

## THE MORE THINGS CHANGE

By

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Reprinted from *Bench & Bar of Minnesota* (May/June 1996)

A full generation of lawyers has been admitted to practice in Minnesota since the Lawyers Professional Responsibility Board had its first meeting in February 1971. The March 1996 meeting of the board will be the 100<sup>th</sup>, marking 25 years of service to the bench and bar of this state and dedication to the protection of the public. Much has changed about the lawyers disciplinary system in Minnesota in those 25 years; much more, however, about the ethical issues confronting lawyers and accordingly the lawyer discipline system remains the same.

Under the Rules of the Supreme Court on Professional Responsibility effective in 1971, disciplinary determinations were less centralized in nature. District Ethics Committees (“DECs”) – volunteer ethics committees organized by the district bar associations – had the authority to investigate a complaint and then dismiss it or issue an admonition. The rules initially contained no formal provision for complainant appeals of the decisions of the DECs. The director was simply to exercise discretion as to whether any further investigation need occur. The “grass roots” nature of DEC determinations subjected the system to various forms of criticism, including inconsistent determinations by the various DECs as to similar conduct and accusations of white-washing.

Since 1977, the state’s 21 DECs investigate, make preliminary factual and credibility determinations, and make recommendations to the director as to dismissal or discipline. The director, and not the DECs, has the authority to make private disciplinary determinations. Significantly more due process is accorded both complainants and respondents as to these determinations than was present 25 years ago. Complainants have the right to appeal the director’s private determination to a Lawyers Board member.[Ftn 1](#) Respondent attorneys have the right to appeal an admonition to a Lawyers Board Panel and ultimately to the Supreme Court.[Ftn 2](#) Accordingly, the Director’s Office and the board spend more time and resources on private dispositions than was true early on.

The board itself has changed in size and structure since its inception. Originally called the State Board of Professional Responsibility, in 1971 it was comprised of 18 members and a chair. The rules provided for three nonlawyer members. The board was divided into three hearing panels of six members each. The panels considered complaints of professional misconduct and recommended whether disciplinary proceedings should be commenced.

The board is currently comprised of 22 members and a chair. Nine members are nonlawyers. Six panels of three members each hear admonition appeals by respondent attorneys, make determinations as to probable cause for public discipline, and hear evidence and make recommendations with respect to suspended or disbarred lawyers who have petitioned to be reinstated. The board has an executive committee consisting of the chair and four other members of the board (two lawyers and two non-lawyers)

who have served for at least one year. The executive committee acts on behalf of the board between meetings and is responsible for the general supervision of the Director's Office. Executive committee members do not sit on panels.

The Director's Office has also changed appreciably since those early years. In its first year of operation, 400 complaints were filed with the director. Of the 367 complaints disposed of, 156 were handled by the Director's Office while 211 were resolved by the DEC's. Since 1990, the number of complaints filed each year has averaged approximately 1,400, with all the disciplinary determinations made by the Director's Office. The office has grown from a three-person staff, with director, assistant director, and secretary, to an overall staff of 25, including 10 lawyers.

While structure and procedures have changed quite significantly in the last quarter century, the ethical issues with which lawyers, and consequently the discipline system, have struggled over those same years have changed very little. In February 1971 issue of *Bench & Bar*, excerpts of a letter written by George Ramier were published. Ramier had acted as retained counsel to the MSBA Committee on Professional Responsibility and Discipline. The letter, to Richey Reavill, the first administrative director of the discipline system, set out what Ramier had experienced as recurring problems facing the discipline system. Ramier's letter would be accurate if published today. The following topics were among the issues he discussed:

- **LACK OF COMMUNICATION.** Described by Ramier as "the most prominent problem in the Bar," he further opined, "[I]f the lawyers of this state, or any state, could keep in constant communication and keep the clients properly informed, the disciplinary machinery would be practically out of business." Reavill aggressively tried to eliminate neglect and non-communication as issues for the bar. He wrote at least five *Bench & Bar* articles in short order "suggesting," "advising," and "urging" Minnesota practitioners to take care of their clients and files.[Ftn 3](#) Unfortunately, the director's column apparently has not changed the face of lawyer ethics or the basic human nature to procrastinate. Each year, lack of communication and neglect account for approximately 40 percent of the complaints received. But no lawyers can say they haven't been warned that lack of communication and neglect will inevitably result in discipline – be it private or public – if these problems of practice are not resolved.
- **INCOME TAX PROBLEMS.** Prior to 1971, the disciplinary system did not deal severely with lawyers who failed to file income taxes, as such misconduct was not viewed as a matter involving "moral turpitude." Ramier recommended that "the lawyers of the state would be well served if a policy statement were issued containing a clear expression of the effect failure to file income tax returns will have on professional standing" and urged that attorneys be suspended. The Supreme Court of Minnesota subsequently did just that in *In re Bunker*, 199 N.W.2d 628 (Minn. 1972) ("Hereafter, absent extreme extenuating circumstances, a failure by an attorney to file Federal or State income tax returns will result in either suspension or disbarment.") Tax nonfiling continues as a frequent cause of attorney suspension.
- **HEINOUS CONDUCT.** Described by Ramier as "all of the infamous acts known to humanity, most especially the ultimate compromise of an attorney . . . the personal use of his clients' trust account or other form of stealing from a client." Unfortunately, misappropriation of client funds continues to plague the profession. In 1995, five of the six lawyers disbarred in Minnesota had engaged in conduct involving theft of client funds.
- **DISCOURTESE.** Lack of courtesy or civility is not a problem born of the '90s. It was well-established as

a “sure way to generate a complaint” 25 years ago. The converse also remains true, as Ramier pointed out: “[T]he more courteous lawyers are, the less complaints we have to handle.” Lack of civility to judges, other lawyers, police officers, and clients remains a subject of discipline vigorously pursued in Minnesota.[Ftn 4](#)

■ **POOR LOSERS AND CRANK COMPLAINTS.** There is a reason that many complaints are dismissed with no investigation whatsoever. Many complainants simply have no legitimate complaint against a lawyer. Others are simply angry that their case is lost and are unable to let go.

Still other complainants are on the edge of mental instability, or well over it, and, as Ramier concludes, “have made life miserable for their own attorney and they can do the same for the people involved in the disciplinary procedure.” No doubt every practicing lawyer has encountered at least one client such as this. Take solace only in that the disciplinary system must deal with them all.

Sadly, crank complainants as well as lawyer misconduct likely will be with us when the board observes its 50<sup>th</sup> year.

## NOTES

<sup>1</sup> Rule 8(e), *Rules on Lawyers Professional Responsibility*.

<sup>2</sup> Rule 8(d)(2)(iii), *RLPR*. As to complainants’ right to appeal to the Supreme Court, see Rule 9(1), *RLPR*.

<sup>3</sup> R.B. Reavill, “A Warning” *Bench & Bar* (October 1971); R.B. Reavill, “More About Neglect” *Bench & Bar* (March 1972); R.B. Reavill, “Take Heed!” *Bench & Bar* (September 1972) R.B. Reavill, “Communicate!” *Bench & Bar* (October 1972); R.B. Reavill, “More About Communication” *Bench & Bar* December 1972).

<sup>4</sup> M. A. Johnson, “Uncivil Practice” *Bench & Bar* (April 1994); W.J. Wernz “Duties to Third Parties” *Bench & Bar* (May/June 1992).