

## Hello, Goodbye

By

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*“You say goodbye and I say hello. I don’t know why you say goodbye, I say hello.”*

— Lennon & McCartney

Most of the popular songs I grew up with in the late 1960s probably had hidden meanings that I didn’t completely understand, maybe even the lyrics above penned by Paul McCartney. In my youthful naiveté I considered this to be generally a simple optimistic song about looking forward rather than backwards. Music historians seem to prefer that it be considered simply as utter nonsense. As another of my icons of the era, Kurt Vonnegut Jr., said, “so it goes.” [Ftn1](#)

That’s the extent of my nostalgia trip for the days of long ago. Rather, I intend to look forward to a good 2008 and maintain my optimism. Still, a quick look back to review the prior year’s activities can be helpful, and the lawyer disciplinary system is no different in that regard. An equally quick look ahead should follow.

### **Goodbye 2007: The Year in Review**

In calendar year 2007, the total number of attorneys publicly disciplined was lower than the previous year. Only five attorneys were disbarred: Sergio Andrade, Francis Giberson, Mark Pitzele, Bradley Rhodes, and Michael Swensen. [Ftn 2](#) As in other years, there was not just one path to disbarment. Andrade was disbarred after being criminally convicted of theft by swindle; Giberson failed to pay child support and was convicted of a crime; Pitzele misappropriated funds from his trust account; Rhodes failed to cooperate with a prior probation and neglected several more files; and Swensen participated in a fraudulent real estate scheme. Giberson and Rhodes previously had been publicly disciplined, which aggravated their more current misconduct; the others had not. Giberson was admitted to practice in 1976 and Rhodes in 1984, while Swensen, Pitzele and Andrade were more recent admittees from 1991, 1993 and 1995. Their practice areas also were diverse.

In addition, 21 lawyers were suspended this past year, and five lawyers were publicly reprimanded and either placed on probation or had their existing probation extended. Supreme Court decisions of note included lengthy suspensions for misappropriation or other trust-account-related misconduct, and shorter suspensions for patterns of multiple acts of misconduct; these last featured in particular misrepresentations

to clients, courts or the disciplinary authority. There were also five reinstatement proceedings this year, with three of the attorneys being reinstated to probation while the other two attorneys' petitions were denied. All of the attorneys involved this past year were seeking reinstatement from suspension; there were no petitions seeking reinstatement from disbarment as in recent years.

Twenty public matters were pending at the end of the calendar year, as were ten additional petitions for reinstatement, one of which is from disbarment.[Ftn 3](#) Six of the 20 matters were already set for oral argument before the Supreme Court as part of their January and February calendars. Another eight sets of charges of unprofessional conduct are pending before panels of the Lawyers Board to determine whether probable cause for filing a public petition exists. The total number of public discipline matters in 2008 seems headed towards exceeding that of 2007.

It had been feared that the number of complaints received by the Director's Office was headed for another sizeable jump this past year. Ultimately that didn't occur. A November-December stagnation in the number of complaints filed meant that the total for the year was 1,226, only one more than in 2006. That 2006 total was an increase from the approximately 1,150 per year that had been fairly constant for several previous years. There's always the fear that a "New Year's Resolution" influx of complaints in January will make up for the lower-than-normal November-December total.

That end-of-year lull in complaints received allowed our office to close more files than were opened during this final period of 2007, such that the overall number of files open at the end of 2007 was 500, exactly the target guideline for open files established by the Lawyers Board. With a full complement of staff attorneys again in place, it should be possible to continue to meet this goal. More difficult, however, is maintaining the office's other target guideline of having no more than 100 open files that are more than one year old (from date of opening the investigation file). When an experienced attorney departs, to be replaced by a less experienced attorney, the new attorney usually can help keep up with the new complaints and less serious matters, even while gaining expertise. Already pending cases are more difficult to reassign and resolve, and often age to beyond the one-year goal. These target numbers matter because the Director's Office is funded by a portion of the annual lawyer registration fee; if additional resources or staff prove necessary to handle the office's workload, all Minnesota lawyers can be affected.

Finally, although various proposals for changes to either the Rules of Professional Conduct or Rules on Lawyers Professional Responsibility have been put forward, and are being studied by the Lawyers Board or MSBA's Rules of Professional Conduct Committee, no amendments to the rules were adopted this past year by the Court.

### **Hello 2008: The Year Ahead**

The Supreme Court Committee to Review the Lawyer Disciplinary System, chaired by Minneapolis attorney Allen Saeks, met several times in the latter portion of 2007 and now is nearing the end of their

preliminary review. Their report is scheduled for completion and submission to the Supreme Court in April 2008. Any suggestions for change made by that committee likely will be topics of discussion and action during this coming year. In the past, several positive changes emerged following these reviews. To date, issues such as the procedures used by District Ethics committees to conduct their preliminary investigations of complaints, revision of the Lawyers Board Panel Manual, and the file aging noted above have been discussed by the review committee.

One technology development of the new year already is noteworthy. As many of you already are aware, all of these columns are posted on the website maintained by the Director's Office and the Lawyers Board, [Ftn 4](#) along with articles written by staff attorneys that appear in other periodicals. They are word-searchable and there is a subject index with links to the articles. It has long been a goal to revise this index to more closely match researchers' needs. That revision recently has been completed and should be available online by the time this column is published. The index now has both a completely new subject matter/topic index and also an index by Rule of Professional Conduct. As before, all articles that discuss a particular topic or rule are listed and linked. This has been a major undertaking, but a worthwhile one. We hope the change will constitute a significant improvement, and urge interested individuals to try the new indexes and let us know your views.

The Director's Office staff continues to balance its educational function, presenting at Continuing Legal Education seminars and providing advisory opinions, with its prosecutorial obligation. We look forward in 2008 to protecting the public while also serving the bar.

#### NOTES

**1** Vonnegut first used what became his catch phrase in *Slaughterhouse Five*.

**2** Citations to the Supreme Court decisions discussed in this article are not provided. Copies of all lawyer disciplinary decisions can be found on the Lawyers Board website using the lawyer public discipline search function. Copies of the petition for the case and any stipulation for discipline also are included.  
[www.mncourts.gov/lprb/SearchLawyer.aspx](http://www.mncourts.gov/lprb/SearchLawyer.aspx).

**3** Not all petitions for reinstatement result in Court decisions. Some petitions are withdrawn during the investigation stage in response to concerns raised by the Director's Office.

**4** The MSBA also archives past issues of *Bench & Bar of Minnesota* at [http://www2.mnbar.org/benchandbar/perms/archive\\_index.htm](http://www2.mnbar.org/benchandbar/perms/archive_index.htm).