

## LIFE BEGINS AT 40

By  
Martin A. Cole, Director  
Minnesota Office of Lawyers Professional Responsibility

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On January 4, 1971, a small state agency began operations.<sup>Ftn 1</sup> It was called the Office of Lawyers Professional Responsibility and operated in conjunction with the Lawyers Professional Responsibility Board, which oversaw the office and acted as adjudicators in contested matters. The substantive disciplinary rules that the office was established to enforce had been in effect for only five months; the procedural rules by which it was to operate wouldn't take effect for another month.<sup>Ftn 2</sup> For a while, it overlapped operations with the State Board of Law Examiners.<sup>Ftn 3</sup>

This month, that same agency celebrates its 40th anniversary. That it is alive and well is certainly cause for celebration. And my how it's changed and grown, both in size and in the breadth of services it provides to the bar and the public.

The professional discipline landscape for lawyers was quite different in 1971. The Watergate break-in and cover-up are often credited with generating increased attention in this country to lawyer ethics and professional discipline. In fact, the Watergate break-in didn't occur until June 1972 and the involvement of lawyers on the president's staff was not uncovered for another year or more. The Clark Report had already in 1970 concluded that there was a "scandalous situation" in lawyer discipline.<sup>Ftn 4</sup> And the then-new Code of Professional Responsibility had been adopted by the American Bar Association in 1969.

Responding to the Clark Report, the ABA and other factors, Minnesota—like many jurisdictions—took action to improve the lawyer-discipline system, in part by creating the first full-time statewide authority to oversee lawyer discipline; thus the Lawyers Professional Responsibility Board and the Office of Lawyers Professional Responsibility were born.

### Quick Comparisons

In 1971, the new Office of Lawyers Professional Responsibility had a staff of three: the first director, Richey Reavill, one assistant director, and a secretary.

Approximately 6,300 lawyers paid fees that year in Minnesota. The office had total first-year expenses of just over \$137,000, including salaries and benefits. Rent was \$341 per month. The office received 400 complaints in its first year. Thirty private warnings were issued (the functional equivalent of today's admonitions) and five lawyers were publicly disciplined by the supreme court, although four of those proceedings had been commenced prior to the office opening. It was a reasonable debut.

In the 40 years since then, the profession and the complexity of lawyer regulation has changed. Minnesota's lawyer population has increased dramatically, to over 28,000 active attorneys. Four law schools now serve the state, as opposed to two in 1971. The Director's Office now has a staff of 27 and the budget has grown to over \$3.1 million per year. Our monthly rent is \$21,772. We will receive over 1,350 complaints this year; over 125 admonitions will be issued; 25 attorneys will stipulate to private probation; and 25-30 attorneys will be publicly disciplined. The Code of Professional Responsibility morphed into the Rules of Professional Conduct in 1985, the Client Security Board began in 1986, and four review committees (one mounted by the ABA and three fostered by our supreme court) have studied the disciplinary system (in 1981, 1985, 1993, and 2008). The board, often in conjunction with the MSBA, has periodically petitioned for amendments to the disciplinary and procedural rules to ensure continued vitality and fairness. The rules continue to be improved and "tweaked" regularly.

### **Additional Tasks**

The tasks and services performed by the lawyer discipline system have increased considerably over the years and many current functions likely were not even imagined in 1971. Early on, the board began issuing formal opinions on professional responsibility issues of general concern. Although the path has been rocky, this opinion function still exists.<sup>Ftn 5</sup> Far more time-consuming are the many "departments" that are now a staple of the Director's Office activities: processing professional firms' annual fees and reports; providing free disclosure (good standing) letters to other jurisdictions, to the governor for judicial appointments, or to volunteer lawyer organizations; overseeing attorneys on probation, often including those with chemical or mental health issues, or perhaps trust account problems that require periodic auditing; the trust account overdraft notification program, which is both an educational and occasionally an investigative tool; teaching at numerous Continuing Legal Education seminars, a task that has increased ever since mandatory ethics and bias CLE was adopted; and providing staff services to the Client Security Board in its task of reimbursing victims of lawyer dishonesty. Perhaps most significant in my opinion, the office provides telephone advisory opinions to licensed Minnesota attorneys in numbers that likely were never foreseen. The program is a rousing success with the office's staff attorneys

receiving over 2,500 inquiries every year. Oh yeah, we write columns, articles, and maintain a very useful website too.

One thing that has not changed is the dedication of the board and the staff to providing high quality, cost-effective services to the courts, bar, and public. Also, the volunteer efforts of board members, district ethics committee chairs and investigators, probation supervisors, and members of the courts and bar association committees remains astounding: Without their efforts what would our system cost, if it could exist at all? Also, the court and the bar have been consistently generous in their willingness to adequately fund the lawyer discipline system and the Client Security Fund.

### **Futurama**

What does the future hold for the OLPR and lawyer discipline in Minnesota? As noted, many of the current functions of the discipline system were not foreseen in 1971; for example, the ubiquity of the internet and the need for a web presence were not foreseen even 20 years ago. No doubt, there are tasks and needs that will arise in the future that are completely unforeseen today. Technology is evolving so rapidly that, for many lawyers, the future is scary. We will try to keep up.

Protecting the public by prosecuting the most serious lawyer misconduct remains Job 1. Educating and helping the bar to avoid major problems through private discipline, advisory opinions, and articles and seminars is almost as important a task, and we hope serves to protect the public as well.

The job of disciplining lawyers is not an easy one. It has been done professionally in Minnesota for 40 years now, thanks to the efforts of many, many individuals. Looking ahead, we embrace the challenges ahead of us. After all, as the saying goes, "Life begins at 40!"<sup>Ftn 6</sup>

### **Notes**

1 Some of the information about the earliest operations of the OLPR comes from *Bench & Bar of Minnesota* columns written by Richey Reavill, the first director, in 1972.

2 The Minnesota Code of Professional Responsibility became effective in August 1970. It was supplanted by the first version of the Rules of Professional Conduct in 1985. The Rules on Lawyers Professional Responsibility took effect in February 1971.

3 Prior to the creation of the Lawyers Board and Director's Office, the Board of Law Examiners handled referrals for public discipline from the district ethics committees. Cases already pending at the time the new OLPR began continued to be prosecuted by BLE.

4 "This new emphasis on professional regulation followed publication of Problems and Recommendations in Disciplinary Enforcement (the 'Clark Report') in 1970, which was

produced by the Special Committee on Evaluation of Disciplinary Enforcement, chaired by former U.S. Supreme Court Justice Tom Clark.

5 See, e.g., Cleary, "Ethics and the Board: the Court Draws the Line," *Bench & Bar of Minnesota* (May/June 2001).

6 American psychologist Walter Pitkin is usually credited with popularizing this saying in his 1932 book of the same title.