

I'VE HAD A GOOD RUN

By

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November 2, 2005, telephone call:

Me: *Hello.*

Caller: *Is this Ken?*

Me: *Yes.*

Caller: *Ken, this is Tim Pawlenty.*

Me: *Ahh, uh, huh ah oh [continued stuttering . . .].*

Caller: *Did I catch you at a bad time?*

Me: *Ahhh, no -- you'll have to forgive me, I'm just not used to having the Governor call my cell phone.*

So began the conversation that marked the beginning of the end of my 23-year career with the Office of Lawyers Professional Responsibility.[Ftn 1](#) In this as in several important life events, excitement prevented me from handling the situation with poise and composure. In fact, it likely added to my expanding humility resume, which I am told may benefit me in my next position.

Leaving as Director to become a judge is bittersweet. The exciting challenges that lie ahead are juxtaposed with melancholy feelings over cutting ties with a system and a position that has provided unlimited opportunities to learn the law, work with truly excellent people, and experience a variety of legal matters rarely afforded to most lawyers over an entire career. Some have commented that the business of disciplining lawyers must get old. Although lawyer discipline is often difficult, frustrating and sometimes sad, I can honestly say that after 23 years I enjoy working here just as much, if not more, than when I started.

LOOKING BACK

When I started as law clerk over two decades ago, I never dreamed I would stay this long, let alone be appointed Director. I vividly recall delivering my first dictation to the word processing pool only to have the frustrated word processor flip the cassette tape back

onto my desk and chastise me “to learn how to dictate, cuz we ain’t typing that crap.”

As a clerk I was also a hoax victim courtesy of one of the office lawyers. Having been told that I needed to keep my suit jacket on at all times in case a Supreme Court justice visited the office, I endured at least two uncomfortable summers before realizing that justice sightings in the office were less frequent than solar eclipses.[Ftn 2](#) It is quite possible that ordeals of this nature spawned my desire to become Director.

CHANGES

When I look back, I sometimes wonder how the office was able to operate in the early years. When I started, the office employed only five lawyers, it now has nine. Our complaint tracking system was composed of 3 x 5 index cards written in pencil so that address changes could be accomplished with an eraser. Vetting a lawyer’s disciplinary record required manually searching multiple sets of index card systems and often pulling the physical files. Today, complaints are electronically logged within minutes of receipt and lawyer discipline history is instantly available.

At the beginning of my tenure, the advisory opinion service had been suspended due to lack of resources. In the late 1990s the volume of advisory opinion requests began to exceed the number of ethics complaints filed each year. Last year nearly 2000 advisory opinions were issued to Minnesota lawyers and judges.[Ftn 3](#)

In the early 1980s as today, the Director wrote this monthly professional responsibility column. The office lawyers also appeared at a handful of CLE seminars. Now monthly ethics columns appear in two publications and dozens of CLE appearances are made by office lawyers annually. In addition, a wealth of Minnesota ethics resources are available on the office’s Web site and by the time this article appears, the public and the bar should be able to search the record of all Minnesota lawyers who have been publicly disciplined.[Ftn 4](#)

Other changes involve advancements in case investigation and prosecution techniques. Trust account audits to establish lawyer theft have evolved from pencils and ledger paper to sophisticated electronic spreadsheets that track individual client balances in color-coded fonts and calculate daily shortages to the penny. Where necessary, experts are routinely secured to provide forensic assistance in handwriting analysis, psychiatric and psychological assessment, and more recently where proof issues focus upon computer hard drive analysis.

Probably the most significant change, however, has been the elevation of the status of professional responsibility and legal ethics as a recognized discipline of law. Twenty years

ago, far fewer lawyers deemed professional responsibility worthy of their constant time and attention. Today it is the atypical lawyer or law firm who fails to make professional responsibility a priority in the practice of law. Cynical observers attribute the legal profession's heightened sense of ethics to the corporate scandals and indictments or ethical lapses of government officials that have plagued the country over the last decade. While these events may have played some role, my belief is different. After issuing over a thousand advisory opinions, it is my perception most lawyers do not seek ethical guidance due to fear of professional discipline, but because as professionals they appreciate the value and importance of ethical compliance and the role it plays in delivering quality legal services.

THANK YOU

After this many years, there are too many people to thank by name in a single article. To the Minnesota Supreme Court I express my sincere appreciation for the opportunities provided to me, not only as Director but also as a young lawyer, and then a not-so-young lawyer, to argue numerous cases. When I first started, I longed for the day that I could argue cases without the attendant anxiety and stomach butterflies. Some time ago I realized that that day will never come and that anxiety and butterflies are "good things."

One of the true benefits of employment with the office has been the opportunity to work along side truly great lawyers. The list of Lawyers Board chairs during my tenure (Bob Henson, John Levine, Charles Kennedy, Greg Bistram, Chuck Lundberg, and Kent Gernander) is legendary. If a Hall of Fame existed for the Minnesota bar, all would be charter members.

I owe a debt of great gratitude to former directors under whose tutelage I acquired much of the knowledge and skills that enabled me to become Director. Special thanks to Bill Wernz and Judge Ed Cleary. Bill not only taught me volumes about legal ethics, but had enduring patience with me as a young, sometimes over eager lawyer. Ed schooled me in the art of being politic without being political and broke a long-standing curse, [Ftn 5](#) thereby paving the way for my judicial aspirations.

I will miss my dedicated and loyal staff, some with whom I have worked for my entire 23 years and many others for more than a decade. Many things have changed over these years: when I started I was a nonlawyer, unmarried without children, and did not possess a single gray hair on my head. As I leave, I am about to become a judge, have a lovely wife, two wonderful children, and am just happy to still have hair on my head regardless of its color. What has not changed or even wavered during this very long time is the staff's undying loyalty and ongoing commitment to quality performance.

Finally, I would like to thank the lawyers of Minnesota. During my term as Director there was nothing but unanimous support for aggressive but fair enforcement of the ethical standards. The respect demonstrated for my office is a testament to your commitment to being true professionals. I include in this group those lawyers whose association with me took place under less than ideal circumstances. Many of you exhibited class and professionalism, even in the most arduous times. The respect and dignity you afforded me as Director did not go unnoticed. I've had a good run.

NOTES

1 On November 3, 2005, Governor Pawlenty announced that he was appointing Fridley lawyer William Ekstrum and me to the two Washington County District Court openings created by the retirements of Judges Gary Meyer and Steven Muehlberg.

2 Ironically, nearly a decade later, Justice Paul Anderson turned this urban myth into reality with his regular appearances in the office to express the Court's appreciation for the staff's efforts. I doubt that rarely, if ever, was I wearing a suit jacket.

3 In 2004 there were 1,147 ethics complaints and 1,974 advisory opinion requests.

4 The Web site address is www.courts.state.mn.us/lprb. For over 20 years, records of public discipline have been available to the public upon request. By mid-December 2005 the office hopes to go online with a feature on the Web site enabling the public and the bar to search public discipline decisions by lawyer.

5The Curse: a former Supreme Court justice once theorized that because of the nature of lawyer discipline work, no lawyer employed in the Office of Lawyers Professional Responsibility would ever be appointed to judicial office.