

TAKING STOCK

By

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At the end of a year, or the start of a new one, many individuals “take stock” of their life situation in order to make some decisions about the future. Businesses likewise take stock, including literally taking inventory counts, to determine where they have been and where they are going as an entity.^{Ftn 1} A government agency such as the Office of Lawyers Professional Responsibility (OLPR) also should periodically “take stock” of where we are, what we are doing, and how well we are doing it.

This task periodically has been performed by “blue ribbon” committees appointed by the Minnesota Supreme Court to review the lawyer discipline system. The most recent such review was completed in May 2008.^{Ftn 2} Similar committees issued reports in 1985 and 1994. Each such committee made recommendations for improvements in the discipline system, many of which by now are so familiar that they have become “the norm” for the system. Hundreds of lawyers enter the profession annually in Minnesota without knowing that the Rules of Professional Conduct or the disciplinary system’s procedural rules once were different.

Beyond such major reviews, the Lawyers Board and the OLPR assess their status at least yearly, in an annual report filed with the supreme court in July of each year,^{Ftn 3} but often at the start of a new calendar year as well. So, if the disciplinary system “takes stock” of its current situation, what’s the result?

Finances

One way to assess the current status of the system is financially. In this regard, the OLPR remains in good health. It has been 11 years since the portion of the lawyer registration fee applied to the lawyer discipline system has been increased,^{Ftn 4} yet the OLPR has been able to meet its budgetary obligations despite ever-increasing costs. In part, that has been so because judicial branch employees had not, until just this year, received merit increases for five consecutive years. Employee salaries and benefits account for approximately 72 percent of the OLPR budget, so although benefit costs increased, overall budgetary expenditures have remained somewhat flat. With merit increases apparently resuming (from a hopeful employee’s perspective, perhaps annually), the OLPR’s current budget surplus may quickly be depleted and additional funding may even become necessary in a few short years. Without the outstanding efforts of our many volunteer investigators and board and committee members, the costs of the lawyer discipline system in Minnesota would be significantly higher.

The other major expense item is, of course, rent for our office space. We have been in our present location in the Landmark Towers building in downtown St. Paul since 2003. The OLPR was able to renegotiate our lease downwards when it was last renewed, with only incremental increases thereafter. The office suite's library was remodeled into additional offices for attorneys and paralegals as part of this process—By the way, with desktop computer access these days, are law libraries becoming obsolete for most firms? Just asking.

Finally, the system is in the process of building new databases and case management systems, both for the OLPR and for the Client Security Board. These, too, are major expenses, but the building is being done in phases and the costs thus are spread out over several fiscal years. Keeping up with the ever-changing electronic and data storage world is a regular challenge for any government agency.

Programs

Another way to take stock of the discipline system is by considering the myriad tasks performed by the Director's Office and others in the system. Obviously, processing over 1,300 complaints each year remains the major function of the office, from screening, to investigation, to disposition. Many cases today seem to be contested to a greater degree than in the past and thus take up more time per major case. Maintaining reasonable caseloads for the attorney and paralegal staff has been challenging. One new attorney position was added this past year; an additional paralegal may be next. But in addition to investigations of complaints and prosecution of serious cases as appropriate, what do Minnesota lawyers get for their money?

The principal activity of the office beyond discipline is the various educational activities engaged in by the OLPR staff, as well as by board members and local district ethics committee members: instructing at Continuing Legal Education seminars, writing articles, teaching law school classes, speaking to civic groups, and providing telephone advisory opinions to hundreds of lawyers annually. In 2014, for the tenth consecutive year, the senior lawyers in the Director's Office will provide over 2,000 informal telephone advisory opinions. We can't know for sure, but we like to think that number also reflects how many better decisions were made by Minnesota lawyers facing an ethical dilemma, and that at least some sizeable percentage of those decisions did not turn into complaints. If that is even partly true, the advisory opinion service is time and money well-spent.

Several other tasks performed by the OLPR directly impact lawyer discipline and regulation, such as processing complainant appeals, monitoring attorneys on probation, overseeing the trust account overdraft notification process, acting as trustee over the files and/or trust accounts of deceased attorneys or attorneys who have abandoned their practice, and providing staff services to the Minnesota Client Security Board. Each of these tasks requires the expenditure of many attorney and paralegal hours each year.

One perhaps less well-known activity of the Director's Office is what we refer to as the disclosure department. The disclosure department responds to written requests for attorney disciplinary records. Public discipline is always disclosed; private discipline is disclosed with a properly executed authorization from the affected attorney.^{Ftn 5} In 2013, for example, over 700

requests were processed for disclosure on over 1,200 lawyers. Lawyers seeking admission in other states constitute the largest portion of these requests, but requests also come from the governor in considering judicial appointments and from MSBA specialist certification programs.

The other aspect to disclosure is the LPRB's press release policy. The Director's Office issues nondescriptive press releases upon the filing of contested petitions for public discipline if suspension or disbarment is definitely being sought, and again upon the issuance of all public discipline determinations by the supreme court.

Verdict

As it heads into 2015 (its 44th year), the discipline system in Minnesota continues to function well at a reasonable cost to the Minnesota lawyers who fund it. High quality volunteers continue to be willing to participate and keep the system strong and vital. The professional staff is experienced, working under sometimes stressful situations. After taking stock, we believe we continue to provide quality service to the public and the bar of Minnesota.

Notes

¹ Lawyers, of course, occasionally invest in their client's business and receive stock in return or accept stock in lieu of payment of fees. See, Rule 1.8(a), Minnesota Rules of Professional Conduct; and Cleary, "When the Lawyer Takes a Share," *Bench & Bar of Minnesota*, May/June 2000. This is not the kind of taking stock this column is talking about.

² The report can be found at <http://lprb.mncourts.gov/AboutUs/Supreme%20Court%20Advisory%20Report/Supreme%20Court%20Advisory%20Committee%20Report.pdf>.

³ Copies are available at <http://lprb.mncourts.gov/AboutUs/Pages/AnnualReports.aspx>.

⁴ Approximately 94 percent of the OLPR budget is funded through lawyer registration fees. The remainder comes from, *inter alia*, providing staff services to the Client Security Board, collecting professional firm filing fees, and judgments against publicly disciplined attorneys.

⁵ Private discipline is, of course, disclosed, with a copy provided to the complainant in a matter, and may become public as prior discipline in a subsequent public discipline proceeding against the attorney.