Can tobacco suit fees ever be so large as to be unethical?

The full record of the Ethics Board's rejection of Stephen Young's complaint against Robins, Kaplan

For the Record

Editor's note: Minnesota Lawyer is always pleased to publish previously unpublished material of interest to the legal community. This week we present the full record of the correspondence between Minneapolis attorney Steve Young and the Board of Professional Responsibility regarding Young's complaint that the $566 million contingency fee accepted by the Minneapolis law firm of Robins, Kaplan, Miller & Ciresi was unreasonably high compensation for the firm's tobacco litigation work.

Request For a Determination of Ethical Conduct
Edward Cleary, Director,
Lawyers Professional Responsibility Board
May 20, 1998
RE: Contingency Fee for Robins, Kaplan, Miller & Ciresi

Dear Mr. Cleary:

Rule 8.3 (a) of the Minnesota Rules of Professional Conduct for attorneys obligates lawyers to report instances of unprofessional conduct by other members of the legal profession. I believe that acceptance by the Robins, Kaplan, Miller and Ciresi law firm of a contingency fee in the amount of $566 million dollars for three years of legal work for the Attorney General of Minnesota and Blue Cross/Blue Shield of Minnesota in litigation against the tobacco industry constitutes a *per se* violation of Rule 1.5(a) of the Minnesota Rules of Professional Conduct, and therefore would be unprofessional conduct on the part of that law firm.

Rule 1.5(a) of the Minnesota Rules of Professional Conduct requires that a lawyer's fee shall be reasonable. A contingency fee in the amount of $566 million is not a reasonable fee under any circumstance.

Thus, I ask for a determination by the Lawyer's Board of Professional Responsibility that receipt of such fee either does or does not constitute ethical conduct by attorneys in Minnesota.

According to the Pioneer Press of Sunday, May 17, 1998, the law firm of Robins Kaplan Miller & Ciresi will receive $440 million for representation of the State of Minnesota and an additional $126 million for work on behalf of plaintiff Blue Cross/Blue Shield of Minnesota.

The amount of such fee cannot be justified as having been properly earned as the result of providing professional litigation services. It is an arbitrary and capricious fee. The amount of such compensation therefore has to be, in and of itself, unconscionably large.

As an unconscionable fee, it may not be received by a lawyer consistent with Minnesota's Rules of Professional Conduct.

The number of dollars which constitute the fee bears no rational relation to any component by which legal fees are calculated. It would represent an excessive hourly charge for the hours actually worked, a charge out of all proportion to normal legal fees charged in Minnesota. Alternatively, at a normal hourly rate, it would implicate that too many hours had been worked over the course of the litigation. Under normal litigation circumstances, it would be said that such a bill had been padded to the client's financial detriment.

Neither does the amount of the fee have any rational relation to a reasonable consideration of risk of non-payment to the attorney acting on the basis of a contingency, should the litigation be attempted and not succeed.

The amount of this particular fee is in the nature of a windfall, an act beyond the normal and ordinary expectations of practicing attorneys and persons familiar with commercial litigation.

To the extent the fee as agreed to becomes a windfall, it should not be accepted by an attorney, but rather should be turned over to a good cause, such as providing financial support for indigent parties seeking legal services.

A more reasonable fee for the work of the Robins firm in this litigation in the order, perhaps, of $100 million could be calculated. Such a sum would be more within the realm of acceptable professional earnings but would nevertheless still provide a handsome return for the risk assumed by a law firm deciding to invest in this or in any litigation.

Ten lawyers working 12 hour days for 6 days a week would accumulate 112,320 hours over a three year assignment. At a reasonable hourly fee of $300, that time invested would earn them $33,696,000. With 35 paralegals working 12 hour days for 6 days a week for three years, 393,120 hours would be billed to the client. At a reasonable paralegal rate of $100 per hour, those hours would convert into a fee of $39,312,000.

These amounts equal $73,008,000. Adding the additional sum of $27,000,000 for a reward for risk-taking, to make a total return of $100 million, would be a handsome return for assuming an initiative.

In fact, the initiative to bring the lawsuit was actually taken by the Attorney General of Minnesota and not the Robins law firm. The Attorney General of Minnesota, acting in and for the people of Minnesota, is not an impecunious client unable to pay reasonable legal fees.

Any contract to pay a contingency fee of such magnitude as the Robins firm is to receive is voidable in retrospect as producing results contrary to public policy. The Robins law firm recognizes this equitable principle. It has already waived provisions of its contingency agreement to cut its percentage fee from 25% to 7.1% in deference to subjective opinion that receiving 25% of a nearly 7 billion dollar settlement is unconscionable.

Yet, if the time value of money is considered, the amount which the Robins firm has agreed to receive is more than 7.1% of the settlement amount to be received by the people of Minnesota. The State of Minnesota will get its damages paid out over a 25 year period while the Robins law firm will have been paid in only 4 years. By converting both sums to a present value amount, we can compare the real value of the law firm's fee to the real value of the State's recovery. The law firm gets much more than 7.1% of the settlement amount in present value terms.

When the $126 million to be received by the Robins firm as a result of its relationship with Blue Cross/Blue Shield of Minnesota is added to the earnings of the law firm from this litigation, the present value of the firm's fee is much higher yet as a percentage of the present value of all monies to be paid out by defendant tobacco companies as a result of the settlement in this case.

If the Robins Firm reformed its contract with its client the Attorney General of Minnesota once, the firm's partners should have no compunction about accepting a second reformation to bring their conduct fully in line with the Rules of Professional Conduct in this state.

Accepting an unconscionable fee brings the legal profession into disrepute. Such avarice undermines public faith and confidence in the Rule of Law as upheld by our adversary system of justice, damaging our constitutional democracy. Under Rule 8.4 (d) of the Rules of Professional Conduct, no lawyer in Minnesota may engage in conduct which is prejudicial to the administration of justice. Acceptance of an unconscionable fee in the amount of $566 million would be prejudicial to the administration of justice.

The Robins attorneys who worked on the tobacco litigation were dual fiduciaries. First, they are officers of the court, with obligations to act not only out of self-interest, but also to temper their self-interest with concern for the public good. This status mandates setting some maximum limit on the absolute amount of their legal compensation. Lawyers are neither investors, who put their money at hazard, nor investment bankers, who work for fees without any maximum limits.

Second, the Robins attorneys were servants of the people of Minnesota, having been retained on behalf of the people by the Attorney General of the State of Minnesota. As temporary and quasi-public servants, a role they voluntarily and enthusiastically assumed, the Robins attorneys should work for modest fees, in keeping with salary scales paid by the public to its officers and agents. To accept higher compensation is to violate the faith which the people have in their elected officials and those hired to work for constitutional officers.

Nor is the amount to be received by the Robins firm justified by any special skill or competence on their part. Lawyers from any number of Minnesota law firms—firms such as Dorsey & Whitney, Feagre & Benson, Gray Plant, Oppenheimer Wolff & Donnelly, Briggs & Morgan, Leonard Street, to name only a few—are as competent as Robins lawyers in general. No contingency fee of the magnitude at issue here was required to obtain qualified representation for the State of Minnesota and Blue Cross/Blue Shield.

Even if we assume that the individual attorney Michael Ciresi of the Robins firm possessed special skills in conceptualizing legal theories or making persuasive arguments before a jury, a premium of some $27,000,000 over and above generous fees would be an ample return for his individual services.

Further, every action by the Robins lawyers was checked and supervised by an experienced attorney, Hubert H. Humphrey III, the Attorney General of Minnesota. If his personal legal skills were in question at any point, he had as his direct subordinates a large number of highly respected and competent attorneys. Together they provided a base for excellence in litigation which the normal contingency arrangement does not contemplate.

Blue Cross/Blue Shield of Minnesota, likewise, had easy access to its own legal counsel. As a very large and profitable corporation, Blue Cross/Blue Shield of Minnesota was under no compulsion to pay a premium merely to obtain counsel. And, Blue Cross/Blue Shield of Minnesota was in no danger of losing the benefit of expert advice regarding this litigation should the Robins firm or Mr. Ciresi not have been available.

Adequate legal representative for the plaintiffs in this case was readily and easily available. No extraordinary premium, therefore, should have been arranged for the acquisition of litigation attorneys.

It is also unclear why Blue Cross/Blue Shield of Minnesota was unable to pay in more modest and regular ways for representation in this law suit. Contingency fees are most justified when clients are unable to finance the cost of litigation.

Correspondingly, it is not clear why the Attorney General did not seek appropriations to pay for this litigation. If he chose for personal reasons, or for reasons of expediency, not to seek public funds to finance the litigation, then the Robins attorneys have no ethical claim under the Rules of Professional Conduct to benefit financially in an unreasonable amount from his self-centered administrative decisions.

If it turns out that the Robins attorneys are political contributors and supporters of Mr. Humphrey, then a corrupt bargain between a holder of elective office seeking advancement to the office of governor and his supporters would taint the good faith of any contract between the Attorney General and the Robins firm. Such a contract, being one uniquely in the public interest, should be reviewed for over-reaching and self-seeking. It may not have been not negotiated at arms-length. The necessary legal work was not, apparently, put out for bid. Such an infected contract would be easily voidable upon a showing of harm to the public interest, which harm would arise if the Robins law firm is to receive the full mount of their agreed-upon fee.

The Robins firm was, in legal contemplation, negotiating with the citizens of Minnesota to represent their interests in the tobacco litigation. But, under these very special circumstances, the agent of the citizens, Attorney General Humphrey, had personal ambitions of his own to pursue in this law suit. So, in negotiating with the Robins firm, he did not zealously perform his duty to keep the cost of legal representation within just and reasonable bounds in order to uphold public confidence in the administration of justice.

If there are grounds to establish the reasonableness of this fee under Rule 1.5(a), then the sound administration of justice requires that they be articulated for the public to consider. If the public then is unpersuaded by those arguments and considerations, then the people may seek legislation to cap contingency fees in the future.

Sincerely yours,
Stephen B. Young
Attorney at Law

Supplement to Request For a Determination of Ethical Conduct

Edward Cleary, Director,
Lawyers Professional Responsibility Board
May 26, 1998
RE: Contingency Fee for Robins, Kaplan, Miller & Ciresi

Dear Mr. Cleary:

On May 20, 1998, I asked the Lawyer's Professional Responsibility Board to make a determination whether or not the law firm of Robins, Kaplan, Miller & Ciresi could accept a contingency fee of $566 million under Rule 1.5(a) of the Rules of Professional Conduct for its services in the recently settled tobacco industry litigation.

I have since received a copy of the original fee agreement entered into in 1994 by the Robins firm and the Office of the Attorney General of Minnesota, which agreement as subsequently modified by the parties provided for the contingency fee in question. A copy of that original fee agreement is enclosed for the consideration of the Board.

This fee agreement is relevant to a determination of the reasonableness of a fee of $566 million because it reveals just what risk the Robins firm actually took in proceeding with the tobacco litigation. The agreement reduced the risk for the Robins firm in important and substantial ways from the start of

the litigation, thereby undercutting any later claim by the firm for receipt of a huge contingency fee.

Please share with those who will review my request for a determination of reasonableness the following observations regarding the Robins fee agreement:

First, if the Robins firm was discharged and the case lost, the Attorney General would seek payment of the value of the firm's services, including fees, from the State. See paragraph 7 of the fee agreement.

Second, if the firm was discharged and the case won, then the Robins firm would still get its fees and costs. See paragraph 8 of the fee agreement.

Third, if the Robins firm was not discharged, but the case went badly for the State, the Robins firm could negotiate with the tobacco industry to get its fees and costs paid by defendants short of trial. See paragraph 6 of the fee agreement. Since all complex cases with discovery of numerous documents have a growing settlement value for defendants, this provision of the fee agreement acknowledges that reality. Further, this paragraph 6 of the fee agreement reflects a judgment that the Robins firm was not substantially exposed to risk of financial loss if it assumed responsibility for this litigation on behalf of the Attorney General.

Fourth, the fee agreement permitted the Robins firm to find other plaintiffs to pay the costs of the contemplated litigation, further reducing the firm's financial risk. See paragraphs 4, 5, and 10 of the fee agreement.

These provisions in the fee agreement provided substantial protection for the Robins firm in the tobacco litigation. By lowering its risk in these important ways, the firm reduced its need for the incentives of a large contingency award in the event of a successful result as a device to enable the litigation to be commenced and pursued with vigor.

Sincerely yours,
Stephen B. Young
Attorney at Law

In the Matter of the Complaint of
STEPHEN B. YOUNG
4040 IDS Center
Minneapolis, MN 55402
against MICHAEL V. CIRESI,
an Attorney at Law of
the State of Minnesota.
DETERMINATION THAT DISCIPLINE IS NOT WARRANTED
TO: Complainant and the Respondent Attorney Above-Named:

Based upon the documents submitted by the complainant and the failure of the complaint to state a basis for a reasonable belief that misconduct has occurred, the Director has decided not to investigate the complaint. Therefore discipline is not warranted pursuant to Rule 8(d)(1), Rules on Lawyers Professional Responsibility. The reasons for this decision are as follows:

Respondent and his law firm represented the State of Minnesota and Blue Cross/Blue Shield Minnesota in a lawsuit against manufacturers and distributors of tobacco products. The case, which received much public and media attention, recently settled for, *inter alia*, annuity payments to the State of Minnesota totaling over $6.5 billion, a smaller and shorter term annuity payable to Blue Cross/Blue Shield, and a contingent fee payment to respondent and his law firm of about $566 million. Complainant attorney, who does not profess to have been involved in any way in this lawsuit, contends that this fee is unreasonable on its face pursuant to Rule 1.5(a), Minnesota Rules of Professional Conduct.

The Director first notes that the settlement, which occurred after four years of litigation and four months of trial, was reviewed and approved by the judge who had presided over the litigation. The complaint alleges no facts that respondent, opposing counsel, or the parties in the case misled the judge or that the judge was not competent to review and approve the settlement. Although the settlement apparently did not outline the distribution of fees, it does not appear that any of the parties involved suggested to the presiding judge, by motion or otherwise, that the fees agreed to were unreasonable or unconscionable.

Second, complainant is neither respondent's client nor one of the attorneys involved in the case. The rules regarding the reasonableness of fees are primarily intended to protect attorneys' clients who may be unsophisticated or otherwise vulnerable to manipulation by an attorney. In this case, the parties were sophisticated and well aware of their rights and respective roles in the litigation. Fee agreements between attorneys and clients are generally arms length transactions which are not typically open to reinterpretation or condemnation by unrelated third parties. Although it is true, as a citizen of Minnesota, complainant might ultimately benefit from a lawsuit that was brought on behalf of the state, courts have consistently held that one's status as a taxpayer does not by itself grant standing to challenge decisions of government officials. *See Allen v. Wright*, 468 U.S. 737 (1984).

Rule 1.5, MRPC, identifies a variety of factors that may be taken into account to determine whether a fee is reasonable. The Rule states no per se limits on a fee an attorney may charge; to the contrary, a facial reading of the Rule indicates that potentially all of the factors listed could be construed in support of a sizable fee award in this matter. While the amount of the settlement after trial and the amount of attorney's fees agreed upon by the parties in this case are both much larger than average, contingent fees are just that; contingent on the successful outcome of litigation that is often complex and time-consuming, but is seldom as complex and time-consuming as the tobacco litigation. Further, unlike plaintiffs' counsel in tobacco litigation in other states, respondent and respondent's firm took their case to trial, a far riskier and more demanding method of resolution than settlement prior to trial; they reached a favorable settlement to the satisfaction of their clients after trial; and, as conceded by complainant, they accepted fees in an amount substantially less than the amount they were entitled to contractually. While reasonable people may disagree as to the appropriateness of the total amount of fees agreed upon by the parties, if the trial court does not take issue with the amount of fees, it would be neither prudent nor appropriate for the Director to intervene.

Similarly, the Director does not believe that the payment of attorney's fees, agreed to by the parties involved pursuant to contract, paid in relation to a settlement arrived at after years of preparation followed by trial, constitutes conduct which is prejudicial to the administration of justice.

The remaining claims and observations made by complainant are personal and political in nature and do not form a basis for disciplinary action.

The complaint does not state a basis for a reasonable belief that misconduct has occurred. Therefore, it will not be investigated.

The Director's Office is limited to investigating complaints of unprofessional conduct and prosecuting disciplinary actions against attorneys. It cannot represent complainants in any legal matter or give legal advice. Complainant must retain an attorney if either legal advice or representation is desired.

NOTICE OF COMPLAINANT'S RIGHT TO APPEAL

If the complainant is not satisfied with this decision, an appeal may be made by notifying the Director in a letter postmarked no later than fourteen (14) days after the date of this notice. The letter of appeal should state the reason(s) why the complainant disagrees with the decision. An appealed decision will be reviewed by a designated Lawyers Professional Responsibility Board member, whose options are limited to approving this decision or requiring further investigation. This determination will generally be based upon the information which is already contained in the file.

Enclosed with this notice to the respondent attorney is a copy of complainant's complaint.

Dated: May 22, 1998.
EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY

In the Matter of the Complaint of
STEPHEN B. YOUNG
against MICHAEL V. CIRESI,
an Attorney at Law of
the State of Minnesota
APPEAL OF DENIAL OF REQUEST FOR DETERMINATION
TO: Edward J. Cleary, Director of the Office of Lawyers Professional Responsibility

Thank you for your letter of June 2, 1998 with the information that my request for a determination has been forwarded to William M. Kronschnabel for further consideration. Since my Supplement to a Request for a Determination, dated May 26, 1998, crossed in the mail with your letter of May 22 to me, such Supplement was not an appeal of your Determination that Discipline is not Warranted. I am pleased that you have referred this matter to Mr. Kronschnabel, however, this letter alone gives the reasons for my appeal of your Determination. Please forward this letter to Mr. Kronschnabel.

This letter of appeal of your May 22, 1998 Determination that Discipline is not Warranted in the above matter is sent pursuant to such Determination. The reasons for my appeal of your determination are as follows:

Your Determination was hastily reached and, therefore, did not consider the terms of the contract of engagement with the Office of the Attorney General of Minnesota used by Michael V. Ciresi and his partners in the Robins, Kaplan Miller & Ciresi law firm to justify a fee of $440 million dollars in relation to services rendered to the State of Minnesota in the recently concluded tobacco litigation. That contract was only sent to you by Supplement to my Request for a Determination dated May 26, 1998, after the date of your Determination.

Further, you did not have at hand in making your Determination the contract between Michael V. Ciresi and Blue Cross/Blue Shield of Minnesota.

Thus you were unable to take into account in making your determination various important factors set forth in Rule 1.5(a) of the Rules of Professional Conduct. Only consideration of such factors can permit a determination whether receipt of this contingency fee by Michael V. Ciresi and his partners is ethical conduct by lawyers in Minnesota. Since you did not make that specific determination, further consideration of my request is necessary if the Lawyers Professional Responsibility Board is to do its duty in this case and consider the factors set forth in Rule 1.5(a).

Second, your reasons for concluding that no basis exists to support a reasonable belief that misconduct might occur upon the receipt of this contingency fee are, in my opinion, off the point.

The judge in the tobacco litigation did not consider the ethical appropriateness of the receipt of $566 million in contingency fees by Michael V. Ciresi. The judge under the circumstances you recite did not scrutinize the contingency fee under Rule 1.5(a) of the Rules of Professional Conduct. In the brief discussion of the arrangements made by the Attorney General, the Robins law firm and the settling defendants in that litigation in their settlement agreement no mention of the size of the fee is made. Judge Fitzpatrick had no knowledge of the legal fee to be received by the Robins firm. If you need a copy of the Settlement Agreement reached in that litigation to confirm this point, I would be happy to provide you with one.

Thus, Judge Fitzpatrick's approval of the settlement in the relevant litigation is completely beside the point of an ethical challenge to the amount of the contingency fee to be received by Minnesota lawyers. To date, no one has ruled on the ethical appropriateness of the fee under challenge in my Request for a Determination.

You duck the significance of Judge Fitzpatrick's silence on the ethical quality of the fee in question by noting that no party to the settlement raised objections as to the fee arrangements. That point of yours is specious. Parties to a mutually satisfactory settlement agreement will not bring objections to their handiwork before the presiding judge. Expecting them to do so flies in the face of logic and experience. According to

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and 1099s. Modules for ALTA Commitments and Owner and Mortgage policies, FHA and FNMA Fixed Rate Notes (but not coordinated Mortgages), and a variety of management reports each cost $200 more. Although we didn't test it, the program claims to export electronic files of the 1099s, suitable for electronic submission to the IRS.

Considerations

We have mentioned some of the program's negative idiosyncracies. Further, there are a variety of other useful documents that the program does not generate, and this version has no way to add documents or to send transaction or party data to a third party document assembly system. We're told that these and other questions are being addressed for the next version, and we are looking forward to seeing it.

In the meantime, we note that Blackacre's RESPA does consolidate most of the functions of the title and closing office, and will generate documents from title commitment to HUD-1 to the 1099 reports. At $700 for a single user, an additional $600 for an unlimited user network version—and $200 each for the Management Reports, Notes and ALTA modules—the program is usable, and certainly isn't very expensive.

New low price for legal research

Versuslaw, an Internet—based legal research provider, has announced a substantial change to its price structure. Versuslaw has been around for several years, providing judicial opinions from all 50 states, U.S. Supreme Court and circuit courts, and statutes for a few states. Although Versuslaw had a broad scope, it was not particularly deep, with no more than 30 or 40 years of opinions in many states, and only 13, for example, in Illinois. There were virtually no federal district court cases.

But it wasn't a bad deal at $600 per year, or about $70 per month, per firm.

The new pricing is $6.95 per month per attorney in the firm, lowering costs for solo practitioners and firms up to seven lawyers in size. Because the $6.95 is assessed on each attorney in the firm, rather than Versuslaw "users," an eight-lawyer firm would pay $667.20 for the year, rather than the $600 required under the old system. (Versuslaw is also available to one lawyer at $14.95 for 24 consecutive hours, although that no longer makes sense at all for a firm with more than two lawyers.)

The system does not have the wide range of secondary legal material and non-legal material available through Westlaw or Lexis, not does it boast a cite checking service. But we are told that Versuslaw will be adding statutes and district court cases by the end of the year, which will make the collection more valuable. It will be interesting to see what these rate and library changes do to the legal research scene.

Very small firms who haven't yet signed up for Computer Assisted Legal Research should at least give Versuslaw a try.

Summary

Blackacre's RESPA for Windows is not very expensive and does an adequate job of preparing many of the documents and management reports required by a real estate closing practice or title company office. Versuslaw announces new pricing. At $6.95 per attorney per month, this should be irresistible to the solo practitioner and very small law office.

Barry D. Bayer and Benjamin H. Cohen practice law and write about computers from their offices in Homewood, Ill., and Chicago. They can be reached at either bbayer@counsel.com or PO Box 2577, Homewood, IL 60430.

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Justice Holmes, the life of the law has been experience. The work of the Board must take into account the day-to-day realities of legal practice in setting forth standards for lawyers in Minnesota.

Next, you allude to the concept of standing, to argue that non-parties to a fee agreement have no right to seek a determination of the ethical conduct of an attorney. The standing argument falls in the face of Rule 8.3(a) of the Rules of Professional Conduct, which obligates attorneys in Minnesota to report conduct they believe to be unprofessional, even if they are not party to the conduct in question. In this case, the conduct was notorious, being widely reported in the media. The size of the actual fee to be received was shocking and such conduct deserves consideration of its impact on the "standing" of the legal profession in our state.

In the Pioneer Press newspaper of June 4, 1998, the results of a poll of the opinions of Minnesota citizens was reported. Only 11% of those polled believed that the size of the fee to be received by the Robins firm was appropriate. A full 80% of those citizens asked responded that the fee was too large.

In setting rules for the ethical conduct of lawyers, you and the Board are well advised to respect such strong ethical feelings on the part of the public to be served by the profession. Willful avoidance of such opinion will only bring the practice of law into greater disrepute than it now sadly enjoys among the majority of our citizens.

Next, you point out that Rule 1.5(a) does not put a cap on the amount of a contingency fee which a lawyer may receive. Indeed, in making this point you are correct, for the Rule only requires that a fee be "reasonable". However, when the Rule invokes a standard of "reasonableness", it presumes that some fees will fall short of the standard and be unethical for being "unreasonable". The Rule mandates an inquiry into factual circumstances to determine when the line between an ethical contingency fee and an unethical one has been crossed.

Roughly speaking, the larger the fee to be received, in percentage or absolute terms, the more facts should be required to find it reasonable under the circumstances.

The point of Rule 1.5(a) is to provide an objective standard by which third parties, such as yourself and the Board, can independently determine the ethical quality of a given contingency fee. Your letter of May 22, 1998 does not constitute such an independent determination of the substantive factors which must govern a conclusion on that question. Your letter expressly declines to make such an objective determination and I appeal so that the necessary analytical work can be done and the public educated about the thinking of the Board on this size of contingency fee for the work done and the risks assumed by the attorneys in question.

Your observation that the arguments made in my Request for a Determination were not germane because you characterized them as "personal and political in nature" is also off the point. Those arguments, while not appealing to you, have been drawn from the common sense discussions of this very large fee which are taking place in the society in which lawyers practice. The Pioneer Press poll of June 4, 1998 reflects the power and dignity of such "personal and political" considerations.

Call them personal and political if you will, they rest on the factors set forth in Rule 1.5(a) and deserve the considered attention of the Board. To blow them off as unworthy is to ignore the Board's duty to the Supreme Court and the people of this state to provide reasoned defense of ethical attorney conduct when questions of justice are raised. Stigmatizing arguments as unworthy of response is not the substance of a reasoned defense of the contrary position.

I would hope that the review of my Request will now fully consider the arguments made in my Request, the Supplement to my Request and this Appeal of your Determination.

Thank you very much for your consideration of my Request and this Appeal.

Sincerely yours,
Stephen B. Young

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
June 19, 1998
RE: Appeal of Director's Disposition in Complaint of STEPHEN B. YOUNG,

Dear Mr. Young, Mr. Ciresi, and Mr. Cleary:

The appeal identified above was referred to me for review pursuant to the Rules on Lawyers Professional Responsibility. I have reviewed the entire file, including the Complaint, the Director's determination, Complainant's letter seeking review, and all other correspondence and documentation. Based on that review, I hereby approve and affirm the Director's determination that **discipline is not warranted.**

The contingent fee was calculated pursuant to a contract entered into between Respondent and the Attorney General of the State of Minnesota, who was elected by the citizens of this state, is also an attorney, and who has a sizeable legal staff upon whom to rely for guidance and counsel. Absent any final ruling by a court of competent jurisdiction that the retainer contract between the State of Minnesota and Respondent's law firm is legally invalid or unenforceable, there is no reasonable basis to infer that any misconduct may even have occurred. I agree with the Director that it is neither prudent nor appropriate for the Director's office to intervene in a legal and binding contract of this magnitude entered into between sophisticated parties. It is improvident to ask the Director to even consider substituting his judgment for that of an elected constitutional officer in a case with such far-reaching social, economic and political overtones as the tobacco litigation.

Very truly yours,
William M. Kronschnabel

Opening on the Minnesota State Board of Law Examiners

An attorney position is open on the nine-member Minnesota State Board of Law Examiners. The all-volunteer Board is made up of 7 attorneys and 2 public members. The Board is responsible for drafting, editing, and administering the Minnesota Bar Exam as well as overseeing bar applicants' character and fitness screening and certification process.

The members of the Board meet 12 times per year for meetings and hearings that range in length from 4 to 8 hours. An additional 2 to 3 hours of preparation is required prior to meetings and hearings.

Matters considered include Board review of policy and administrative issues, review and selection of bar exam questions, as well as conducting due process hearings on applicant character and fitness issues. The Board employs an Executive Director and a staff of 8.

Compensation is limited to reimbursement for costs of travel and lodging, if necessary.

Submit letters of interest and curriculum vitae to Fred Grittner, Clerk of the Appellate Courts, 25 Constitution Ave., Suite 305, St. Paul, MN 55155.