						2				2
2014-09						1				1
2014-11						1				1
2015-01	1					2	2	1		6
2015-02						1	1	1		3
2015-03	1	1			4	2				8
2015-04	0					2	1	2		5
2015-05	1			2	1	2				6
2015-06	1					2		1	2	6
2015-07	1					1		1		3
2015-08	1			1	1					3
2015-09	2					3				5
2015-10	1	1				2		1		5
2015-11	4					2		1		7
2015-12	2								1	3
2016-01	1									1
2016-02	4			1	2	3		4	2	16
2016-03	10					3				13
2016-04	9					1				10
2016-05	9		1	1		2			1	14
2016-06	1									1
Total	49	2	1	5	8	35	6	15	6	127

	Total	Sup. Ct.
Sub-total of Cases Over One Year Old	106	41
Total Cases Under Advisement	21	21
Total Cases Over One Year Old	127	62

ALL FILES PENDING & FILES OVER 1 YR. OLD REPORTS STATUS KEY

SD	Summary Dismissal
DEC	District Ethics Committees
REV	Being reviewed by OLPR attorney after DEC report received
OLPR	Under Investigation at Director's Office
AD	Admonition issued
ADAP	Admonition Appealed by Respondent
PROB	Probation Stipulation Issued
PAN	Charges Issued
SUP	Petition has been filed.
S12C	Respondent cannot be found
SCUA	Under Advisement by the Supreme Court
REIN	Reinstatement
RESG	Resignation
TRUS	Trusteeship

Professional Responsibility

By SUSAN HUMISTON

Congressional interest in lawyer advertising

I did not expect to receive letters from Congress when I was appointed as director of the Office of Lawyers Professional Responsibility, but that is what my mail contained on March 10, 2017. Congressman Bob Goodlatte (R-Va.), chair of the U.S. House of Representatives Committee on the Judiciary, wrote to me and all other lawyer regulation offices throughout the country on the subject of lawyer advertising. The letter begins, "I write to you to take immediate action to enhance the veracity of attorney advertising." Rep. Goodlatte's specific concern, apparently raised initially by the American Medical Association in June 2016, is attorney commercials "which may cause patients to discontinue medically necessary medications," and advocates a requirement that such commercials contain an "appropriate warning that patients should not discontinue medications without seeking the advice of their physician."

The letter goes on to describe specific commercials, including one relating to the drugs Pradaxa and Xarelto, which

apparently directs individuals to call the law firm at 1-800-BAD-DRUG. Not mentioned in Rep. Goodlatte's letter—but easily discovered through a web search—is the fact that www.1800baddrug.com is an alias URL that takes you to the website for a Texas law firm. The letter is concerned with the apparent fear-mongering in these commercials, and it notes that deadly consequences can occur from "deceptive

advertisements" if patients stop taking medically necessary medications. Rep. Goodlatte offered a specific request:

The legal profession, which prides itself on the ability to self-regulate, should consider immediately adopting common sense reforms that require legal advertising to contain a clear and conspicuous admonition to patients not to discontinue medication without consulting their physician. It should also consider reminding patients that the drugs are approved by the FDA and that doctors prescribe these medications because of the overwhelming health benefits from these drugs.

Rep. Goodlatte's request has been referred to the Lawyer Professional Responsibility Board's Rules Committee and Minnesota State Bar Association's Rules of Professional Conduct Committee for their consideration, and we will see where that leads. It did get me thinking about lawyer advertising, however—something that the American Bar Association (ABA) is also reviewing.

Current efforts to amend the rules

At the request of the Association of Professional Responsibility Lawyers (APRL), the ABA Standing Committee on Ethics and Professional Responsibility is considering potential changes to the model rules on lawyer advertising. The proposed changes involve an essential rewrite of the current model rules by limiting and merging Rules 7.2 and 7.3 and deleting Rules 7.4 and 7.5.¹ No amendments are recommended to the cornerstone rule on communications concerning a lawyer's services, Rule 7.1, but the comments to Rule 7.1 would be expanded to pick up portions of Rules 7.4 and 7.5. The proposed changes are in the review and comment stage and are apparently a "work in process," with the earliest anticipated action in May 2018. Minnesota largely follows the model rules, so it will be interesting to see where this leads as well.

Minnesota rules on lawyer advertising

Given the current interest in changes and additions to lawyer advertising rules, this is a good time to review the current state of Minnesota's Rules of Professional Conduct. Under the broad heading "Information about Legal Services" falls several rules:

- Rule 7.1: Communications Concerning Lawyer's Services;
- Rule 7.2: Advertising;
- Rule 7.3: Solicitation of Clients;
- Rule 7.4: Communication of Fields of Practice and Certification;
- Rule 7.5: Firm Names and Letterheads.

The cardinal rule is that "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading."² This rule governs all communications about a lawyer's services, not just advertising.³ The rule's comments note that truthful statements can be misleading if facts are omitted, or may impermissibly create unjustified expectations about results.⁴

A lawyer may not state or imply that the lawyer is a specialist or certified as a specialist in a particular field of law except where the lawyer clearly identifies the name of the certifying organization.



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

Professional Responsibility

Lawyer advertising is expressly permitted by rule, subject to Rule 7.1 (false or misleading) and Rule 7.3 (solicitation of clients).⁵ Lawyers may not give anything of value to a person recommending their services except under specified circumstances,⁶ and any advertisement must include the name of at least one lawyer responsible for its content.⁷

The rules treat advertisements aimed at the public in general differently from direct communications with specific individuals who may need a lawyer.⁸ Specifically, a lawyer cannot solicit work in person or by phone unless the person contacted is a lawyer, family member, close personal friend, or there is a prior professional relationship.⁹ Lawyers may otherwise solicit work by written, recorded or electronic communication, but only if it is clearly and conspicuously marked "Advertising Material" on the outside of the envelope and on the communication itself—unless, again, the person is a lawyer, family member, close personal friend, or there is a prior professional relationship.¹⁰

A lawyer may not state or imply that the lawyer is a specialist or certified as a specialist in a particular field of

law except where the lawyer clearly identifies the name of the certifying organization, and the certifying agency is accredited by the Minnesota Board of Legal Certification (BLC). If the latter is not the case, the communication must note the agency is not accredited by the BLC.¹¹

Finally, the rules prohibit trade names that imply a connection with a governmental agency or public or charitable legal services organization.¹² Lawyers may not state or imply that they are in a partnership or other organization unless that is a fact,¹³ or use the name of a lawyer holding public office while the lawyer is not actively and regularly practicing with the firm.¹⁴ And the use of the word "Associates" or the phrase "& Associates" in a name can only be used if there are at least two or three licensed attorneys in the firm, respectively.¹⁵

In 2016, there were five admonitions that involved violations of one of the above-referenced advertising rules, and nine public cases that involved Rule 7.1 violations. About 5 percent of advisory opinion calls in 2016 involved questions relating to one of the "seven series" rules. If you are advertising your services

and soliciting clients, which I know you are, you are well-served to take a few minutes to review the current rules on advertising. It will be interesting to see where the profession moves next, given the competing interest of protection of the public, constitutional commercial speech, and the ever-evolving business orientation of the legal profession. ▲

Notes

- ¹ www.americambar.org/publications/youraba/2017/march-2017/aba-standing-committee-on-ethics-and-professional-responsibility
- ² Rule 7.1, Minnesota Rules of Professional Conduct (MRPC).
- ³ Comment [1], Rule 7.1, MRPC.
- ⁴ Comment [2], Comment [3], Rule 7.1, MRPC.
- ⁵ Rule 7.2(a), MRPC.
- ⁶ Rule 7.2(b), MRPC.
- ⁷ Rule 7.2(c), MRPC.
- ⁸ Rule 7.3, MRPC.
- ⁹ Rule 7.3(a), MRPC.
- ¹⁰ Rule 7.3(c), MRPC.
- ¹¹ Rule 7.4(d), MRPC.
- ¹² Rule 7.5(a), MRPC.
- ¹³ Rule 7.5(d), MRPC.
- ¹⁴ Rule 7.5(c), MRPC.
- ¹⁵ LPRB Opinion 20 (2009).



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- ▶ Continue outreach to specialty bars and outstate Minnesota
- ▶ Implement updated data management system and continue progress toward paperless office
- ▶ Implement a proactive regulation model
- ▶ Increase external educational programs (solos, succession planning, retainer agreements, trust account books and records)
- ▶ Training/Outreach to in-house attorney population
- ▶ Audit of Disciplinary System

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MEETINGS OF THE LAWYERS PROFESSIONAL RESPONSIBILITY BOARD 2018

Lawyers Professional Responsibility Board meetings are
 scheduled for the following dates and locations:

Date	Location
Friday, January 19, 2018*	Town & Country Club, St. Paul, MN
Friday, April 13, 2018*	Town & Country Club, St. Paul, MN
Friday, June 22, 2018*	Town & Country Club, St. Paul, MN
Friday, September 28, 2018	Earle Brown Center, Brooklyn Center, MN (following seminar)

*Lunch is served for Board members at 12:00 noon. The public meeting starts at approximately 1:00 p.m.

If you have a disability and anticipate needing an accommodation, please contact Susan Humiston at lhprada@courts.state.mn.us or at 651-296-3952. All requests for accommodation will be given due consideration and may require an interactive process between the requestor and the Office of Lawyers Professional Responsibility to determine the best course of action. If you believe you have been excluded from participating in, or denied benefits of, any Office of Lawyers Professional Responsibility services because of a disability, please visit www.mncourts.gov/ADAaccommodation.aspx for information on how to submit an ADA Grievance form.