

**LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
MEETING AGENDA**

Friday, July 22 - 1:00 p.m. (via zoom)

If you are not a member of the Board and wish to attend the virtual meeting, please email Board Chair, Jeanette Boerner, jeanette.boerner@hennepin.us

1. Approval of Minutes of April 29, 2022 Lawyers Board Meeting (**Attachment 1**)
2. LPRB Reports
 - a. Committees
 - i) Diversity and Inclusion-Michael Friedman (**Attachment 2**)
 - ii) Rules and Opinions-Dan Cragg (**Attachment 3**)
 - iii) Training, Education and Outreach-Landon Ascheman
 - b. Panel Chairs
 - b. Chair
 - i) Complainant Appeals & Panel Hearing Stats 1-1-22 to 6-30-22 (**Attachment 4**)
 - ii) 2023 proposed Board meeting schedule (**Attachment 5**)
3. New Business
 - a. OLPR update- Director Humiston (**Attachment 6**)
4. Open discussion

Lawyers Professional Responsibility Board Meeting Minutes
April 29, 2022

The April 29, 2022 meeting of the Lawyers Professional Responsibility Board convened at 1:00 p.m. via Zoom. Adjourned at 2:35 p.m.

Board attendees:

Chair, Jeanette Boerner

Landon J. Ascheman

Benjamin J. Butler

Daniel J. Cragg

Michael Friedman

Cliff Greene

Jordan Hart

Katherine Brown Holmen

Virginia Klevorn

Tommy A. Krause

Mark Lanterman (not in attendance from 2 p.m. to end of meeting)

Paul J. Lehman

Kristi J. Paulson

William Z. Pentelovitch

Andrew N. Rhoades

Susan C. Rhode

Geri C. Sjoquist

Mary L. Waldkirch Tilley

Antoinette M. Watkins (joined meeting around 2 p.m.)

Bruce R. Williams

Allan Witz

Julian C. Zebot

Other meeting participators in attendance:

Natalie Hudson, Supreme Court Justice- LPRB liaison

Susan Humiston, OLPR Director

Chair Boerner- called meeting to order, announced that meeting would be recorded for purpose of minutes but not retained or disseminated following Court rules.

Chair Boerner- stated that Board members asked that we start the meetings with an affirmation of purpose. Recited as follows:

“Our fundamental purpose is to enhance public trust and confidence in the lawyer disciplinary system. We do this primarily in our role as adjudicators which includes deciding complainant appeals, presiding over lawyer reinstatement hearings, determining whether there is probable cause to issue public discipline, approving stipulations for probation and authorizing the issuance of investigatory subpoenas to name a few. Our decisions are independent, and some are appealable to the MN Supreme Court. In addition to our adjudicatory role, we create key policy and rule changes in order to further our mission. Our Board members not only draft policy and rule changes but argue cases to the Court when necessary. Finally, in order to ensure continuity and high performance, we actively train, mentor and support our public and lawyer Board members. We are a collaborative, hard-working and committed group of volunteers who remain united in our purpose. We recognize that both members of the public and licensed attorneys have a vested interest in the outcome of their matter and proceed with integrity in each matter.”

Agenda Items:

1. **Approval of January 28, 2022 minutes** - Mr. Friedman noted an error in the minutes with regard to the following paragraph as it pertained to his committee update:

(ii)Ethics Rules Review—The Committee would like to review all the rules related to the disciplinary process for possible bias. This is a long-term project and two OLPR attorneys will be helping with this. Although this project could be something done solely by OLPR attorneys, Mr. Friedman stated that he is very interested in this project because he has worked as a volunteer for Legal Aid and wants to take this work on and be involved in the process.

Specifically, the sentence that starts with: *Although this project...* was a new topic and missing information. Both sections should have read as follows:

(ii) Ethics Rules Review—The Committee would like to review all the rules related to the disciplinary process for possible bias. This is a long-term project and two OLPR attorneys will be helping with this.

(iii) Facts sheets- Development of fact sheets about lawyer complaints and the OLPR for Lawhelpmn.org designed for the public. Although this project could be something done solely by OLPR attorneys, Mr. Friedman stated that he is very interested in this project because he has worked as a volunteer for Legal Aid and wants to take this work on and be involved in the process.

Chair Boerner accepted Mr. Friedman’s amendment to the minutes. Mr. Cragg moved to approved. Seconded by Mr. Witz. Minutes approved

2. Introduction of new Board members- Cliff Greene and Jordan Hart

Chair Boerner highlighted that the DI Committee chaired by Mr. Friedman did a wonderful job of recruiting noting that there were strong candidates for both the public and attorney positions. Chair Boerner announced a new process where all applicants who applied for public and attorney position were interviewed, which included reviewing materials and conducting zoom interviews. Chair Boerner sent a list of extremely qualified candidates to Justice Hudson for the Court’s consideration. Chair Boerner acknowledged that the Court made excellent choices and that the Board is thrilled to have Mr. Greene and Ms. Jordan as part of the Board. She invited both to introduce themselves as well as have Board members, Ms. Humiston from the OLPR and Justice Hudson do the same. All Board members and Director Humiston introduced themselves.

Justice Hudson welcomed new Board members noting that the slate of

candidates were outstanding so there were difficult choices to make. The Court will keep these candidates in mind as future openings occur. The Court expressed gratitude for the hard work that the Board put in along with the Director in vetting the candidates and really getting to know the applicants also noting that this is a process that the Court has really encouraged.

3. LPRB Reports

a. Committees

i) Diversity and Inclusion-Michael Friedman-

a. Leveraging judicial branch training that already exists for implicit bias and other issues related to equity. Ms. Watkins is leading this project. She, with the help of OLPR attorney Ms. Frank, went through many options. They jointly recommended and DI committee approved that all Board members review 2nd district Judge JePaul Harris' training to judicial branch. Training is about an hour. The link to the training is on our home page on SharePoint under shared resources. It's well-recommended and a limited time commitment.

b. Development of statement of commitment to anti-discrimination- ongoing discussion by committee

c. Development of fact sheets- ongoing discussion by committee

d. Intensive review of rules to see if any changes needed with an eye towards to diversity and inclusion.

ii) **Rules and Opinions-Dan Cragg**- committee met on April 19, 2022 via zoom. Meeting was mostly devoted to discussion with one action item for today.

a. Reinstatement hearings- Mr. Butler presented his idea on amending Rule 18 regarding Reinstatement hearings. Specifically, there is a concern that Reinstatement petitions drag on longer than they should. Any lawyer suspended for 90 days or more has to go through formal petition process to be reinstated and technically his petition could languish for years. OLPR gave feedback that the Petitioner bears the burden of

proof and it is on them to cooperate. Likewise, there could be delays from the OLPR. Mr. Butler had a thoughtful proposal, that will be considered further.

In the meantime, one recommendation was that Panel Chairs have a scheduling order and status conference as is done in civil litigation to keep the cases moving and on track. This ensures that Respondents are being treated fairly if they are doing what they need to be doing. At the RO committee meeting, OLPR staff Ms. Tuong raised the issue of the OLPR moving to dismiss noting there is no clear process for it. The committee felt that there should be a formal mechanism for the OLPR to move for this without prejudice. Mr. Cragg expects a formal proposal at next meeting.

b. 8.4(g): Monitoring 2nd opinion to come out of the Eastern District of PA. *Greenberg vs. Goodrich*. 1-2 years ago, PA adoption of Model Rule 8.4(g) was struck down as violating 1st amendment initially. Pennsylvania Supreme Court amended and recently a federal judge again enjoined the rule from going into effect. Bill Wernz, former OLPR Director, attended Rules and Opinion meeting and offered that because Minnesota Courts did not adopt the ABA Model rule- we are not subject to a similar attack. Specifically, our Rule 8.4(h) makes it a violation to commit a discriminatory act that is prohibited by federal, state or local statute or ordinance on the subject of discrimination that also adversely affects the fitness of the lawyer. Our 8.4(g) prohibits harassment on the basis of protected class in connection with the lawyer's professional activities. Our rule is more defensible although given recent MN Supreme Court cases it could be probably be tightened up by requiring a specific intent to harass. This isn't a high priority because we haven't seen issues filtered up. Adding that language could help avoid a constitutional challenge.

Bill Wernz reminded the RO committee that challenges to our rules being unconstitutional can be expensive because

attorney's fees are assessed and can be quite large. When the LPRB lost the *White* case it came out of the OLPR budget to pay plaintiff's lawyers- almost 2 million and created a lot of backlog. For now, RO is monitoring the issue and believes LPRB to be fine at this point.

c) Cryptocurrency-Maryland has joined other states in giving an attorney an opinion on attorney acceptance of cryptocurrency. Maryland bar opinion is classifying cryptocurrency as property and went in to essentially create a custody system that functions like a trust account but not monitored by their ethics authority specifically. It definitely went in a different direction than the RO committee has been looking at and this committee has not approved anything at this point. They plan to continue monitoring.

d) Action item: Complainant Appeals-At our October 21, 2021 Board meeting, Board approved change to Rule 4(f) assignment of matters to Panels. Rule now says Director. We changed to Chair assigning randomly using the Mark Lanterman sheet for assignments. We did not vote on how complainant appeals are assigned- Rule 8 (e). Committee voted on change that conforms the appeal assignment to the panel assignment with some changes. **Proposed changes:** the Chair or a member of the Executive Committee designated by the Chair. Committee also recommend taking out "by rotation" to give the executive committee discretion. For example, if you are brand new on the Board you might need time before you an appeal so you can have training. This discretion is important. Otherwise, the no additional rule changes are proposed. This passed unanimously by rules Committee.

Mr. Williams asked Mr. Cragg if he wanted us to move on issue now. Mr. Williams then asked to make the rule change to Rule 4(f) and Rule 8(e) as outlined by rules committee. Mr. Cragg noted that Rule 4(f) was already approved but not yet

petitioned to Court, doing 8(e) but this on today so that we could go to Court once.

Mr. Ascherman wondered if 4(f) should mirror the designee language. The only reason is that 4(f) was already voted on. Mr. Cragg yields to the Chair. Chair opened back to floor for vote on both if there is a motion.

Mr. Ascherman moved to add Chair or a member of executive committee designated by Chair to 4(f) and moved to approve changes for both. Motion seconded by Mr. Williams. All in favor. Motion to amend 4(f) and 8(e) carries.

Chair Boerner notes that there are inconsistencies with Rules, Executive Committee Policy and how we operate and one of goals in limited time left on Board that she can try to align these to be able to pass along information.

iii) Training, Education and Outreach-Landon Ascherman

a) DEC events- these are OLPR events and passed the coordination of these events to them.

b) Focusing on training for new and current Board members

In May, OLPR will do DEC and OLPR training to both new members and those already on the Board. New members already had training on Sharepoint. LPRB has 4 different training sessions up and running. Respondent Appeals (Bruce and Bill) – training coming up on Complainant appeals, Reinstatements and PC. Trainings are retained and can be shared with Board members, which should make future trainings easier.

c) Board training/reference manual is finalized. Sent to Board all board members and available of SharePoint.

Mr. Ascherman invited Board members to send ideas for more training as well as outreach opportunities.

Mr. Greene- very interested in Dan's presentation about regulation of discriminatory action by attorneys. Once a decade he gets a situation where someone has behaved disrespectfully in Court usually involves sexism towards female attorneys. Mr. Greene volunteered to help on this issue. Mr. Cragg will loop him in.

Chair expressed gratitude to all Committee chairs highlighting the heavy lift that the TEO committee has had recently. Chair also thanked OLPR staff Karin Ciano for her invaluable contributions to our reference manual.

b. **Chair report** -goal is to share information and educate each other on all that we do. We don't hear about each other's work enough as we realized as we started doing training.

i) **Updated Panel and Committee Assignments** – New board members changes the equation for panels. We have to accommodate different experience levels as well as succession plan for future vacancies. Mr. Butler, Mr. Williams and Mr. Pentelovitch are all taking panel chair positions to allow for succession planning as others are leaving the Board in the next year or two. Chair thanked Mr. Williams and Mr. Krause for their excellent service as Executive Committee members. Chair reported that both wanted to be back in the panel mix and will be terrific assets because of vast experience. Executive committee team announced: Vice-Chair, Ms. Rhode, Lawyer member Mr. Witz, public members Ms. Klevorn and Ms. Watkins.

ii) **Complainant Appeals** -stats for 2022- Chair Boerner thanked OLPR staff for helping to gather the data.

2021:

Board was assigned 132 Complainant appeals

Summary Dismissals 64%

Discipline Not Warranted after investigation- 29%

Admonition 7%
Affirmed 95%
Sent back for Further investigation- 4%
Sent to panel for consideration of public discipline- 1%
Average time to review and submit decision- 25 days.

2022 as of 4/25/22:

Board assigned 42 Complainant Appeals
Summary Dismissals 60%
Discipline Not Warranted after investigation 33%
Admonition 7%
34 of 42 have been decided to date.
Affirmed 85%
Returned for investigation 15%
Average time to review and submit decision- 20.5 days

Chair noted that these appeals can be 5 pages or 500 pages.
Numbers show how timely and thorough we are.

Mr. Pentelovitch asked for clarification with regard to Admonition Appeals namely whether it referred to complainants. Chair Boerner confirmed these stats were for complainants appealing a Respondent's admission. Chair Boerner asked for confirmation from Director Humiston who agreed that this data is limited to complainants and that was the data requested. Respondents appeals are panel matters.

- iii) **Panel Hearings** -Mark Lanterman's random panel generator is working well. Case assignments are equal. Chair Boerner explains the process regarding a request for assignment and using the panel generator to assign as they come in.

2021:

20 cases referred for Panel Assignments
14 Charges
4 Reinstatements
1 Admonition appeal by Respondent

1 Complaint against OLPR staff

2022 through 4/25/22:

10 cases

5 Charges

4 Reinstatements

1 Complaint against OLPR staff

Mr. Butler found data to be interesting and very helpful. Mr. Butler asked for more explanation of complaints as noted. Chair Boerner explained that they are allegations against Director or staff (didn't investigate matter, etc.). Procedure administers by executive committee designee. Chair can send to Panel for a decision. Director Humiston elaborated on this policy as well with more detail explaining that there is an Executive Committee policy that covers handling complaint appeals against Director, OLPR staff, LPRB Board member, etc. The OLPR does not process complaints made against OLPR staff. Consideration is whether it goes to the work of the office because most complaints are against the Director for not investigating. Director Humiston also referenced complaints against Board members noting there is a process for that as well. They will not automatically go to the Chair. OLPR can handle directly or investigate.

iv) **Reinstatement Hearings**-Chair Boerner noted that there were some Panel Chairs concerned about the scheduling and communication for these hearings not only to ensure that they are moving along but also to protect the schedule of the panel members who need to reserve time. Chair asked either Mr. Butler or Mr. Pentelovitch to weigh in.

Mr. Butler expressed two concerns. One is about the panel- specifically the lack of information getting to panel on status of these cases. Case would sit for lengthy periods of time which is not efficient. The more important concern for Mr. Butler is for the Petitioner. Attorney needs some assurance that there was a schedule for considering his or her claim. Suspension period is long over. For one reason or ten reasons it is taking a long time. Mr. Cragg came up with scheduling order idea and learned that Mr. Pentelovitch was already doing it. Mr. Butler noted this is valuable to keep everyone on the same page. The rules put no time or reporting limit on Director's duty to report out on a Petition for Reinstatement.

Mr. Butler noted that the RO committee liaison is very helpful in working through this issue and looks forward to continuing on with this process.

Mr. Pentelovitch confirmed he had not talked to Mr. Cragg so both doing independently. Having done civil litigation for 5 decades, he rarely had a Court not hold scheduling conferences. Mr. Pentelovitch believes it is important to give time for parties to prepare as well as keeping calendars clear. When he became panel chair, it seemed a logical thing to do in order to assess how much time each side needed to prepare and to block out time.

4. **New Business**

a. **ABA update- Justice Hudson**, Supreme Court Liaison – The ABA standing committee on PR was here last week. ABA came in on the 18th and stayed through the 22nd. Purpose in being here was to give audit/consultation on processes and procedure of the OLPR. Some may remember, this type of audit has been discussed for a couple of years in one form or another. The Court did this in 1980 with OLPR but not since. For host of reasons, this would be a good time to look in an exhaustive way at the procedures and processes of the OLPR. Court decided to do with ABA PR committee. It was important to get a national perspective and an informed and objective review of OLPR. ABA has a standing committee and doing around nation since 1980- they have done 66 of them.

Ellen Rosen who is counsel to committee has been involved in almost all consultations since 1996. Ms. Rose was part of 4-member team. Team is Ellen Rosen, counsel to committee (regulation and global initiatives counsel for ABA Center for PR), Chair of the committee, Justice Dan Carruthers, Associate Justice North Dakota Supreme Court, Sari Montgomery, experienced Respondent's counsel, and former Senior litigation counsel for the IL Attorney disciplinary commission, and Maret Vessella, chief bar counsel at state bar of Arizona. Between the 4 they have decades of experience in attorney discipline and ethics.

Team was brought in to do an exhaustive review of the OLPR. Structure, Internal procedures, case processing all of things that OLPR and LPRB talk

about regularly. They looked at OLPR budget, Court rules, RLPR case statistics, and disciplinary files. The Court gave them permission through Court order to look at files to see how the files move through the system. Looking to see how complainants and respondents are kept informed as a case is processed through the system

The overall goal is to help those of us who are responsible for administrating our disciplinary system by looking at all of the processes and procedures and ultimately providing us with constructive recommendations for improvements. The ABA team will do so based on their review and their national perspective on how other systems run and how cases are processed. They will look at and did look at processes unique to MN. Justice Hudson mentioned the DEC system to the ABA team because it was unique to MN.

Over the last week, they interviewed a broad range of individuals in the disciplinary process. ABA interviewed the Director and members of her staff. They interviewed 6 Board members, Chair and Vice Chair. Complainants, Respondents, Respondent's Counsel, and Referees. They conducted 36 interviews when here and had more when they left to do via zoom. It was a wide range of stakeholders.

The Court also met with the committee shortly before they left. The process going forward now is that the Court is waiting for the formal written report. It takes 4 months to do it. They will issue a final report to the Court by end of the September. The ABA is making recommendations to the Court. It will ultimately be up to the Court as to whether the Court accepts any of those recommendations. The Court has not made any final determination if it will make it public, it is likely the Court will. The Court will certainly be seeking recommendations from this Board. In many other instances like this we put out for public opinion. It is possible the Court will do something like that here. In preparing for the ABA to come here, Justice Hudson talked to other states to see how they handled. She stressed that there will be an opportunity for this Board to weigh in on the recommendations. It is up to the Court regarding whether to accept any recommendations. Justice Hudson invited questions.

Board member Klevorn thanked Court. Coming at lens as public member and also as a legislator, Ms. Klevorn stated that the Court did a very good job at the redistricting session held on zoom. At time when we have this question about reputation of the office, relationship between Board and Court, Ms. Klevorn suggested it might be a good idea after report comes to have a joint listening session like redistricting hearings. Ms. Klevorn said that perhaps the Chair and Vice-Chair and Justices could listen to public input about recommendations. Show unity between us and faith for public to being heard.

Justice Hudson thanked Ms. Klevorn about the very timely suggestion and will bring to back to the Court

Ms. Klevorn noted that if the Court chose not to publish the report that policies could be posted for a listening session. We have separation between OLPR and Court but being together for this feedback on policy shows unity and is a powerful message.

Justice Hudson acknowledged and agreed that our separation be clear but that we all have taken a hit with public perception and confidence we all share a devotion to and respect for protecting the public. We all share this mission, and this is the utmost importance to people of MN. To the extent we can demonstrate unity on this issue, we should. Justice Hudson knows there is unity. She further thanked those who talked to ABA .

b. OLPR report

i. Staff introduction: Joanna Lapista formerly practiced in Kansas, DOR as staff attorney. Caitlin Guilford- 4 years at SMRLES (housing and consumer unit).

ii. Reappointment- looking forward to continuing working with Court and Board for stated purpose Justice Hudson talked about which is making sure we have the best PR system we can. Director wants Board to know they can call her up and have a conversation. If a Board member has particular concerns regarding why we do what we do or if the Board members are interested in gathering

information, the OLPR is open to pulling that data or answering the questions. Director encouraged Board members to give feedback after a matter has been completed or to discuss concerns about a matter.

iii. ABA- process is still continuing. For the two months prior to onsite visit the OLPR has been providing information. The ABA does have a supplemental slate of people they are interviewing remotely. While the onsite visit is complete, the OLPR is still providing a lot of information. Director noted that it has been interesting to pull information and to think about why the OLPR does things the way it does and has done it that way for 55 years. There will be follow up interviews for people. The ABA is taking a broad approach. This evaluation will be ongoing, and the Director will continue to provide information.

iv. The September DEC seminar date changed to September 23, 2022. At the recommendation of Board members, the seminar will move away from Earle Brown Center because of historic connection to MN racist past. Event will be moving to Wilder center. Director welcomes suggestions from the Board as to content as well as invites Board members to present. The event is an annual training session to give DEC to be volunteer investigator. Attended by Respondents counsel, referees, Board members. Again, the Director welcomes suggestions.

v. Director is speaking on panel 8.4(g) and (h) and national org of bar counsel in April. Talking with a couple law professors – Director believes MN rule is a good rule which could withstand constitutional scrutiny.

- c. **Covid Court operations update**-discussion about whether to go back in person for next Board meeting. Mr. Williams remarked that he hasn't met many Board members in person. Some Board members have had benefit of meeting in person to form bonds and friendship while others haven't. We work better when we can be together, and it is hard to be remote. But we are still not out of the woods yet.

Mr. Ivy thinks a hybrid model works well. The whole process is more enjoyable if we can meet one another and also meet OLPR staff.

Chair Boerner- we need to make a decision. Is June too early to change anything. If Town and County, hybrid model is calling in. Mr. Butler suggested we aim for a Fall 2022 meeting – practical in terms of COVID and finding a space. Mr. Butler noted he would like to meet everyone in person and thinks the Fall is more realistic. Mr. Cragg agreed with Mr. Butler- 2 months out things get really tough for calendars. As an example, he is out of town but attending remote for June but if switched to in person could not do that. Ms. Paulsen- always a fan on in person. But Covid still an issue. Better to wait for Fall.

Mr. Pentelovitch-encouraged us to find a venue other than Town and Country club for historical reasons similar to Earle Brown. Mr. Pentelovitch inquired about space in judicial center as it makes sense because we are part of the judicial branch. He also suggested the Ramsey or Hennepin Court houses.

Justice Hudson said that there are two rooms large enough to hold Board meeting and social distance. Main conference on 2nd floor 230 of the MN judicial center has all of the IT and tech equip to do that type of meeting. Other room is 305 of judicial center and set up with the right equipment- used to be file storage room. Before electronic held paper files now empty. Justice Hudson noted that both are real possibilities.

Chair Boerner acknowledged consensus was to stay the course for next meeting but aim for remote at the Judicial Center starting in the Fall.

Susan Humiston noted it would be easy to get boxed lunch catering if desired. Justice Hudson inquired of Director about both rooms and Director confirmed it would work. Board members expressed preference to move to a different venue from Town and Country.

Motion to Adjourn meeting made by Mr. Williams, seconded by Mr. Pentelovitch. Meeting adjourned at 2:35 p.m.

Commitment Statement for Non-Discrimination and Inclusion

The Lawyers Professional Responsibility Board (LPRB) is committed to fairness in process in all of the work that it does, including complainant appeal review and panel hearing deliberation, excellent quality in review, and balancing ethical demands on attorneys against harm to the public or the profession while respecting cultural differences. The LPRB is further committed to delivering equal service to all and oversight to ensure the absence of discrimination against a person on any improper basis—including discrimination based upon: race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender, gender identity, disability, age, marital status, familial status, emancipated minor status, veteran status, status with regard to a public assistance program or any requirement of a public assistance program, genetic information, economic, financial, or professional status. The above list is non-exclusive.

MINNESOTA RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY

Effective January 1, 1989

Including Amendments Received Through
July 14, 2021

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RULE 1. DEFINITIONS

As used in these Rules:

- (1) “Board” means the Lawyers Professional Responsibility Board.
- (2) “Chair” means the Chair of the Board.
- (3) “Executive Committee” means the committee appointed by the Chair under Rule 4(d).
- (4) “Director” means the Director of the Office of Lawyers Professional Responsibility.
- (5) “District Bar Association” includes the Range Bar Association.
- (6) “District Chair” means the Chair of a District Bar Association's Ethics Committee.
- (7) “District Committee” means a District Bar Association's Ethics Committee.
- (8) “Notify” means to give personal notice or to mail to the person at the person’s last known address or the address maintained on this Court’s attorney registration records, or to the person’s attorney if the person is represented by counsel.
- (9) “Panel” means a panel of the Board.

RULE 2. PURPOSE

It is of primary importance to the public and to the members of the Bar that cases of lawyers’ alleged disability or unprofessional conduct be promptly investigated and disposed of with fairness and justice, having in mind the public, the lawyer complained of and the profession as a whole, and that disability or disciplinary proceedings be commenced in those cases where investigation discloses they are warranted. Such investigations and proceedings shall be conducted in accordance with these Rules.

RULE 3. DISTRICT ETHICS COMMITTEE

(a) Composition. Each District Committee shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Four or more persons whom the District Bar Association (or, upon failure thereof, this Court) may appoint to three-year terms except that shorter terms shall be used where necessary to assure that approximately one-third of all terms expire annually. No person may serve more than two consecutive three-year terms, nor more than a total of four three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as District Chair. At least 20 percent of each District Committee’s members shall be nonlawyers. Every effort shall be made to appoint lawyer members from the various areas of practice. The Board shall monitor District Committee compliance with this objective and the District Committee shall include information on compliance in its annual report to the Court.

(b) Duties. The District Committee shall investigate complaints of lawyers' alleged unprofessional conduct and make reports and recommendations thereon as provided in these Rules in a format prescribed by the Executive Committee. It shall meet at least annually and from time to time as required. The District Chair shall prepare and submit an annual report to the Board and this Court in a format specified by the Executive Committee and make such other reports as the Executive Committee may require.

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(a) Composition. The Board shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Thirteen lawyers having their principal office in this state, six of whom the Minnesota State Bar Association may nominate, and nine nonlawyers resident in this State, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that as nearly as may be one-third of all terms expire each February 1. No person may serve more than two three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as Chair. To the extent possible, members shall be geographically representative of the state and lawyer members shall reflect a broad cross section of areas of practice.

(b) Compensation. The Chair, other Board members, and other panel members shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

(c) Duties. The Board is responsible for administering these rules, and for establishing the policies that govern the lawyer discipline system.. The Board may, from time to time, issue opinions on questions of professional conduct. The Chair may appoint a Vice-Chair and specify the Vice-Chair's duties. Board meetings are open to the public, except the Board may go into closed session not open to the public to discuss matters protected by Rule 20 or for other good cause.

(d) Executive Committee. The Executive Committee, consisting of the Chair, and two lawyers and two nonlawyers designated annually by the Chair, shall be responsible for carrying out the duties set forth in these Rules. The Executive Committee shall act on behalf of the Board between Board meetings. The Executive Committee shall have the assistance of the State Court Administrator's office in carrying out its responsibilities. Members shall have served at least one year as a member of the Board prior to appointment to the Executive Committee. Members shall not be assigned to Panels during their terms on the Executive Committee.

(e) Panels. The Chair shall divide the Board into Panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair and a Vice-Chair for each Panel. Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. No Board member shall be assigned

to a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. The Board's Chair or the Vice-Chair may designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided, that any panel with other than current Board members must include at least one current lawyer Board member. A Panel may refer any matters before it to the full Board, excluding members of the Executive Committee.

(f) Assignment to Panels. The Chair shall assign matters to Panels randomly. The Executive Committee may, however, redistribute case assignments to balance workloads among the Panels, appoint substitute panel members to utilize Board member or District Committee member expertise, and assign appeals of multiple admonitions issued to the same lawyer to the same Panel for hearing.

(g) Approval of Petitions. Except as provided in these Rules or ordered by this Court, no petition for disciplinary action shall be filed with this Court without the approval of a Panel or the Board.

RULE 5. DIRECTOR

(a) Appointment. The Director is an employee of the Judicial Branch, appointed by and serving at the pleasure of this Court. The State Court Administrator will evaluate the Director's performance annually or at such times as this Court directs. Every 2 years the State Court Administrator shall make recommendations to this Court concerning the continuing service of the Director.

(a) Duties. The Director is responsible for the day-to-day operations of the Office of Lawyers Professional Responsibility, shall supervise the employees of that Office, shall prepare and submit to the Court an annual report covering the operation of the Office of Lawyers Professional Responsibility, and shall make such other reports to the Court that it may require the Director to provide.

(b) Employees. The Director may employ, on behalf of this Court persons at such compensation as the Court may approve.

(c) Client Security Board Services. Subject to the approval of this court, the Director may provide staff investigative and other services to the Client Security Board. Compensation for such services may be paid by the Client Security Board to the Director's office upon such terms as are approved by the Court and the Client Security Board.

RULE 6. COMPLAINTS

(a) Investigation. All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules. No District Committee investigator shall investigate a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. No employee of the Office of Lawyers Professional Responsibility shall be assigned to a matter if the employee's activities outside the Office are such that a judge with similar activities would be disqualified under Canon 3 of the Code of Judicial Conduct

(b) Notification: Referral. If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chair promptly shall notify the Director

of its pendency. If a complaint is submitted to the Director, it shall be referred for investigation to the District Committee of the district where the lawyer's principal office is located or in exceptional circumstances to such other District Committee as the Director reasonably selects, unless the Director determines to investigate it without referral or that discipline is not warranted.

(c) **Copies of Investigator's Report.** Upon the request of the lawyer being investigated, the Director shall provide a copy of the investigator's report, whether that investigation was undertaken by the District Committee or the Director's Office.

(d) **Opportunity to respond to statements.** The District Committee or the Director's Office shall afford the complainant an opportunity to reply to the lawyer's response to the complaint.

RULE 6Z. COMPLAINTS INVOLVING JUDGES

(a) **Jurisdiction.** The Lawyers Professional Responsibility Board has jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, including referees of conciliation court, not occurring in a judicial capacity. The Board on Judicial Standards may also exercise jurisdiction to consider whether judicial discipline is warranted in such matters.

(b) Procedure for Conduct Occurring Prior to Assumption of Judicial Office.

(1) **Complaint; Notice.** If either the executive secretary or the Office of Lawyers Professional Responsibility makes an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(2) **Investigation.** Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(3) **Authority of Board on Judicial Standards to Proceed Directly to Public Charges.** If probable cause has been determined under [Rule 9\(j\)\(ii\)](#) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

(4) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding. If there is a hearing under [Rule 9](#) or [Rule 14](#) of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the Board on Judicial Standards may be permitted to introduce additional evidence, relevant to violations of the Code of Judicial Conduct, at the hearing under Rule 10.

Advisory Committee Comment—1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Rule 6Z(a) grants the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2.

The procedural provisions of Rule 6Z(b)(1)-(4) are identical to those in R.Bd.Jud.Stds. 6Z(a)-(d). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

Rule 6Z(b)(1) is identical to R.Bd.Jud.Std. 6Z(a) and requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(b)(1) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(b)(1) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

Under Rule 6Z(b)(2) and its counterpart R.Bd.Jud.Std. 6Z(b), it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10).

This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(b)(3) is identical to R.Bd.Jud.Std. 6Z(C) and authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under R.Bd.Jud.Std. 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under R.Bd.Jud.Std. 7 may only serve to delay the judicial disciplinary process.

Rule 6Z(b)(3) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow R.Bd.Jud.Std. 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(b)(4) is identical to R.Bd.Jud.Std. 6Z(d) and authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under Rule 6Z(b)(4) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the judicial disciplinary hearing. Counsel for the Board on Judicial Standards and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the judicial disciplinary hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. *See, e.g., In re Gillard*, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); *In re Gillard*, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as factfinder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the Rules of the Board on Judicial Standards do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

RULE 7. DISTRICT COMMITTEE INVESTIGATION

(a) Assignment; Assistance. The District Chair may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the Director's assistance in making the investigation. The investigation may be conducted by means of written and telephonic communication and personal interviews.

(b) Report. The investigator's report and recommendations shall be submitted for review and approval to the District Chair, the Chair's designee or to a committee designated for this purpose by the District Chair, prior to its submission to the Director. The report shall include a recommendation that the Director:

- (1) Determine that discipline is not warranted;
- (2) Issue an admonition;
- (3) Refer the matter to a Panel; or
- (4) Investigate the matter further.

If the report recommends discipline not warranted or admonition, the investigator shall include in the report a draft letter of disposition in a format prescribed by the Director.

(c) Time. The investigation shall be completed and the report made promptly and, in any event within 90 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 90 days, the District Chair or the Chair's designee within that time shall notify the Director of the reasons for the delay. If a District Committee has a pattern of responding substantially beyond the 90-day limitation, the Director shall advise the Board and the Chair shall seek to remedy the matter through the President of the appropriate District Bar Association.

(d) Removal. The Director may at any time and for any reason remove a complaint from a District Committee's consideration by notifying the District Chair of the removal.

(e) Notice to Complainant. The Director shall keep the complainant advised of the progress of the proceedings.

RULE 8. DIRECTOR'S INVESTIGATION

(a) Initiating Investigation. At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as the Director deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee.

(b) Complaints by Criminal Defendants. No investigation shall commence on a complaint by or on behalf of a party represented by court appointed counsel, insofar as the complaint against the court appointed attorney alleges incompetent representation by the attorney in the pending matter. Any such complaint shall be summarily dismissed without prejudice. The Director's dismissal shall inform the complainant that the complaint may be sent to the chief district judge or trial court judge involved in the pending matter. The judge may, at any time, refer the matter to the Director for

investigation. The Director may communicate with the appropriate court regarding the complaint and its disposition.

(c) Investigatory Subpoena. With the Board Chair or Vice-Chair's approval upon the Director's application showing that it is necessary to do this before issuance of charges under [Rule 9\(a\)](#), the Director may subpoena and take the testimony of any person believed to possess information concerning possible unprofessional conduct of a lawyer. The examination shall be recorded by such means as the Director designates. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the examination.

(d) Disposition.

(1) Determination Discipline Not Warranted. If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted, the Director shall so notify the lawyer involved, the complainant, and the Chair of the District Committee, if any, that has considered the complaint. The notification shall:

- (i) Set forth a brief explanation of the Director's conclusion;
 - (ii) Set forth the complainant's identity and the complaint's substance;
- and
- (iii) Inform the complainant of the right to appeal under subdivision (e).

(2) Admonition. In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional but of an isolated and non-serious nature, the Director may issue an admonition. The Director shall issue an admonition if so directed by a Board member reviewing a complainant appeal, under the circumstances identified in [Rule 8\(e\)](#). The Director shall notify the lawyer in writing:

- (i) Of the admonition;
- (ii) That the admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Panel;
- (iii) That the lawyer may, by notifying the Director in writing within fourteen days, demand that the Director so present the charges to a Panel which shall consider the matter de novo or instruct the Director to file a Petition for Disciplinary Action in this Court; and
- (iv) That unless the lawyer so demands, the Director after that time will notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, that the Director has issued the admonition.

If the lawyer makes no demand under clause (iii), the Director shall notify as provided in clause (iv). The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(3) Stipulated Probation

- (i) In any matter, with or without a complaint, if the Director concludes

that a lawyer's conduct was unprofessional and that a private probation is appropriate, and a Panel approves, the Director and the lawyer may agree that the lawyer will be subject to private probation for a specified period up to two years, provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the approval of a Panel, the Director and the lawyer may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall maintain a permanent disciplinary record of all stipulated probations.

(ii) The Director shall notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(iii) If it appears that the lawyer has violated the conditions of the probation, or engaged in further misconduct, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by a Panel Chair, file a petition for disciplinary action under [Rule 12](#). A lawyer may, in the stipulation for probation, waive the right to such consideration by the Panel or Panel Chair.

(4) Submission to Panel. The Director shall submit the matter to a Panel under [Rule 9](#) if:

(i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted;

(ii) The lawyer makes a demand under subdivision (d)(2)(iii);

(i) A reviewing Board member so directs upon an appeal under subdivision (e); or

(iii) The Director determines that a violation of the terms of a conditional admission agreement warrants revocation of the conditional admission.

(5) Extension or Modification of a Conditional Admission Agreement. If, in a matter involving a complaint against a conditionally admitted lawyer the Director determines that the conditional admission agreement was violated, the Director may enter into an agreement with the lawyer and the Board of Law Examiners to modify or extend the terms of the agreement for a period not to exceed two years.

(e) Review by Lawyers Board. If the complainant is not satisfied with the Director's disposition under Rule 8(d)(1), (2) or (3), the complainant may appeal the matter by notifying the Director in writing within fourteen days. The Director shall notify the Chair of the appeal and the Chair shall assign the matter by rotation to a member of the Board, other than an Executive Committee member. The reviewing Board member may:

- (1) approve the Director's disposition; or
- (2) direct that further investigation be undertaken; or
- (3) if a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or
- (4) in any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

The reviewing Board member shall set forth an explanation of the Board member's action. A summary dismissal by the Director under Rule 8(b) shall be final and may not be appealed to a Board member for review under this section.

RULE 9. PANEL PROCEEDINGS

(a) Charges. If the matter is to be submitted to a Panel, the matter shall proceed as follows:

(1) The Director shall prepare charges of unprofessional conduct, receive a Panel assignment from the Chair, and notify the lawyer of the Charges, the name, address, and telephone number of the Panel Chair and Vice Chair, and the provisions of this Rule. Within 14 days after the lawyer is notified of the Charges, the lawyer shall submit an answer to the Charges to the Panel Chair and the Director and may submit a request that the Panel conduct a hearing. Within ten days after the lawyer submits an answer, the Director and the lawyer may submit affidavits and other documents in support of their positions.

(2) The Panel shall make a determination in accordance with paragraph (j) within 40 days after the lawyer is notified of the Charges based on the documents submitted by the Director and the lawyer, except in its discretion, the Panel may hear oral argument or conduct a hearing. If the Panel orders a hearing, the matter shall proceed in accordance with subdivisions (b) through (i). If the Panel does not order a hearing, subdivisions (b) through (i) do not apply.

(3) The Panel Chair may extend the time periods provided in this subdivision for good cause.

(b) Setting Pre-Hearing Conference. If the Panel orders a hearing, the Panel Chair shall schedule a Pre-Hearing Conference, and the Panel Chair shall then notify the Director and the lawyer of:

- (1) The time and place of the pre-hearing conference; and
- (2) The Director's and lawyer's obligation to appear at the time set unless the meeting is rescheduled by order of the Panel Chair or Vice-Chair.

(c) Request for Admission. Either party may serve upon the other a request for admission. The request shall be made before the pre-hearing conference or within ten days thereafter. The Minnesota Rules of Civil Procedure are applicable to requests for admissions, except that the time for answers or objections is ten days and the Panel Chair or Vice-Chair shall rule upon any objections. If a party fails to admit, the Panel may award expenses as permitted by the Minnesota Rules of Civil Procedure.

(d) Deposition. Either party may take a deposition as provided by the Minnesota Rules of Civil Procedure. A deposition under this Rule may be taken before the pre-hearing conference or within ten days thereafter. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the deposition. The lawyer shall be denominated by number or randomly selected initials in any District Court proceedings.

(e) Pre-hearing Conference. The Director and the lawyer shall attend a pre-hearing conference. At the conference:

- (1) The parties shall endeavor to formulate stipulations of fact and to narrow and simplify the issues in order to expedite the Panel hearing; and

- (2) Each party shall mark and provide the other party with a copy of each affidavit or other exhibit to be introduced at the Panel hearing. The genuineness of each exhibit is admitted unless objection is served within ten days after the pre-hearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Minnesota Rules of Civil Procedure. No additional exhibit shall be received at the Panel hearing without the opposing party's consent or the Panel Chair's permission.

(f) Setting Panel Hearing. Promptly after or at the pre-hearing conference, the Panel Chair shall schedule a hearing on the charges and shall then notify the lawyer of:

- (1) The time and place of the hearing;
- (2) The lawyer's right to be heard at the hearing; and

- (3) The lawyer's obligation to appear at the time set unless the hearing is rescheduled by order of the Panel Chair or Vice-Chair. The Director shall also notify the complainant, if any, of the hearing's time and place. The Director shall send each Panel member a copy of the charges, of any stipulations, and of the prehearing statement. Each party shall provide to each Panel member in advance of the Panel hearing, copies of all documentary exhibits marked by that party at the pre-hearing conference, unless the parties agree otherwise or the Panel Chair or Vice-Chair orders to the contrary.

(g) Referee Probable Cause Hearing. Upon the certification of the Panel Chair and the Board Chair to the Court that extraordinary circumstances indicate that a matter is not suitable for submission to a Panel under this Rule, because of exceptional complexity or other reasons, the Court may appoint a referee with directions to conduct a probable cause hearing acting as a Panel would under this Rule, or the Court may remand the matter to a Panel under this Rule with instructions, or the Court may direct the Director to file with this Court a petition for disciplinary action under Rule 12(a). If a referee is appointed to substitute for a Panel, the referee shall have the powers of a district court judge and Ramsey County District Court shall not exercise such powers in such case. If the referee so appointed determines there is probable cause as to any charge and a petition for disciplinary action is filed in this Court, the Court may appoint the same referee to conduct a hearing on the petition for disciplinary action under Rule 14. If a referee appointed under Rule 14 considers all of the evidence presented at the probable cause hearing, a transcript of that hearing shall be made part of the public record.

(h) Form of Evidence at Panel Hearing. The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for testimony by:

- (1) The lawyer;
- (2) A complainant who affirmatively desires to attend; and
- (3) A witness whose testimony the Panel Chair or Vice-Chair authorized for good cause. If testimony is authorized, it shall be subject to cross-examination and the Rules of Evidence and a party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Rules of Civil Procedure for the District Courts. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by number or randomly selected initials in any district court proceedings.

(i) Procedure at Panel Hearing. Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

- (1) The Chair shall explain the purpose of the hearing, which is:
 - (i) to determine whether there is probable cause to believe that public discipline is warranted, and the Panel will terminate the hearing on any charge whenever it is satisfied that there is or is not such probable cause;
 - (ii) if an admonition has been issued under Rule 8(d)(2) or 8(e), to determine whether the Panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court; or
 - (iii) to determine whether there is probable cause to believe that a conditional admission agreement has been violated, thereby warranting revocation

of the conditional admission to practice law, and that the Panel will terminate the hearing whenever it is satisfied there is or is not such probable cause.

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining for resolution, and the proof which the Director proposes to offer thereon;

(3) The lawyer may respond to the Director's remarks;

(4) The parties shall introduce their evidence in conformity with the Rules of Evidence except that affidavits and depositions are admissible in lieu of testimony;

(5) The parties may present oral arguments;

(6) The complainant may be present for all parts of the hearing related to the complainant's complaint except when excluded for good cause; and

(7) The Panel shall either recess to deliberate or take the matter under advisement.

(j) Disposition. The Panel shall make one of the following determinations:

(1) In the case of charges of unprofessional conduct, the Panel shall separately with respect to each charge:

(i) determine that there is not probable cause to believe that public discipline is warranted, or that there is not probable cause to believe that revocation of a conditional admission is warranted;

(ii) if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action.

The Panel shall not make a recommendation as to the matter's ultimate disposition;

(iii) if it concludes that the attorney engaged in conduct that was unprofessional but of an isolated and nonserious nature, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition. If the Panel issues an admonition based on the parties' submissions without a hearing, the lawyer shall have the right to a hearing de novo before a different Panel. If the Panel issues an admonition following a hearing, the lawyer shall have the right to appeal in accordance with Rule 9(m). If the Panel finds probable cause to believe that public discipline is warranted on any charge, it may not issue an admonition as to any other charge; or

(iv) if it finds probable cause to revoke a conditional admission agreement, instruct the Director to file in this Court a petition for revocation of conditional admission.

(2) If the Panel held a hearing on a lawyer's appeal of an admonition that was issued under Rule 8(d)(2), or issued by another panel without a hearing, the Panel shall affirm or reverse the admonition, or, if there is probable cause to believe that public

discipline is warranted, instruct the Director to file a petition for disciplinary action in this Court.

(k) Notification. The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, that has the complaint, of the Panel's disposition. The notification to the complainant, if any, shall inform the complainant of the right to petition for review under subdivision (l). If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform the lawyer of the right to appeal to the Supreme Court under subdivision (m).

(l) Complainant's Petition for Review. If not satisfied with the Panel's disposition, the complainant may within 14 days file with the Clerk of the Appellate Courts a petition for review. The complainant shall, prior to or at the time of filing, serve a copy of the petition for review upon the respondent and the Director and shall file an affidavit of service with the Clerk of the Appellate Courts. The respondent shall be denominated by number or randomly selected initials in the proceeding. This Court will grant review only if the petition shows that the Panel acted arbitrarily, capriciously, or unreasonably. If the Court grants review, it may order such proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may dismiss the petition or, if it finds that the Panel acted arbitrarily, capriciously, or unreasonably, remand the matter to the same or a different Panel, direct the filing of a petition for disciplinary action or a petition for revocation of conditional admission, or take any other action as the interest of justice may require.

(m) Respondent's Appeal to Supreme Court. The lawyer may appeal a Panel's affirmance of the Director's admonition or an admonition issued by a Panel by filing a notice of appeal, with proof of service, with the Clerk of Appellate Courts and by serving a copy on the Director within 30 days after being notified of the Panel's action. The respondent shall be denominated by number or randomly selected initials in the proceeding. The Director shall notify the complainant, if any, of the respondent's appeal. This Court may review the matter on the record or order such further proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may either affirm the decision or make such other disposition as it deems appropriate.

(n) Manner of Recording. The Director shall arrange for a court reporter to make a record of the proceedings as in civil cases.

(o) Panel Chair Authority. Requests or disputes arising under this Rule before the Panel hearing commences may be determined by the Panel Chair or Vice-Chair. For good cause shown, the Panel Chair or Vice-Chair may shorten or enlarge time periods for discovery under this Rule.

RULE 10. DISPENSING WITH PANEL PROCEEDINGS

(a) Agreement of Parties. The parties by written agreement may dispense with some or all procedures under Rule 9 before the Director files a petition under Rule 12.

(b) Admission. If the lawyer admits some or all charges, the Director may dispense with some or all procedures under Rule 9 and file a petition for disciplinary action together with the lawyer's admission. This Court may act thereon with or without any of the procedures under Rules 12, 13, or 14.

(c) Criminal Conviction or Guilty Plea. If a lawyer pleads guilty to or is convicted

of a felony under Minnesota statute, a crime punishable by incarceration for more than one year under the laws of any other jurisdiction, or any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit such a crime, the Director may either submit the matter to a Panel or, with the approval of the Chair of the Board, file a petition under Rule 12.

(d) Other Serious Matters. In matters in which there are an attorney's admissions, civil findings, or apparently clear and convincing documentary evidence of an offense of a type for which the Court has suspended or disbarred lawyers in the past, such as misappropriation of funds, repeated non-filing of personal income tax returns, flagrant non-cooperation including failure to submit an answer or failure to attend a pre-hearing meeting as required by Rule 9, fraud and the like, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by the Panel Chair, file the petition under Rule 12.

(e) Additional Charges. If a petition under Rule 12 is pending before this Court, the Director must present the matter to the Panel Chair, or if the matter was not heard by a Panel or the Panel Chair is unavailable, to the Board Chair or Vice-Chair, for approval before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

(f) Discontinuing Panel Proceedings. The Director may discontinue Panel proceedings for the matter to be disposed of under Rule 8(d)(1), (2) or (3).

RULE 11. RESIGNATION

This Court may at any time, with or without a hearing and with any conditions it may deem appropriate, grant or deny a lawyer's petition to resign from the bar. A copy of a lawyer's petition to resign from the bar shall be served upon the Director. The petition with proof of service shall be filed with this Court. If the Director does not object to the petition, the Director shall promptly advise the Court. If the Director objects, the Director shall also advise the Court, but then submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petitioner and filed with the Court.

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10 or this Rule, the Director shall file with this Court a petition for disciplinary action or a petition for revocation of conditional admission, with proof of service. The petition shall set forth the unprofessional conduct charges. When a lawyer is subject to a probation ordered by this Court and the Director concludes that the lawyer has breached the conditions of the probation or committed additional serious misconduct, the Director may file with this Court a petition for revocation of probation and further disciplinary action with proof of service.

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent not found.

(1) **Suspension.** If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respondent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplinary action.

(2) **Order to Show Cause.** If the respondent does not so move, the Director shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken. The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

(d) **Reciprocal Discipline.** Upon learning from any source that a lawyer licensed to practice in Minnesota has been publicly disciplined or is subject to public disciplinary charges in another jurisdiction, the Director may commence an investigation and, without further proceedings, may file a petition for disciplinary action in this Court. A lawyer subject to such charges or discipline shall notify the Director. If the lawyer has been publicly disciplined in another jurisdiction, this Court may issue an order directing that the lawyer and the Director inform the Court within thirty (30) days whether either or both believe the imposition of the identical discipline by this Court would be unwarranted and the reasons for that claim. Without further proceedings this Court may thereafter impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota. If this Court determines that imposition of the identical discipline is not appropriate, it may order such other discipline or such other proceedings as it deems appropriate. Unless the Court determines otherwise, a final adjudication in another jurisdiction that a lawyer had committed certain misconduct shall establish conclusively the misconduct for purposes of disciplinary proceedings in Minnesota.

RULE 13. ANSWER TO PETITION FOR DISCIPLINARY ACTION

(a) **Filing.** Within 20 days after service of the petition, the respondent shall file an answer with in this Court, with proof of service. The answer may deny or admit any accusations or state any defense, privilege, or matter in mitigation.

(b) **Failure to File.** If the respondent fails to file an answer within the time provided or any extension of time this Court may grant, the allegations shall be deemed admitted and this Court may proceed under Rule 15.

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION

(a) **Referee.** This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action or petition for revocation of conditional admission.

(b) **Conduct of Hearing Before Referee.** Unless this Court otherwise directs, the hearing shall be conducted in accordance with the rules of civil procedure applicable to district courts and the referee shall have all the powers of a district court judge.

(c) **Subpoenas.** The District Court of Ramsey County shall issue subpoenas. The referee shall have jurisdiction to determine all motions arising from the issuance and enforcement of subpoenas.

(d) **Record.** The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(e) **Referee's Findings, Conclusions, and Recommendations.** The referee shall make findings of fact, conclusions, and recommendations, file them with this Court, and notify the respondent and the Director of them. In revocation of conditional admission matters, the referee shall also notify the Director of the Board of Law Examiners. Unless the respondent or Director, within ten days, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the respondent or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one copy for the respondent and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the referee's findings of fact, conclusions and recommendations that are disputed.

(f) **Panel as Referee.** Upon written agreement of an attorney, the Panel Chair and the Director, at any time, this Court may appoint the Panel which is to conduct or has already conducted the probable cause hearing as its referee to hear and report the evidence submitted for or against the petition for disciplinary action. Upon such appointment, the Panel shall proceed

under Rule 14 as the Court's referee, except that if the Panel considers evidence already presented at the Panel hearing, a transcript of the hearing shall be made part of the public record. The District Court of Ramsey County shall continue to have the jurisdiction over discovery and subpoenas in Rule 9(d) and (h).

(g) Hearing Before Court. This Court within thirty days of the referee's findings, conclusions and recommendations, shall set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. In all matters in which the Director seeks discipline, the cover of the main brief of the Director shall be blue; the main brief of the respondent, red; and any reply brief shall be gray. In a matter in which reinstatement is sought pursuant to Rule 18 of these Rules, the cover of the respondent's main brief shall be blue; that of the main brief of the Director, red; and that of any reply brief, gray. The matter shall be heard upon the record, briefs, and arguments.

RULE 15. DISPOSITION; PROTECTION OF CLIENTS

(a) Disposition. Upon conclusion of the proceedings, this Court may:

- (1) Disbar the lawyer;
- (2) Suspend the lawyer indefinitely or for a stated period of time;
- (3) Order the lawyer to pay costs;
- (4) Place the lawyer on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;
- (5) Reprimand the lawyer;
- (6) Order the lawyer to successfully complete within a specified period such written examination as may be required of applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility;
- (7) Make such other disposition as this Court deems appropriate;
- (8) Require the lawyer to pay costs and disbursements; in addition, in those contested cases where the lawyer has acted in the proceedings in bad faith, vexatiously, or for oppressive reasons, order the lawyer to pay reasonable attorney fees;
- (9) Dismiss the petition for disciplinary action or petition for revocation of conditional admission, in which case the Court's order may denominate the lawyer by number or randomly selected initials and may direct that the remainder of the record be sealed; or
- (10) Revoke, modify or extend a conditional admission agreement.

(b) Protection of Clients. When a lawyer is disciplined or permitted to resign, this Court may issue orders as may be appropriate for the protection of clients or other persons.

(c) Petition for Rehearing. A petition for rehearing may be filed regarding an order of the Court under this rule, by following the procedures of Rule 140, Rules of Civil Appellate Procedure. The filing of a petition for rehearing shall not stay this Court's order.

RULE 16. TEMPORARY SUSPENSION PENDING DISCIPLINARY PROCEEDINGS

(a) Petition for Temporary Suspension. In any case where the Director files or has filed a petition under Rule 12, if it appears that a continuation of the lawyer's authority to practice law pending final determination of the disciplinary proceeding poses a substantial threat of serious harm to the public, the Director may file with this Court a petition for suspension of the lawyer pending final determination of the disciplinary proceeding, with proof of service. The petition shall set forth facts as may constitute grounds for the suspension and may be supported by a transcript of evidence taken by a Panel, court records, documents or affidavits.

(b) Service. The Director shall cause the petition to be served upon the lawyer in the same manner as a petition for disciplinary action.

(c) Answer. Within 20 days after service of the petition or such shorter time as this Court may order, the lawyer shall file in this Court an answer to the petition for temporary suspension, with proof of service. If the lawyer fails to do so within that time or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may enter an order suspending the lawyer pending final determination of disciplinary proceedings. The answer may be supported by a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) Hearing; Disposition. If this Court after hearing finds a continuation of the lawyer's authority to practice law poses a substantial threat of serious harm to the public, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings.

(e) Interim Suspension. Upon a referee disbarment recommendation, the lawyer's authority to practice law shall be suspended pending final determination of the disciplinary proceeding, unless the referee directs otherwise or the Court orders otherwise.

RULE 17. FELONY CONVICTION

(a) Duty of the Court Administrator. Whenever a lawyer is convicted of a felony, the court administrator shall send the Director a certified copy of the judgment of conviction.

(b) Other Cases. Nothing in these Rules precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

RULE 18. REINSTATEMENT

(a) Petition for Reinstatement. A copy of a petition for reinstatement to practice law shall be served upon the Director. The petition, with proof of service, shall then be filed with this Court. Together with the petition served upon the Director's Office, a petitioner seeking reinstatement shall pay to the Director a fee in the same amount as that required by Rule 12(B), Rules for Admission to the Bar, for timely filings. Applications for admission to the bar following a revocation of conditional admission shall be filed with the Board of Law Examiners pursuant to Rule 16, Rules for Admission to the Bar.

(b) Investigation; Report.

(1) The Director shall publish an announcement of the petition for reinstatement in a publication of general statewide circulation to attorneys soliciting comments regarding the appropriateness of the petitioner's reinstatement. Any comments made in response to such a solicitation shall be absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person making the statement.

(2) The Director shall investigate and report the Director's conclusions to a Panel.

(c) Hearing Before Panel.

(1) The Panel shall conduct a hearing and shall make its findings of fact, conclusions, and recommendations. The recommendations shall be served upon the petitioner and filed with this Court. Unless the petitioner or Director, within ten days of the date of service, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the petitioner or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of the appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one for the petitioner and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the Panel's findings of fact, conclusions, and recommendations that are disputed.

(2) Promptly after the filing of the Petition for Reinstatement, the Panel Chair shall hold a pre-hearing scheduling conference with the Petitioner and the Director and issue a scheduling order with a date certain for the Panel Hearing and for any further pre-hearing conference(s) as the Panel Chair deems prudent for the fair and efficient handling of the matter. The Scheduling Order may be modified for good cause shown upon motion made more than thirty days before the Panel Hearing. The motion may be made orally at any pre-hearing conference. Any motion to modify the Scheduling Order made less than 30 days before the Panel Hearing may only be granted upon a showing of exceptional circumstances or to prevent a

manifest injustice. The Panel Chair shall have authority to consider and make orders on any matter provided for by Minnesota Rules of Civil Procedure Rule 16 that are not inconsistent with these rules.

(d) Hearing Before Court. There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. Should this Court determine further consideration on the petition is necessary, this Court may appoint a referee and the same procedure shall be followed as under Rule 14, except subdivision (f) will not apply.

(e) General Requirements for Reinstatement.

(1) Unless such examination is specifically waived by this Court, no lawyer, after having been disbarred by this Court, may petition for reinstatement until the lawyer shall have successfully completed such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners.

(2) No lawyer ordered reinstated to the practice of law after having been suspended or transferred to disability inactive status by this Court, and after petitioning for reinstatement under subdivision (a), shall be effectively reinstated until the lawyer shall have successfully completed such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility.

(3) Unless specifically waived by this Court, any lawyer suspended for a fixed period of ninety (90) days or less, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), must, within one year from the date of the suspension order, successfully complete such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Except upon motion and for good cause shown, failure to successfully complete this examination shall result in automatic suspension of the lawyer effective one year after the date of the original suspension order.

(4) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following the lawyer's resignation, suspension, disbarment, or transfer to disability inactive status by this Court until the lawyer shall have satisfied (1) the requirements imposed under the rules for Continuing Legal Education on members of the bar as a condition to a change from a restricted to an active status and (2) any subrogation claim against the lawyer by the Client Security Board.

(f) Reinstatement by Affidavit. Unless otherwise ordered by this Court, subdivisions (a) through (d) shall not apply to lawyers who have been suspended for a fixed period of ninety (90) days or less. Such a suspended lawyer, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), may apply for reinstatement by filing an affidavit with the Clerk of Appellate Courts and the Director, stating that the suspended lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. After receiving the lawyer's affidavit, the Director shall promptly file a proposed order and an affidavit regarding the lawyer's compliance or lack thereof with the requirements for reinstatement. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(a) Criminal Conviction. A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the lawyer was accorded fundamental fairness and due process.

(b) Disciplinary Proceedings.

(1) Conduct Previously Considered And Investigated Where Discipline Was Not Warranted. Conduct considered in previous lawyer disciplinary proceedings of

any jurisdiction, including revocation of conditional admission proceedings, is inadmissible if it was determined in the proceedings that discipline was not warranted, except to show a pattern of related conduct, the cumulative effect of which constitutes an ethical violation, except as provided in subsection (b)(2).

(2) Conduct Previously Considered Where No Investigation Was Taken And Discipline Was Not Warranted. Conduct in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings which was not investigated, is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.

(3) Previous Finding. A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline or revocation, modification or extension of conditional admission is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

(4) Previous Discipline. The fact that the lawyer received discipline in previous disciplinary proceedings, including revocation, modification or extension of conditional admission, is admissible to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that the lawyer acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:

(i) A pattern of related conduct, the cumulative effect of which constitutes a violation;

(ii) The current charge (e.g., the lawyer has continued to practice despite suspension);

(iii) For purposes of impeachment (e.g., the lawyer denies having been disciplined before); or

(iv) Motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Stipulation. Unless the referee or this Court otherwise directs or the stipulation otherwise provides, a stipulation before a Panel remains in effect at subsequent proceedings regarding the same matter before the referee or this Court.

(d) Panel proceedings. Subject to the Rules of Civil Procedure for District Courts and the Rules of Evidence, evidence obtained through a request for admission, deposition, or hearing under Rule 9 is admissible in proceedings before the referee or this Court.

(e) Admission. Subject to the Rules of Evidence, a lawyer's admission of unprofessional conduct or of violating a conditional admission agreement is admissible in proceedings under these Rules.

RULE 20. CONFIDENTIALITY; EXPUNCTION

(a) General Rule. The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

(1) As between the Committees, Board and Director in furtherance of their duties;

(2) After probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules;

(3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;

(4) Upon request of the lawyer affected, the file maintained by the Director shall be produced including any district committee report; however, the Director's work product shall not be required to be produced, nor shall a member of the District Ethics Committee or the Board, the Director, or the Director's staff be subject to deposition or compelled testimony, except upon a showing to the court issuing the subpoena of extraordinary circumstance and compelling need. In any event, the mental impressions, conclusions, opinions and legal theories of the Director and the Director's staff shall remain protected.

(5) If the complainant is, or at the time of the actions complained of was, the lawyer's client, the lawyer shall furnish to the complainant copies of the lawyer's written responses to investigation requests by the Director and District Ethics Committee, except that, insofar as a response does not relate to the client's complaint or involves information as to which another client has a privilege, portions may be deleted;

(6) Where permitted by this Court; or

(7) Where required or permitted by these Rules.

(8) Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Committee or Board members made in furtherance of their duties.

(9) As between the Director and the Client Security Board in furtherance of their duties to investigate and consider claims of client loss allegedly caused by the intentional dishonesty of a lawyer.

(10) As between the Director and the Board on Judicial Standards or its executive secretary in furtherance of their duties to investigate and consider conduct of a judge that occurred prior to the judge assuming judicial office.

(11) As between the Director and the Board of Law Examiners in furtherance of their duties under these rules.

(b) Special Matters. The following may be disclosed by the Director:

(1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;

(2) With the affected lawyer's consent, the fact that the Director has determined that discipline is not warranted;

(3) The fact that the Director has issued an admonition;

(4) The Panel's disposition under these Rules;

(5) The fact that stipulated probation has been approved under Rule 8(d)(3) or 8(e);

(6) The fact that the terms of a conditional admission agreement have been modified or extended under Rule 8(d)(5);

(7) Information to other members of the lawyer's firm necessary for protection of the firm's clients or appropriate for exercise of responsibilities under Rules 5.1 and 5.2, Rules of Professional Conduct.

Notwithstanding any other provision of this Rule, the records of matters in which it has been determined that discipline is not warranted shall not be disclosed to any person, office or agency except to the lawyer and as between Committees, Board, Director, Referee or this Court in furtherance of their duties under these Rules.

(c) Records after Determination of Probable Cause or Commencement of Referee or Court Proceedings. Except as ordered by the referee or this Court and except for work product, after probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules, the files, records, and proceedings of the District Committee, the Board, and the Director relating to the matter are not confidential.

(d) Referee or Court Proceedings. Except as ordered by the referee or this Court, the files, records, and proceedings before a referee or this Court under these Rules are not confidential.

(e) Expunction of Records. The Director shall expunge records relating to dismissed complaints as follows:

(1) Destruction Schedule. All records or other evidence of a dismissed complaint shall be destroyed three years after the dismissal;

(2) Retention of Records. Upon application by the Director to a Panel Chair chosen in rotation, for good cause shown and with notice to the respondent and opportunity

to be heard, records which should otherwise be expunged under this Rule may be retained for such additional time not exceeding three years as the Panel Chair deems appropriate.

(f) Advisory Opinions, Overdraft Notification Program Files, and Probation Files. The files, notes, and records maintained by the Director relating to advisory opinions, trust account overdraft notification, and monitoring of lawyers on probation shall be deemed confidential and shall not be disclosed except:

(1) in the course of disciplinary proceedings arising out of the facts or circumstances of the advisory opinion, overdraft notification, or probation; or

(2) upon consent of the lawyer who requested the advisory opinion or was the subject of the overdraft notification or probation.

Advisory Committee Comment—1999 Amendment

Rule 20 has been modified to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. *See also* R.L.Prof.Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R.Bd.Jud.Std. 2(b); R.L.Prof.Resp. 6Z.

RULE 21. PRIVILEGE: IMMUNITY

(a) Privilege. A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

(b) Immunity. Board members, other Panel members, District Committee members, the Director, and the Director's staff, and those entering into agreements with the Director's Office to supervise probations, shall be immune from suit for any conduct in the course of their official duties.

RULE 22. PAYMENT OF EXPENSES

Payment of necessary expenses of the Director and the Board and its members incurred from time to time and certified to this Court as having been incurred in the performance of their duties under these Rules and the compensation of the Director and persons employed by the Director under these Rules shall be made upon vouchers approved by this Court from its funds now or hereafter to be deposited to its credit with the State of Minnesota or elsewhere.

RULE 23. SUPPLEMENTAL RULES

The Board and each District Committee may adopt rules and regulations, not inconsistent with these Rules, governing the conduct of business and performance of their duties.

RULE 24. COSTS AND DISBURSEMENTS

(a) **Costs.** Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding or revocation of conditional admission proceeding decided by this Court shall recover costs in the amount of \$900.

(b) **Disbursements.** Unless otherwise ordered by this Court, the prevailing party in any disciplinary proceedings or revocation of conditional admission proceedings decided by this Court shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action or a petition for revocation of conditional admission under Rule 12. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court, together with those which are normally recoverable by the prevailing party in civil actions in the district court.

(c) **Time and Manner for Taxation of Costs and Disbursements.** The procedures and times governing the taxation of costs and disbursements and for making objection to same and for appealing from the clerk's taxation shall be as set forth in the Rules of Civil Appellate Procedure.

(d) **Judgment for Costs and Disbursements.** Costs and disbursements taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension, disbarment, or revocation of conditional admission is ordered. No suspended attorney shall be permitted to resume practice and no disbarred attorney may file a petition for reinstatement if the amount of the costs and disbursements taxed under this Rule has not been fully paid. A lawyer whose conditional admission has been revoked may not file an application for admission to the bar until the amount of the costs and disbursements taxed under this Rule has been fully paid.

RULE 25. REQUIRED COOPERATION

(a) **Lawyer's Duty.** It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director, or the Director's staff, the Board, or a Panel, by complying with reasonable requests, including requests to:

- (1) Furnish designated papers, documents or tangible objects;
- (2) Furnish in writing a full and complete explanation covering the matter under consideration;
- (3) Appear for conferences and hearings at the times and places designated;

(4) Execute authorizations and releases necessary to investigate alleged violations of a conditional admission agreement.

Such requests shall not be disproportionate to the gravity and complexity of the alleged ethical violations. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 25 requests. The lawyer shall be denominated by number or randomly selected initials in any District Court proceeding. Copies of documents shall be permitted in lieu of the original in all proceedings under these Rules. The Director shall promptly return the originals to the respondent after they have been copied.

(b) Grounds of Discipline. Violation of this Rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, is in good faith and is asserted for a substantial purpose other than delay.

RULE 26. DUTIES OF DISCIPLINED, DISABLED, CONDITIONALLY ADMITTED, OR RESIGNED LAWYER

(a) Notice to Clients in Nonlitigation Matters. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client being represented as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status in a pending matter other than litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, or disability. The notification shall urge the client to seek legal advice of the client's own choice elsewhere, and shall include a copy of the Court's order.

(b) Notice to Parties and Tribunal in Litigation. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client, opposing counsel (or opposing party acting pro se) and the tribunal involved in pending litigation or administrative proceedings as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, or disability. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended, or resigned, disabled lawyer, or a lawyer whose conditional admission has been revoked, and shall include a copy of the Court's order.

(c) Manner of Notice. Notices required by this Rule shall be sent by certified mail, return receipt requested, within ten (10) days of the Court's order.

(d) Client Papers and Property. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall make arrangements to deliver to each client being represented in a pending matter, litigation or administrative proceeding any papers or other property to which the client is entitled.

(e) **Proof of Compliance.** Within fifteen (15) days after the effective date of the Court's order, the disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall file with the Director an affidavit showing:

(1) That the affiant has fully complied with the provisions of the order and with this Rule;

(2) All other State, Federal and administrative jurisdictions to which the affiant is admitted to practice; and

(3) The residence or other address where communications may thereafter be directed to the affiant.

Copies of all notices sent by the disbarred, suspended, resigned or disabled lawyer, or lawyer whose conditional admission has been revoked, shall be attached to the affidavit, along with proof of mailing by certified mail. The returned receipts from the certified mailing shall be provided to the Director within two months of the mailing of notices.

(f) **Maintenance of Records.** A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall keep and maintain records of the actions taken to comply with this Rule so that upon any subsequent proceeding being instituted by or against the lawyer, proof of compliance with this Rule and with the disbarment, suspension, resignation, disability, or revocation of conditional admission order will be available.

(g) **Condition of Reinstatement.** Proof of compliance with this Rule shall be a condition precedent to any petition or affidavit for reinstatement made by a disbarred, suspended, resigned or disabled lawyer, or to an application for admission submitted to the Board of Law Examiners after revocation of a lawyer's conditional admission.

RULE 27. TRUSTEE PROCEEDING

(a) **Appointment of Trustee.** Upon a showing that a lawyer is unable to properly discharge responsibilities to clients due to disability, disappearance or death, or that a suspended, disbarred, resigned, or disabled lawyer, or a lawyer whose conditional admission has been revoked, has not complied with Rule 26, and that no arrangement has been made for another lawyer to discharge such responsibilities, this Court may appoint a lawyer to serve as the trustee to inventory the files of the disabled, disappeared, deceased, suspended, disbarred or resigned lawyer, or a lawyer whose conditional admission has been revoked, and to take whatever other action seems indicated to protect the interests of the clients and other affected parties.

(b) **Protection of Records.** The trustee shall not disclose any information contained in any inventoried file without the client's consent, except as necessary to execute this Court's order appointing the trustee.

RULE 28. DISABILITY STATUS

(a) **Transfer to Disability Inactive Status.** A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors,

narcotics, or other drugs prevents the lawyer from competently representing clients shall be transferred to disability inactive status.

(b) Immediate Transfer. This Court may immediately transfer a lawyer to disability inactive status upon proof that the lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, incapacitated, or inebriate person.

(c) Asserting Disability in Disciplinary Proceeding. A lawyer's assertion of disability in defense or mitigation in a disciplinary proceeding or a revocation of conditional admission proceeding shall be deemed a waiver of the doctor-patient privilege. The Referee may order an examination or evaluation by such person or institution as the Referee designates. If a lawyer alleges disability during a disciplinary investigation or proceeding or a revocation of conditional admission proceeding, and therefore is unable to assist in the defense, the Director shall inform the Court of the allegation and of the Director's position regarding the allegation. The Court may:

- (1) Transfer the lawyer to disability inactive status;
- (2) Order the lawyer to submit to a medical examination by a designated professional;
- (3) Appoint counsel if the lawyer has not retained counsel and the lawyer is financially eligible for appointed counsel. Financial eligibility shall be determined by the referee appointed by the Court to hear the disciplinary or disability petition in the same manner as eligibility for appointment of a public defender in a criminal case;
- (4) Stay disciplinary proceedings or revocation of conditional admission proceedings until it appears the lawyer can assist in the defense;
- (5) Direct the Director to file a petition under Rule 12;
- (6) Appoint a referee with directions to make findings and recommendations to the Court regarding the disability allegation or to proceed under Rule 14;
- (7) Make such or further orders as the Court deems appropriate.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

- (1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and
- (2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since the transfer to disability inactive status.

(e) Transfer Following Hearing. In cases other than immediate transfer to disability inactive status, and other than cases in which the lawyer asserts personal disability, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel may be appointed to represent the lawyer; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

RULE 29. EX PARTE COMMUNICATIONS

Ex parte communications to any adjudicatory body including panels, referees and this Court are strongly disfavored. Such communications should not occur except after first attempting to contact the adversary and then only if the adversary is unavailable and an emergency exists. Such communications should be strictly limited to the matter relating to the emergency and the adversary notified at the earliest practicable time of the prior attempted contact and of the ex parte communication.

RULE 30. ADMINISTRATIVE SUSPENSION

(a) Upon receipt of a district court order or a report from an Administrative Law Judge or public authority pursuant to Minn. Stat. § 518A.66 finding that a licensed Minnesota attorney is in arrears in payment of maintenance or child support and has not entered into or is not in compliance with an approved payment agreement for such support, the Director's Office shall serve and file with the Supreme Court a motion requesting the administrative suspension of the attorney until such time as the attorney has paid the arrearages or entered into or is in compliance with an approved payment plan. The Court shall suspend the lawyer or take such action as it deems appropriate.

(b) Any attorney administratively suspended under this rule shall not practice law or hold himself or herself out as authorized to practice law until reinstated pursuant to paragraph (c). The attorney shall, within 10 days of receipt of an order of administrative suspension, send written notice of the suspension to all clients, adverse counsel and courts before whom matters are pending and shall file an affidavit of compliance with this provision with the Director's Office.

(c) An attorney administratively suspended under this rule may be reinstated by filing an affidavit with supporting documentation averring that he or she is no longer in arrears in payment of maintenance or child support or that he or she has entered into and is in compliance with an approved payment agreement for payment of such support. Within 15 days of the filing of such an affidavit the Director's Office shall verify the accuracy of the attorney's affidavit and file a proposed order for reinstatement of the attorney requesting an expedited disposition.

(d) Nothing in this rule precludes disciplinary proceedings, if the attorney's conduct also violates the Minnesota Rules of Professional Conduct.

MINNESOTA RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY

Effective January 1, 1989

Including Amendments Received Through
July 14, 2021

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RULE 1. DEFINITIONS

As used in these Rules:

- (1) "Board" means the Lawyers Professional Responsibility Board.
- (2) "Chair" means the Chair of the Board.
- (3) "Executive Committee" means the committee appointed by the Chair under Rule 4(d).
- (4) "Director" means the Director of the Office of Lawyers Professional Responsibility.
- (5) "District Bar Association" includes the Range Bar Association.
- (6) "District Chair" means the Chair of a District Bar Association's Ethics Committee.
- (7) "District Committee" means a District Bar Association's Ethics Committee.
- (8) "Notify" means to give personal notice or to mail to the person at the person's last known address or the address maintained on this Court's attorney registration records, or to the person's attorney if the person is represented by counsel.
- (9) "Panel" means a panel of the Board.

RULE 2. PURPOSE

It is of primary importance to the public and to the members of the Bar that cases of lawyers' alleged disability or unprofessional conduct be promptly investigated and disposed of with fairness and justice, having in mind the public, the lawyer complained of and the profession as a whole, and that disability or disciplinary proceedings be commenced in those cases where investigation discloses they are warranted. Such investigations and proceedings shall be conducted in accordance with these Rules.

RULE 3. DISTRICT ETHICS COMMITTEE

(a) **Composition.** Each District Committee shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Four or more persons whom the District Bar Association (or, upon failure thereof, this Court) may appoint to three-year terms except that shorter terms shall be used where necessary to assure that approximately one-third of all terms expire annually. No person may serve more than two consecutive three-year terms, nor more than a total of four three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as District Chair. At least 20 percent of each District Committee's members shall be nonlawyers. Every effort shall be made to appoint lawyer members from the various areas of practice. The Board shall monitor District Committee compliance with this objective and the District Committee shall include information on compliance in its annual report to the Court.

(b) **Duties.** The District Committee shall investigate complaints of lawyers' alleged unprofessional conduct and make reports and recommendations thereon as provided in these Rules in a format prescribed by the Executive Committee. It shall meet at least annually and from time to time as required. The District Chair shall prepare and submit an annual report to the Board and this Court in a format specified by the Executive Committee and make such other reports as the Executive Committee may require.

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(a) **Composition.** The Board shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Thirteen lawyers having their principal office in this state, six of whom the Minnesota State Bar Association may nominate, and nine nonlawyers resident in this State, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that as nearly as may be one-third of all terms expire each February 1. No person may serve more than two three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as Chair. To the extent possible, members shall be geographically representative of the state and lawyer members shall reflect a broad cross section of areas of practice.

(b) **Compensation.** The Chair, other Board members, and other panel members shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

(c) **Duties.** The Board is responsible for administering these rules, and for establishing the policies that govern the lawyer discipline system, and for providing recommendations and guidance to the Director regarding the operations of the Office of the Lawyers Professional Responsibility. The Board may, from time to time, issue opinions on questions of professional conduct. The Board shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system. The Board The Chair may ~~elect~~appoint a Vice-Chair and specify the Vice-Chair's duties. Board meetings are open to the public, except the Board may go into closed session not open to the public to discuss matters protected by Rule 20 or for other good cause.

(d) **Executive Committee.** The Executive Committee, consisting of the Chair, and two lawyers and two nonlawyers designated annually by the Chair, shall be responsible for carrying out the duties set forth in these Rules. The Executive Committee shall act on behalf of the Board between Board meetings. If requested by the The Executive Committee, ~~it~~ shall have the assistance of the State Court Administrator's office in carrying out its responsibilities. Members shall have served at least one year as a member of the Board prior to appointment to the Executive Committee. Members shall not be assigned to Panels during their terms on the Executive Committee.

(e) **Panels.** The Chair shall divide the Board into Panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair and a Vice-Chair for each Panel. Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. No Board member shall be assigned

to a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. The Board's Chair or the Vice-Chair may designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided, that any panel with other than current Board members must include at least one current lawyer Board member. A Panel may refer any matters before it to the full Board, excluding members of the Executive Committee.

(f) **Assignment to Panels.** The ~~Director~~Chair shall assign matters to Panels ~~in rotation~~randomly. The Executive Committee may, however, redistribute case assignments to balance workloads among the Panels, appoint substitute panel members to utilize Board member or District Committee member expertise, and assign appeals of multiple admonitions issued to the same lawyer to the same Panel for hearing.

Commented [DC1]: Approved by Board already

(g) **Approval of Petitions.** Except as provided in these Rules or ordered by this Court, no petition for disciplinary action shall be filed with this Court without the approval of a Panel or the Board.

RULE 5. DIRECTOR

(a) **Appointment.** The Director is an employee of the Judicial Branch, appointed by and serving at the pleasure of this Court. The State Court Administrator will evaluate the Director's performance ~~with input from the Board~~, annually or at such times as this Court directs. Every 2 years the State Court Administrator ~~and the Board~~ shall make recommendations to this Court concerning the continuing service of the Director.

(a) **Duties.** The Director is responsible for the day-to-day operations of the Office of Lawyers Professional Responsibility, shall supervise the employees of that Office, shall prepare and submit to the Board~~Court~~ an annual report covering the operation of the Office of Lawyers Professional Responsibility, and shall make such other reports to the ~~Board as the Board or this Court through the Board~~Court that it may require the Director to provide.

(b) **Employees.** The Director ~~when authorized by the Board~~ may employ, on behalf of this Court persons at such compensation as the ~~Board shall recommend and as this~~ Court may approve.

(c) **Client Security Board Services.** Subject to the approval of this court, ~~the Client Security Board and the Lawyers Board~~, the Director may provide staff investigative and other services to the Client Security Board. Compensation for such services may be paid by the Client Security Board to the Director's office upon such terms as are approved by the Lawyers Board~~Court~~ and the Client Security Board. ~~The Lawyers Board and the Client Security Board may also establish further terms for the provision by the Director of such services.~~

RULE 6. COMPLAINTS

(a) **Investigation.** All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules. No District Committee investigator shall investigate a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. No employee of the ~~office~~Office of Lawyers Professional Responsibility shall be assigned to a matter if the employee's activities outside the Office are such that a judge with similar activities would be disqualified under Canon 3 of the Code of Judicial

Conduct -

(b) **Notification: Referral.** If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chair promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, it shall be referred for investigation to the District Committee of the district where the lawyer's principal office is located or in exceptional circumstances to such other District Committee as the Director reasonably selects, unless the Director determines to investigate it without referral or that discipline is not warranted.

(c) **Copies of Investigator's Report.** Upon the request of the lawyer being investigated, the Director shall provide a copy of the investigator's report, whether that investigation was undertaken by the District Committee or the Director's Office.

(d) **Opportunity to respond to statements.** The District Committee or the Director's Office shall afford the complainant an opportunity to reply to the lawyer's response to the complaint.

RULE 6Z. COMPLAINTS INVOLVING JUDGES

(a) **Jurisdiction.** The Lawyers Professional Responsibility Board has jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, including referees of conciliation court, not occurring in a judicial capacity. The Board on Judicial Standards may also exercise jurisdiction to consider whether judicial discipline is warranted in such matters.

(b) **Procedure for Conduct Occurring Prior to Assumption of Judicial Office.**

(1) **Complaint; Notice.** If either the executive secretary or the Office of Lawyers Professional Responsibility makes an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(2) **Investigation.** Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(3) **Authority of Board on Judicial Standards to Proceed Directly to Public Charges.** If probable cause has been determined under [Rule 9\(j\)\(ii\)](#) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

(4) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding. If there is a hearing under [Rule 9](#) or [Rule 14](#) of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the Board on Judicial Standards may be permitted to introduce additional evidence, relevant to violations of the Code of Judicial Conduct, at the hearing under Rule 10.

Advisory Committee Comment—1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Rule 6Z(a) grants the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2.

The procedural provisions of Rule 6Z(b)(1)-(4) are identical to those in R.Bd.Jud.Stds. 6Z(a)-(d). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

Rule 6Z(b)(1) is identical to R.Bd.Jud.Std. 6Z(a) and requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(b)(1) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(b)(1) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

Under Rule 6Z(b)(2) and its counterpart R.Bd.Jud.Std. 6Z(b), it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10).

This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(b)(3) is identical to R.Bd.Jud.Std. 6Z(C) and authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under R.Bd.Jud.Std. 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under R.Bd.Jud.Std. 7 may only serve to delay the judicial disciplinary process.

Rule 6Z(b)(3) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow R.Bd.Jud.Std. 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(b)(4) is identical to R.Bd.Jud.Std. 6Z(d) and authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under Rule 6Z(b)(4) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the judicial disciplinary hearing. Counsel for the Board on Judicial Standards and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the judicial disciplinary hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. *See, e.g., In re Gillard*, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); *In re Gillard*, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as factfinder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the Rules of the Board on Judicial Standards do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

RULE 7. DISTRICT COMMITTEE INVESTIGATION

(a) **Assignment; Assistance.** The District Chair may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the Director's assistance in making the investigation. The investigation may be conducted by means of written and telephonic communication and personal interviews.

(b) **Report.** The investigator's report and recommendations shall be submitted for review and approval to the District Chair, the Chair's designee or to a committee designated for this purpose by the District Chair, prior to its submission to the Director. The report shall include a recommendation that the Director:

- (1) Determine that discipline is not warranted;
- (2) Issue an admonition;
- (3) Refer the matter to a Panel; or
- (4) Investigate the matter further.

If the report recommends discipline not warranted or admonition, the investigator shall include in the report a draft letter of disposition in a format prescribed by the Director.

(c) **Time.** The investigation shall be completed and the report made promptly and, in any event within 90 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 90 days, the District Chair or the Chair's designee within that time shall notify the Director of the reasons for the delay. If a District Committee has a pattern of responding substantially beyond the ~~90 day~~90-day limitation, the Director shall advise the Board and the Chair shall seek to remedy the matter through the President of the appropriate District Bar Association.

(d) **Removal.** The Director may at any time and for any reason remove a complaint from a District Committee's consideration by notifying the District Chair of the removal.

(e) **Notice to Complainant.** The Director shall keep the complainant advised of the progress of the proceedings.

RULE 8. DIRECTOR'S INVESTIGATION

(a) **Initiating Investigation.** At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as the Director deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee.

(b) **Complaints by Criminal Defendants.** No investigation shall commence on a complaint by or on behalf of a party represented by court appointed counsel, insofar as the complaint against the court appointed attorney alleges incompetent representation by the attorney in the pending matter. Any such complaint shall be summarily dismissed without prejudice. The Director's dismissal shall inform the complainant that the complaint may be sent to the chief district judge or trial court judge involved in the pending matter. The judge may, at any time, refer the matter to the Director for

investigation. The Director may communicate with the appropriate court regarding the complaint and its disposition.

(c) **Investigatory Subpoena.** With the Board Chair or Vice-Chair's approval upon the Director's application showing that it is necessary to do this before issuance of charges under [Rule 9\(a\)](#), the Director may subpoena and take the testimony of any person believed to possess information concerning possible unprofessional conduct of a lawyer. The examination shall be recorded by such means as the Director designates. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the examination.

(d) **Disposition.**

(1) **Determination Discipline Not Warranted.** If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted, the Director shall so notify the lawyer involved, the complainant, and the Chair of the District Committee, if any, that has considered the complaint. The notification shall:

- (i) Set forth a brief explanation of the Director's conclusion;
 - (ii) Set forth the complainant's identity and the complaint's substance;
- and
- (iii) Inform the complainant of the right to appeal under subdivision (e).

(2) **Admonition.** In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional but of an isolated and non-serious nature, the Director may issue an admonition. The Director shall issue an admonition if so directed by a Board member reviewing a complainant appeal, under the circumstances identified in [Rule 8\(e\)](#). The Director shall notify the lawyer in writing:

- (i) Of the admonition;
- (ii) That the admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Panel;
- (iii) That the lawyer may, by notifying the Director in writing within fourteen days, demand that the Director so present the charges to a Panel which shall consider the matter de novo or instruct the Director to file a Petition for Disciplinary Action in this Court; and
- (iv) That unless the lawyer so demands, the Director after that time will notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, that the Director has issued the admonition.

If the lawyer makes no demand under clause (iii), the Director shall notify as provided in clause (iv). The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(3) **Stipulated Probation**

- (i) In any matter, with or without a complaint, if the Director concludes

that a lawyer's conduct was unprofessional and that a private probation is appropriate, and ~~the Board Chair or Vice Chair~~ [Panel](#) approves, the Director and the lawyer may agree that the lawyer will be subject to private probation for a specified period up to two years, provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the ~~Board Chair or Vice Chair's~~ approval [of a Panel](#), the Director and the lawyer may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall maintain a permanent disciplinary record of all stipulated probations.

(ii) The Director shall notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(iii) If it appears that the lawyer has violated the conditions of the probation, or engaged in further misconduct, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by a Panel Chair ~~chosen in rotation~~, file a petition for disciplinary action under [Rule 12](#). A lawyer may, in the stipulation for probation, waive the right to such consideration by the Panel or Panel Chair.

(4) Submission to Panel. The Director shall submit the matter to a Panel under [Rule 9](#) if:

(i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted;

(ii) The lawyer makes a demand under subdivision (d)(2)(iii);

(i) A reviewing Board member so directs upon an appeal under subdivision (e); or

(iii) The Director determines that a violation of the terms of a conditional admission agreement warrants revocation of the conditional admission.

(5) Extension or Modification of a Conditional Admission Agreement. If, in a matter involving a complaint against a conditionally admitted lawyer the Director determines that the conditional admission agreement was violated, the Director may enter into an agreement with the lawyer and the Board of Law Examiners to modify or extend the terms of the agreement for a period not to exceed two years.

(e) **Review by Lawyers Board.** If the complainant is not satisfied with the Director's disposition under Rule 8(d)(1), (2) or (3), the complainant may appeal the matter by notifying the Director in writing within fourteen days. The Director shall notify the ~~lawyer~~Chair of the appeal and ~~the Chair shall~~ assign the matter by rotation to a ~~board~~ member of the Board, other than an Executive Committee member, ~~appointed by the Chair~~. The reviewing Board member may:

- (1) approve the Director's disposition; or
- (2) direct that further investigation be undertaken; or
- (3) if a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or
- (4) in any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

The reviewing Board member shall set forth an explanation of the Board member's action. A summary dismissal by the Director under Rule 8(b) shall be final and may not be appealed to a Board member for review under this section.

RULE 9. PANEL PROCEEDINGS

(a) **Charges.** If the matter is to be submitted to a Panel, the matter shall proceed as follows:

(1) The Director shall prepare charges of unprofessional conduct, ~~assign them to receive~~ a Panel ~~by rotation~~assignment from the Chair, and notify the lawyer of the Charges, the name, address, and telephone number of the Panel Chair and Vice Chair, and the provisions of this Rule. Within 14 days after the lawyer is notified of the Charges, the lawyer shall submit an answer to the Charges to the Panel Chair and the Director and may submit a request that the Panel conduct a hearing. Within ten days after the lawyer submits an answer, the Director and the lawyer may submit affidavits and other documents in support of their positions.

(2) The Panel shall make a determination in accordance with paragraph (j) within 40 days after the lawyer is notified of the Charges based on the documents submitted by the Director and the lawyer, except in its discretion, the Panel may hear oral argument or conduct a hearing. If the Panel orders a hearing, the matter shall proceed in accordance with subdivisions (b) through (i). If the Panel does not order a hearing, subdivisions (b) through (i) do not apply.

(3) The Panel Chair may extend the time periods provided in this subdivision for good cause.

(b) **Setting Pre-Hearing Meeting/Conference.** If the Panel orders a hearing, the ~~Director~~Panel Chair shall ~~schedule a Pre-Hearing Conference, and the Panel Chair shall then~~ notify ~~the Director and~~ the lawyer of:

(1) The time and place of the pre-hearing ~~meeting~~conference; and

(2) The Director's and lawyer's obligation to appear at the time set unless the meeting is rescheduled ~~by agreement of the parties or~~ by order of the Panel Chair or Vice-Chair.

(c) Request for Admission. Either party may serve upon the other a request for admission. The request shall be made before the pre-hearing ~~meeting~~conference or within ten days thereafter. The Minnesota Rules of Civil Procedure ~~for the District Courts~~are applicable to requests for admissions ~~govern~~, except that the time for answers or objections is ten days and the Panel Chair or Vice-Chair shall rule upon any objections. If a party fails to admit, the Panel may award expenses as permitted by the Minnesota Rules of Civil Procedure ~~for District Courts~~.

(d) Deposition. Either party may take a deposition as provided by the Minnesota Rules of Civil Procedure ~~for the District Courts~~. A deposition under this Rule may be taken before the ~~prehearing meeting~~pre-hearing conference or within ten days thereafter. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the deposition. The lawyer shall be denominated by number or randomly selected initials in any District Court proceedings.

(e) Pre-hearing Meeting Conference. The Director and the lawyer shall attend a pre-hearing ~~meeting~~conference. At the ~~meeting~~conference:

(1) The parties shall endeavor to formulate stipulations of fact and to narrow and simplify the issues in order to expedite the Panel hearing; and

(2) Each party shall mark and provide the other party with a copy of each affidavit or other exhibit to be introduced at the Panel hearing. The genuineness of each exhibit is admitted unless objection is served within ten days after the pre-hearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Minnesota Rules of Civil Procedure ~~for the District Courts~~. No additional exhibit shall be received at the Panel hearing without the opposing party's consent or the ~~Panel's~~Panel Chair's permission.

(e)(f) Setting Panel Hearing. Promptly after ~~or at~~ the pre-hearing ~~meeting~~conference, the ~~Director~~Panel Chair shall schedule a hearing ~~by the Panel~~on the charges and ~~the Director~~notify ~~shall then notify~~ the lawyer of:

(1) ~~(1)~~—The time and place of the hearing;

(2) The lawyer's right to be heard at the hearing; and

(3) The lawyer's obligation to appear at the time set unless the hearing is rescheduled ~~by agreement of the parties or~~ by order of the Panel Chair or Vice-Chair. The Director shall also notify the complainant, if any, of the hearing's time and place. The Director shall send each Panel member a copy of the charges, of any stipulations, and of the prehearing statement. Each party shall provide to each Panel member in advance of the Panel hearing, copies of all documentary exhibits marked by that party at the ~~prehearing meeting~~pre-hearing conference, unless the parties agree otherwise or the Panel Chair or Vice-Chair orders to the contrary.

(f)(g) Referee Probable Cause Hearing. Upon the certification of the Panel Chair and the Board Chair to the Court that extraordinary circumstances indicate that a matter is not suitable for submission to a Panel under this Rule, because of exceptional complexity or other reasons, the Court may appoint a referee with directions to conduct a probable cause hearing acting as a Panel would under this Rule, or the Court may remand the matter to a Panel under this Rule with instructions, or the Court may direct the Director to file with this Court a petition for disciplinary action under Rule 12(a). If a referee is appointed to substitute for a Panel, the referee shall have the powers of a district court judge and Ramsey County District Court shall not exercise such powers in such case. If the referee so appointed determines there is probable cause as to any charge and a petition for disciplinary action is filed in this Court, the Court may appoint the same referee to conduct a hearing on the petition for disciplinary action under Rule 14. If a referee appointed under Rule 14 considers all of the evidence presented at the probable cause hearing, a transcript of that hearing shall be made part of the public record.

(g)(h) Form of Evidence at Panel Hearing. The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for testimony by:

- (1) The lawyer;
- (2) A complainant who affirmatively desires to attend; and
- (3) A witness whose testimony the Panel Chair or Vice-Chair authorized for good cause. If testimony is authorized, it shall be subject to cross-examination and the Rules of Evidence and a party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Rules of Civil Procedure for the District Courts. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by number or randomly selected initials in any district court proceedings.

(h)(i) Procedure at Panel Hearing. Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

- (1) The Chair shall explain the purpose of the hearing, which is:
 - (i) to determine whether there is probable cause to believe that public discipline is warranted, and the Panel will terminate the hearing on any charge whenever it is satisfied that there is or is not such probable cause;
 - (ii) if an admonition has been issued under Rule 8(d)(2) or 8(e), to determine whether the Panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court; or
 - (iii) to determine whether there is probable cause to believe that a conditional admission agreement has been violated, thereby warranting revocation

of the conditional admission to practice law, and that the Panel will terminate the hearing whenever it is satisfied there is or is not such probable cause.

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining for resolution, and the proof which the Director proposes to offer thereon;

(3) The lawyer may respond to the Director's remarks;

(4) The parties shall introduce their evidence in conformity with the Rules of Evidence except that affidavits and depositions are admissible in lieu of testimony;

(5) The parties may present oral arguments;

(6) The complainant may be present for all parts of the hearing related to the complainant's complaint except when excluded for good cause; and

(7) The Panel shall either recess to deliberate or take the matter under advisement.

(i) Disposition. The Panel shall make one of the following determinations:

(1) ~~(1)~~ — In the case of charges of unprofessional conduct, the Panel shall ~~separately with respect to each charge:~~

(i) determine that there is not probable cause to believe that public discipline is warranted, or that there is not probable cause to believe that revocation of a conditional admission is warranted;

(ii) if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action. The Panel shall not make a recommendation as to the matter's ultimate disposition;

(iii) if it concludes that the attorney engaged in conduct that was unprofessional but of an isolated and nonserious nature, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition. If the Panel issues an admonition based on the parties' submissions without a hearing, the lawyer shall have the right to a hearing de novo before a different Panel. If the Panel issues an admonition following a hearing, the lawyer shall have the right to appeal in accordance with Rule 9(m). If the Panel finds probable cause to believe that public discipline is warranted on any charge, it may not issue an admonition as to any other charge; or

(iv) if it finds probable cause to revoke a conditional admission agreement, instruct the Director to file in this Court a petition for revocation of conditional admission.

(2) ~~(2)~~ — If the Panel held a hearing on a lawyer's appeal of an admonition that was issued under Rule 8(d)(2), or issued by another panel without a hearing, the Panel shall affirm or reverse the admonition, or, if there is probable cause to believe that public

discipline is warranted, instruct the Director to file a petition for disciplinary action in this Court.

(j)(k) Notification. The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, that has the complaint, of the Panel's disposition. The notification to the complainant, if any, shall inform the complainant of the right to petition for review under subdivision (l). If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform the lawyer of the right to appeal to the Supreme Court under subdivision (m).

(h)(l) Complainant's Petition for Review. If not satisfied with the Panel's disposition, the complainant may within 14 days file with the Clerk of the Appellate Courts a petition for review. The complainant shall, prior to or at the time of filing, serve a copy of the petition for review upon the respondent and the Director and shall file an affidavit of service with the Clerk of the Appellate Courts. The respondent shall be denominated by number or randomly selected initials in the proceeding. This Court will grant review only if the petition shows that the Panel acted arbitrarily, capriciously, or unreasonably. If the Court grants review, it may order such proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may dismiss the petition or, if it finds that the Panel acted arbitrarily, capriciously, or unreasonably, remand the matter to the same or a different Panel, direct the filing of a petition for disciplinary action or a petition for revocation of conditional admission, or take any other action as the interest of justice may require.

(h)(m) Respondent's Appeal to Supreme Court. The lawyer may appeal a Panel's affirmance of the Director's admonition or an admonition issued by a Panel by filing a notice of appeal, with proof of service, with the Clerk of Appellate Courts and by serving a copy on the Director within 30 days after being notified of the Panel's action. The respondent shall be denominated by number or randomly selected initials in the proceeding. The Director shall notify the complainant, if any, of the respondent's appeal. This Court may review the matter on the record or order such further proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may either affirm the decision or make such other disposition as it deems appropriate.

(h)(n) Manner of Recording. The Director shall arrange for a court reporter to make a record of the proceedings as in civil cases.

(h)(o) Panel Chair Authority. Requests or disputes arising under this Rule before the Panel hearing commences may be determined by the Panel Chair or Vice-Chair. For good cause shown, the Panel Chair or Vice-Chair may shorten or enlarge time periods for discovery under this Rule.

RULE 10. DISPENSING WITH PANEL PROCEEDINGS

(a) Agreement of Parties. The parties by written agreement may dispense with some or all procedures under Rule 9 before the Director files a petition under Rule 12.

(b) Admission. If the lawyer admits some or all charges, the Director may dispense with some or all procedures under Rule 9 and file a petition for disciplinary action together with the lawyer's admission. This Court may act thereon with or without any of the procedures under Rules 12, 13, or 14.

(c) Criminal Conviction or Guilty Plea. If a lawyer pleads guilty to or is convicted

of a felony under Minnesota statute, a crime punishable by incarceration for more than one year under the laws of any other jurisdiction, or any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit such a crime, the Director may either submit the matter to a Panel or, with the approval of the Chair of the Board, file a petition under Rule 12.

(d) Other Serious Matters. In matters in which there are an attorney's admissions, civil findings, or apparently clear and convincing documentary evidence of an offense of a type for which the Court has suspended or disbarred lawyers in the past, such as misappropriation of funds, repeated non-filing of personal income tax returns, flagrant non-cooperation including failure to submit an answer or failure to attend a pre-hearing meeting as required by Rule 9, fraud and the like, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by the Panel Chair, file the petition under Rule 12.

(e) Additional Charges. If a petition under Rule 12 is pending before this Court, the Director must present the matter to the Panel Chair, or if the matter was not heard by a Panel or the Panel Chair is unavailable, to the Board Chair or Vice-Chair, for approval before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

(f) Discontinuing Panel Proceedings. The Director may discontinue Panel proceedings for the matter to be disposed of under Rule 8(d)(1), (2) or (3).

RULE 11. RESIGNATION

This Court may at any time, with or without a hearing and with any conditions it may deem appropriate, grant or deny a lawyer's petition to resign from the bar. A copy of a lawyer's petition to resign from the bar shall be served upon the Director. The petition with proof of service shall be filed with this Court. If the Director does not object to the petition, the Director shall promptly advise the Court. If the Director objects, the Director shall also advise the Court, but then submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petitioner and filed with the Court.

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10 or this Rule, the Director shall file with this Court a petition for disciplinary action or a petition for revocation of conditional admission, with proof of service. The petition shall set forth the unprofessional conduct charges. When a lawyer is subject to a probation ordered by this Court and the Director concludes that the lawyer has breached the conditions of the probation or committed additional serious misconduct, the Director may file with this Court a petition for revocation of probation and further disciplinary action with proof of service.

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent not found.

(1) **Suspension.** If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respondent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplinary action.

(2) **Order to Show Cause.** If the respondent does not so move, the Director shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken. The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

(d) **Reciprocal Discipline.** Upon learning from any source that a lawyer licensed to practice in Minnesota has been publicly disciplined or is subject to public disciplinary charges in another jurisdiction, the Director may commence an investigation and, without further proceedings, may file a petition for disciplinary action in this Court. A lawyer subject to such charges or discipline shall notify the Director. If the lawyer has been publicly disciplined in another jurisdiction, this Court may issue an order directing that the lawyer and the Director inform the Court within thirty (30) days whether either or both believe the imposition of the identical discipline by this Court would be unwarranted and the reasons for that claim. Without further proceedings this Court may thereafter impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota. If this Court determines that imposition of the identical discipline is not appropriate, it may order such other discipline or such other proceedings as it deems appropriate. Unless the Court determines otherwise, a final adjudication in another jurisdiction that a lawyer had committed certain misconduct shall establish conclusively the misconduct for purposes of disciplinary proceedings in Minnesota.

RULE 13. ANSWER TO PETITION FOR DISCIPLINARY ACTION

(a) **Filing.** Within 20 days after service of the petition, the respondent shall file an answer with in this Court, with proof of service. The answer may deny or admit any accusations or state any defense, privilege, or matter in mitigation.

(b) **Failure to File.** If the respondent fails to file an answer within the time provided or any extension of time this Court may grant, the allegations shall be deemed admitted and this Court may proceed under Rule 15.

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION

(a) **Referee.** This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action or petition for revocation of conditional admission.

(b) **Conduct of Hearing Before Referee.** Unless this Court otherwise directs, the hearing shall be conducted in accordance with the rules of civil procedure applicable to district courts and the referee shall have all the powers of a district court judge.

(c) **Subpoenas.** The District Court of Ramsey County shall issue subpoenas. The referee shall have jurisdiction to determine all motions arising from the issuance and enforcement of subpoenas.

(d) **Record.** The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(e) **Referee's Findings, Conclusions, and Recommendations.** The referee shall make findings of fact, conclusions, and recommendations, file them with this Court, and notify the respondent and the Director of them. In revocation of conditional admission matters, the referee shall also notify the Director of the Board of Law Examiners. Unless the respondent or Director, within ten days, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the respondent or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one copy for the respondent and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the referee's findings of fact, conclusions and recommendations that are disputed.

(f) **Panel as Referee.** Upon written agreement of an attorney, the Panel Chair and the Director, at any time, this Court may appoint the Panel which is to conduct or has already conducted the probable cause hearing as its referee to hear and report the evidence submitted for or against the petition for disciplinary action. Upon such appointment, the Panel shall proceed

under Rule 14 as the Court's referee, except that if the Panel considers evidence already presented at the Panel hearing, a transcript of the hearing shall be made part of the public record. The District Court of Ramsey County shall continue to have the jurisdiction over discovery and subpoenas in Rule 9(d) and (h).

(g) Hearing Before Court. This Court within thirty days of the referee's findings, conclusions and recommendations, shall set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. In all matters in which the Director seeks discipline, the cover of the main brief of the Director shall be blue; the main brief of the respondent, red; and any reply brief shall be gray. In a matter in which reinstatement is sought pursuant to Rule 18 of these Rules, the cover of the respondent's main brief shall be blue; that of the main brief of the Director, red; and that of any reply brief, gray. The matter shall be heard upon the record, briefs, and arguments.

RULE 15. DISPOSITION; PROTECTION OF CLIENTS

(a) Disposition. Upon conclusion of the proceedings, this Court may:

- (1) Disbar the lawyer;
- (2) Suspend the lawyer indefinitely or for a stated period of time;
- (3) Order the lawyer to pay costs;
- (4) Place the lawyer on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;
- (5) Reprimand the lawyer;
- (6) Order the lawyer to successfully complete within a specified period such written examination as may be required of applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility;
- (7) Make such other disposition as this Court deems appropriate;
- (8) Require the lawyer to pay costs and disbursements; in addition, in those contested cases where the lawyer has acted in the proceedings in bad faith, vexatiously, or for oppressive reasons, order the lawyer to pay reasonable attorney fees;
- (9) Dismiss the petition for disciplinary action or petition for revocation of conditional admission, in which case the Court's order may denominate the lawyer by number or randomly selected initials and may direct that the remainder of the record be sealed; or
- (10) Revoke, modify or extend a conditional admission agreement.

(b) **Protection of Clients.** When a lawyer is disciplined or permitted to resign, this Court may issue orders as may be appropriate for the protection of clients or other persons.

(c) **Petition for Rehearing.** A petition for rehearing may be filed regarding an order of the Court under this rule, by following the procedures of Rule 140, Rules of Civil Appellate Procedure. The filing of a petition for rehearing shall not stay this Court's order.

RULE 16. TEMPORARY SUSPENSION PENDING DISCIPLINARY PROCEEDINGS

(a) **Petition for Temporary Suspension.** In any case where the Director files or has filed a petition under Rule 12, if it appears that a continuation of the lawyer's authority to practice law pending final determination of the disciplinary proceeding poses a substantial threat of serious harm to the public, the Director may file with this Court a petition for suspension of the lawyer pending final determination of the disciplinary proceeding, with proof of service. The petition shall set forth facts as may constitute grounds for the suspension and may be supported by a transcript of evidence taken by a Panel, court records, documents or affidavits.

(b) **Service.** The Director shall cause the petition to be served upon the lawyer in the same manner as a petition for disciplinary action.

(c) **Answer.** Within 20 days after service of the petition or such shorter time as this Court may order, the lawyer shall file in this Court an answer to the petition for temporary suspension, with proof of service. If the lawyer fails to do so within that time or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may enter an order suspending the lawyer pending final determination of disciplinary proceedings. The answer may be supported by a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) **Hearing; Disposition.** If this Court after hearing finds a continuation of the lawyer's authority to practice law poses a substantial threat of serious harm to the public, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings.

(e) **Interim Suspension.** Upon a referee disbarment recommendation, the lawyer's authority to practice law shall be suspended pending final determination of the disciplinary proceeding, unless the referee directs otherwise or the Court orders otherwise.

RULE 17. FELONY CONVICTION

(a) **Duty of the Court Administrator.** Whenever a lawyer is convicted of a felony, the court administrator shall send the Director a certified copy of the judgment of conviction.

(b) **Other Cases.** Nothing in these Rules precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

RULE 18. REINSTATEMENT

(a) **Petition for Reinstatement.** A copy of a petition for reinstatement to practice law shall be served upon the Director. The petition, with proof of service, shall then be filed with this Court. Together with the petition served upon the Director's Office, a petitioner seeking reinstatement shall pay to the Director a fee in the same amount as that required by Rule 12(B), Rules for Admission to the Bar, for timely filings. Applications for admission to the bar following a revocation of conditional admission shall be filed with the Board of Law Examiners pursuant to Rule 16, Rules for Admission to the Bar.

(b) **Investigation; Report.**

(1) The Director shall publish an announcement of the petition for reinstatement in a publication of general statewide circulation to attorneys soliciting comments regarding the appropriateness of the petitioner's reinstatement. Any comments made in response to such a solicitation shall be absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person making the statement.

(2) The Director shall investigate and report the Director's conclusions to a Panel.

~~Recommendation.~~

(c) **Hearing Before Panel.**

(1) The Panel ~~may~~shall conduct a hearing and shall make its findings of fact, conclusions, and recommendations. The ~~recommendation~~recommendations shall be served upon the petitioner and filed with this Court. Unless the petitioner or Director, within ten days of the date of service, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the petitioner or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of the appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one for the petitioner and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the Panel's findings of fact, conclusions, and recommendations that are disputed.

(2) Promptly after the filing of the Petition for Reinstatement, the Panel Chair shall hold a pre-hearing scheduling conference with the Petitioner and the Director and issue a scheduling order with a date certain for the Panel Hearing and for any further pre-hearing conference(s) as the Panel Chair deems prudent for the fair and efficient handling of the matter. The Scheduling Order may be modified for good cause shown upon motion made more than thirty days before the Panel Hearing. The motion may be made orally at any pre-hearing conference. Any motion to modify the Scheduling Order made less than 30 days before the Panel Hearing may only be granted upon a showing of exceptional circumstances or to prevent a

manifest injustice. The Panel Chair shall have authority to consider and make orders on any matter provided for by Minnesota Rules of Civil Procedure Rule 16 that are not inconsistent with these rules.

~~(e)~~(d) **Hearing Before Court.** There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. Should this Court determine further consideration on the petition is necessary, this Court may appoint a referee and the same procedure shall be followed as under Rule 14, except subdivision (f) will not apply.

~~(d)~~(e) **General Requirements for Reinstatement.**

(1) Unless such examination is specifically waived by this Court, no lawyer, after having been disbarred by this Court, may petition for reinstatement until the lawyer shall have successfully completed such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners.

(2) No lawyer ordered reinstated to the practice of law after having been suspended or transferred to disability inactive status by this Court, and after petitioning for reinstatement under subdivision (a), shall be effectively reinstated until the lawyer shall have successfully completed such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility.

(3) Unless specifically waived by this Court, any lawyer suspended for a fixed period of ninety (90) days or less, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), must, within one year from the date of the suspension order, successfully complete such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Except upon motion and for good cause shown, failure to successfully complete this examination shall result in automatic suspension of the lawyer effective one year after the date of the original suspension order.

(4) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following the lawyer's resignation, suspension, disbarment, or transfer to disability inactive status by this Court until the lawyer shall have satisfied (1) the requirements imposed under the rules for Continuing Legal Education on members of the bar as a condition to a change from a restricted to an active status and (2) any subrogation claim against the lawyer by the Client Security Board.

~~(e)~~**(f) Reinstatement by Affidavit.** Unless otherwise ordered by this Court, subdivisions (a) through (d) shall not apply to lawyers who have been suspended for a fixed period of ninety (90) days or less. Such a suspended lawyer, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), may apply for reinstatement by filing an affidavit with the Clerk of Appellate Courts and the Director, stating that the suspended lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. After receiving the lawyer's affidavit, the Director shall promptly file a proposed order and an affidavit regarding the lawyer's compliance or lack thereof with the requirements for reinstatement. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(a) Criminal Conviction. A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the lawyer was accorded fundamental fairness and due process.

(b) Disciplinary Proceedings.

(1) Conduct Previously Considered And Investigated Where Discipline Was Not Warranted. Conduct considered in previous lawyer disciplinary proceedings of

any jurisdiction, including revocation of conditional admission proceedings, is inadmissible if it was determined in the proceedings that discipline was not warranted, except to show a pattern of related conduct, the cumulative effect of which constitutes an ethical violation, except as provided in subsection (b)(2).

(2) Conduct Previously Considered Where No Investigation Was Taken And Discipline Was Not Warranted. Conduct in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings which was not investigated, is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.

(3) Previous Finding. A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline or revocation, modification or extension of conditional admission is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

(4) Previous Discipline. The fact that the lawyer received discipline in previous disciplinary proceedings, including revocation, modification or extension of conditional admission, is admissible to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that the lawyer acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:

- (i) A pattern of related conduct, the cumulative effect of which constitutes a violation;
- (ii) The current charge (e.g., the lawyer has continued to practice despite suspension);
- (iii) For purposes of impeachment (e.g., the lawyer denies having been disciplined before); or
- (iv) Motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Stipulation. Unless the referee or this Court otherwise directs or the stipulation otherwise provides, a stipulation before a Panel remains in effect at subsequent proceedings regarding the same matter before the referee or this Court.

(d) Panel proceedings. Subject to the Rules of Civil Procedure for District Courts and the Rules of Evidence, evidence obtained through a request for admission, deposition, or hearing under Rule 9 is admissible in proceedings before the referee or this Court.

(e) Admission. Subject to the Rules of Evidence, a lawyer's admission of unprofessional conduct or of violating a conditional admission agreement is admissible in proceedings under these Rules.

RULE 20. CONFIDENTIALITY; EXPUNCTION

(a) **General Rule.** The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

(1) As between the Committees, Board and Director in furtherance of their duties;

(2) After probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules;

(3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;

(4) Upon request of the lawyer affected, the file maintained by the Director shall be produced including any district committee report; however, the Director's work product shall not be required to be produced, nor shall a member of the District Ethics Committee or the Board, the Director, or the Director's staff be subject to deposition or compelled testimony, except upon a showing to the court issuing the subpoena of extraordinary circumstance and compelling need. In any event, the mental impressions, conclusions, opinions and legal theories of the Director and the Director's staff shall remain protected.

(5) If the complainant is, or at the time of the actions complained of was, the lawyer's client, the lawyer shall furnish to the complainant copies of the lawyer's written responses to investigation requests by the Director and District Ethics Committee, except that, insofar as a response does not relate to the client's complaint or involves information as to which another client has a privilege, portions may be deleted;

(6) Where permitted by this Court; or

(7) Where required or permitted by these Rules.

(8) Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Committee or Board members made in furtherance of their duties.

(9) As between the Director and the Client Security Board in furtherance of their duties to investigate and consider claims of client loss allegedly caused by the intentional dishonesty of a lawyer.

(10) As between the Director and the Board on Judicial Standards or its executive secretary in furtherance of their duties to investigate and consider conduct of a judge that occurred prior to the judge assuming judicial office.

(11) As between the Director and the Board of Law Examiners in furtherance of their duties under these rules.

(b) Special Matters. The following may be disclosed by the Director:

(1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;

(2) With the affected lawyer's consent, the fact that the Director has determined that discipline is not warranted;

(3) The fact that the Director has issued an admonition;

(4) The Panel's disposition under these Rules;

(5) The fact that stipulated probation has been approved under Rule 8(d)(3) or 8(e);

(6) The fact that the terms of a conditional admission agreement have been modified or extended under Rule 8(d)(5);

(7) Information to other members of the lawyer's firm necessary for protection of the firm's clients or appropriate for exercise of responsibilities under Rules 5.1 and 5.2, Rules of Professional Conduct.

Notwithstanding any other provision of this Rule, the records of matters in which it has been determined that discipline is not warranted shall not be disclosed to any person, office or agency except to the lawyer and as between Committees, Board, Director, Referee or this Court in furtherance of their duties under these Rules.

(c) Records after Determination of Probable Cause or Commencement of Referee or Court Proceedings. Except as ordered by the referee or this Court and except for work product, after probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules, the files, records, and proceedings of the District Committee, the Board, and the Director relating to the matter are not confidential.

(d) Referee or Court Proceedings. Except as ordered by the referee or this Court, the files, records, and proceedings before a referee or this Court under these Rules are not confidential.

(e) Expunction of Records. The Director shall expunge records relating to dismissed complaints as follows:

(1) Destruction Schedule. All records or other evidence of a dismissed complaint shall be destroyed three years after the dismissal;

(2) Retention of Records. Upon application by the Director to a Panel Chair chosen in rotation, for good cause shown and with notice to the respondent and opportunity

to be heard, records which should otherwise be expunged under this Rule may be retained for such additional time not exceeding three years as the Panel Chair deems appropriate.

(f) Advisory Opinions, Overdraft Notification Program Files, and Probation Files. The files, notes, and records maintained by the Director relating to advisory opinions, trust account overdraft notification, and monitoring of lawyers on probation shall be deemed confidential and shall not be disclosed except:

- (1) in the course of disciplinary proceedings arising out of the facts or circumstances of the advisory opinion, overdraft notification, or probation; or
- (2) upon consent of the lawyer who requested the advisory opinion or was the subject of the overdraft notification or probation.

Advisory Committee Comment—1999 Amendment

Rule 20 has been modified to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. *See also* R.L.Prof.Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R.Bd.Jud.Std. 2(b); R.L.Prof.Resp. 6Z.

RULE 21. PRIVILEGE: IMMUNITY

(a) Privilege. A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

(b) Immunity. Board members, other Panel members, District Committee members, the Director, and the Director's staff, and those entering into agreements with the Director's Office to supervise probations, shall be immune from suit for any conduct in the course of their official duties.

RULE 22. PAYMENT OF EXPENSES

Payment of necessary expenses of the Director and the Board and its members incurred from time to time and certified to this Court as having been incurred in the performance of their duties under these Rules and the compensation of the Director and persons employed by the Director under these Rules shall be made upon vouchers approved by this Court from its funds now or hereafter to be deposited to its credit with the State of Minnesota or elsewhere.

RULE 23. SUPPLEMENTAL RULES

The Board and each District Committee may adopt rules and regulations, not inconsistent with these Rules, governing the conduct of business and performance of their duties.

RULE 24. COSTS AND DISBURSEMENTS

(a) **Costs.** Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding or revocation of conditional admission proceeding decided by this Court shall recover costs in the amount of \$900.

(b) **Disbursements.** Unless otherwise ordered by this Court, the prevailing party in any disciplinary proceedings or revocation of conditional admission proceedings decided by this Court shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action or a petition for revocation of conditional admission under Rule 12. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court, together with those which are normally recoverable by the prevailing party in civil actions in the district court.

(c) **Time and Manner for Taxation of Costs and Disbursements.** The procedures and times governing the taxation of costs and disbursements and for making objection to same and for appealing from the clerk's taxation shall be as set forth in the Rules of Civil Appellate Procedure.

(d) **Judgment for Costs and Disbursements.** Costs and disbursements taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension, disbarment, or revocation of conditional admission is ordered. No suspended attorney shall be permitted to resume practice and no disbarred attorney may file a petition for reinstatement if the amount of the costs and disbursements taxed under this Rule has not been fully paid. A lawyer whose conditional admission has been revoked may not file an application for admission to the bar until the amount of the costs and disbursements taxed under this Rule has been fully paid.

RULE 25. REQUIRED COOPERATION

(a) **Lawyer's Duty.** It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director, or the Director's staff, the Board, or a Panel, by complying with reasonable requests, including requests to:

- (1) Furnish designated papers, documents or tangible objects;
- (2) Furnish in writing a full and complete explanation covering the matter under consideration;
- (3) Appear for conferences and hearings at the times and places designated;

(4) Execute authorizations and releases necessary to investigate alleged violations of a conditional admission agreement.

Such requests shall not be disproportionate to the gravity and complexity of the alleged ethical violations. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 25 requests. The lawyer shall be denominated by number or randomly selected initials in any District Court proceeding. Copies of documents shall be permitted in lieu of the original in all proceedings under these Rules. The Director shall promptly return the originals to the respondent after they have been copied.

(b) Grounds of Discipline. Violation of this Rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, is in good faith and is asserted for a substantial purpose other than delay.

RULE 26. DUTIES OF DISCIPLINED, DISABLED, CONDITIONALLY ADMITTED, OR RESIGNED LAWYER

(a) Notice to Clients in Nonlitigation Matters. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client being represented as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status in a pending matter other than litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, or disability. The notification shall urge the client to seek legal advice of the client's own choice elsewhere, and shall include a copy of the Court's order.

(b) Notice to Parties and Tribunal in Litigation. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client, opposing counsel (or opposing party acting pro se) and the tribunal involved in pending litigation or administrative proceedings as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, or disability. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended, or resigned, disabled lawyer, or a lawyer whose conditional admission has been revoked, and shall include a copy of the Court's order.

(c) Manner of Notice. Notices required by this Rule shall be sent by certified mail, return receipt requested, within ten (10) days of the Court's order.

(d) Client Papers and Property. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall make arrangements to deliver to each client being represented in a pending matter, litigation or administrative proceeding any papers or other property to which the client is entitled.

(e) **Proof of Compliance.** Within fifteen (15) days after the effective date of the Court's order, the disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall file with the Director an affidavit showing:

(1) That the affiant has fully complied with the provisions of the order and with this Rule;

(2) All other State, Federal and administrative jurisdictions to which the affiant is admitted to practice; and

(3) The residence or other address where communications may thereafter be directed to the affiant.

Copies of all notices sent by the disbarred, suspended, resigned or disabled lawyer, or lawyer whose conditional admission has been revoked, shall be attached to the affidavit, along with proof of mailing by certified mail. The returned receipts from the certified mailing shall be provided to the Director within two months of the mailing of notices.

(f) **Maintenance of Records.** A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall keep and maintain records of the actions taken to comply with this Rule so that upon any subsequent proceeding being instituted by or against the lawyer, proof of compliance with this Rule and with the disbarment, suspension, resignation, disability, or revocation of conditional admission order will be available.

(g) **Condition of Reinstatement.** Proof of compliance with this Rule shall be a condition precedent to any petition or affidavit for reinstatement made by a disbarred, suspended, resigned or disabled lawyer, or to an application for admission submitted to the Board of Law Examiners after revocation of a lawyer's conditional admission.

RULE 27. TRUSTEE PROCEEDING

(a) **Appointment of Trustee.** Upon a showing that a lawyer is unable to properly discharge responsibilities to clients due to disability, disappearance or death, or that a suspended, disbarred, resigned, or disabled lawyer, or a lawyer whose conditional admission has been revoked, has not complied with Rule 26, and that no arrangement has been made for another lawyer to discharge such responsibilities, this Court may appoint a lawyer to serve as the trustee to inventory the files of the disabled, disappeared, deceased, suspended, disbarred or resigned lawyer, or a lawyer whose conditional admission has been revoked, and to take whatever other action seems indicated to protect the interests of the clients and other affected parties.

(b) **Protection of Records.** The trustee shall not disclose any information contained in any inventoried file without the client's consent, except as necessary to execute this Court's order appointing the trustee.

RULE 28. DISABILITY STATUS

(a) **Transfer to Disability Inactive Status.** A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors,

narcotics, or other drugs prevents the lawyer from competently representing clients shall be transferred to disability inactive status.

(b) Immediate Transfer. This Court may immediately transfer a lawyer to disability inactive status upon proof that the lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, incapacitated, or inebriate person.

(c) Asserting Disability in Disciplinary Proceeding. A lawyer's assertion of disability in defense or mitigation in a disciplinary proceeding or a revocation of conditional admission proceeding shall be deemed a waiver of the doctor-patient privilege. The ~~referee~~Referee may order an examination or evaluation by such person or institution as the ~~referee~~Referee designates. If a lawyer alleges disability during a disciplinary investigation or proceeding or a revocation of conditional admission proceeding, and therefore is unable to assist in the defense, the Director shall inform the Court of the allegation and of the Director's position regarding the allegation. The Court may:

- (1) Transfer the lawyer to disability inactive status;
- (2) Order the lawyer to submit to a medical examination by a designated professional;
- (3) Appoint counsel if the lawyer has not retained counsel and the lawyer is financially eligible for appointed counsel. Financial eligibility shall be determined by the referee appointed by the Court to hear the disciplinary or disability petition in the same manner as eligibility for appointment of a public defender in a criminal case;
- (4) Stay disciplinary proceedings or revocation of conditional admission proceedings until it appears the lawyer can assist in the defense;
- (5) Direct the Director to file a petition under Rule 12;
- (6) Appoint a referee with directions to make findings and recommendations to the Court regarding the disability allegation or to proceed under Rule 14;
- (7) Make such or further orders as the Court deems appropriate.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

- (1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and
- (2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since the transfer to disability inactive status.

(e) **Transfer Following Hearing.** In cases other than immediate transfer to disability inactive status, and other than cases in which the lawyer asserts personal disability, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel may be appointed to represent the lawyer; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

RULE 29. EX PARTE COMMUNICATIONS

Ex parte communications to any adjudicatory body including panels, referees and this Court are strongly disfavored. Such communications should not occur except after first attempting to contact the adversary and then only if the adversary is unavailable and an emergency exists. Such communications should be strictly limited to the matter relating to the emergency and the adversary notified at the earliest practicable time of the prior attempted contact and of the ex parte communication.

RULE 30. ADMINISTRATIVE SUSPENSION

(a) Upon receipt of a district court order or a report from an Administrative Law Judge or public authority pursuant to Minn. Stat. § 518A.66 finding that a licensed Minnesota attorney is in arrears in payment of maintenance or child support and has not entered into or is not in compliance with an approved payment agreement for such support, the Director's Office shall serve and file with the Supreme Court a motion requesting the administrative suspension of the attorney until such time as the attorney has paid the arrearages or entered into or is in compliance with an approved payment plan. The Court shall suspend the lawyer or take such action as it deems appropriate.

(b) Any attorney administratively suspended under this rule shall not practice law or hold himself or herself out as authorized to practice law until reinstated pursuant to paragraph (c). The attorney shall, within 10 days of receipt of an order of administrative suspension, send written notice of the suspension to all clients, adverse counsel and courts before whom matters are pending and shall file an affidavit of compliance with this provision with the Director's Office.

(c) An attorney administratively suspended under this rule may be reinstated by filing an affidavit with supporting documentation averring that he or she is no longer in arrears in payment of maintenance or child support or that he or she has entered into and is in compliance with an approved payment agreement for payment of such support. Within 15 days of the filing of such an affidavit the Director's Office shall verify the accuracy of the attorney's affidavit and file a proposed order for reinstatement of the attorney requesting an expedited disposition.

(d) Nothing in this rule precludes disciplinary proceedings, if the attorney's conduct also violates the Minnesota Rules of Professional Conduct.

To: MSBA Professional Regulation Committee

From: Rule 7.2 Comment Subcommittee (Fred Finch, Dan Cragg and Ken Jorgensen)

Re: Supreme Court Order Soliciting Proposed Comment to Rule 7.2

Date: June 14, 2022

On May 13, 2022, the Minnesota Supreme Court rejected the proposals from the MSBA and the LPRB for amending Rule 7.2 (c), regarding “Specialist” advertising and instead adopted a rule that is similar to the prior Rule 7.4 (now repealed). Because the Court adopted its own Specialist advertising rule, the proposed comment (paragraph 11) applicable to Rule 7.2 (c) did not conform to the rule adopted by the Court. The Court’s May 13, 2022 order invites proposed joint revised comments from the MSBA and the LPRB.

The Subcommittee proposes that the MSBA recommend the following Comment, paragraph 11, to Rule 7.2:

[11] Paragraph (c) requires a lawyer who states or implies that the lawyer is a specialist in a field of law to identify, in the same communication, the organization that designated the lawyer as a specialist or to affirmatively state that the lawyer is not certified as a specialist or that the organization that certified the lawyer as a specialist is not accredited by the Minnesota Board of Legal Certification. The purpose of the disclosure is to permit a prospective client to ascertain the standards for experience, knowledge and proficiency imposed by the certifying organization and to obtain useful information about the organization granting certification.

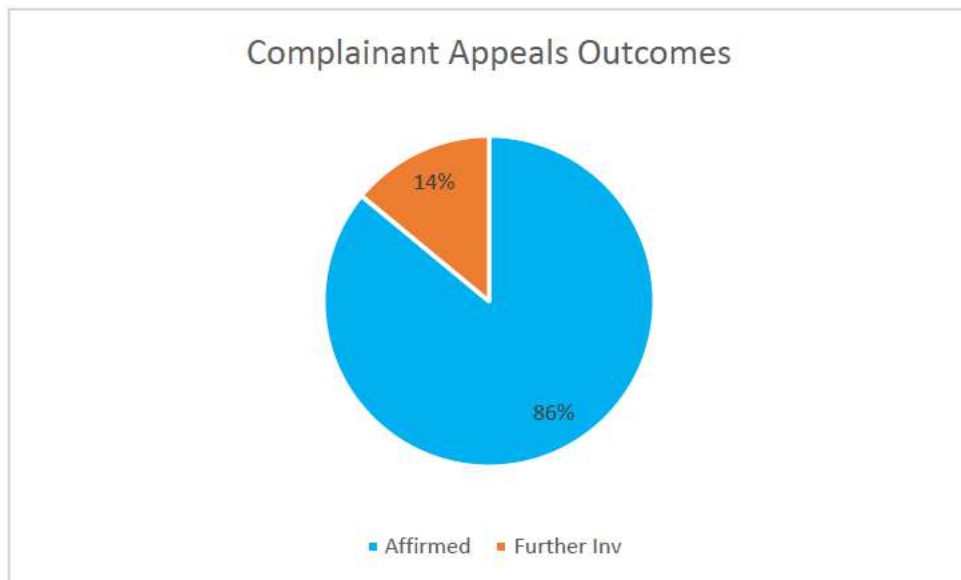
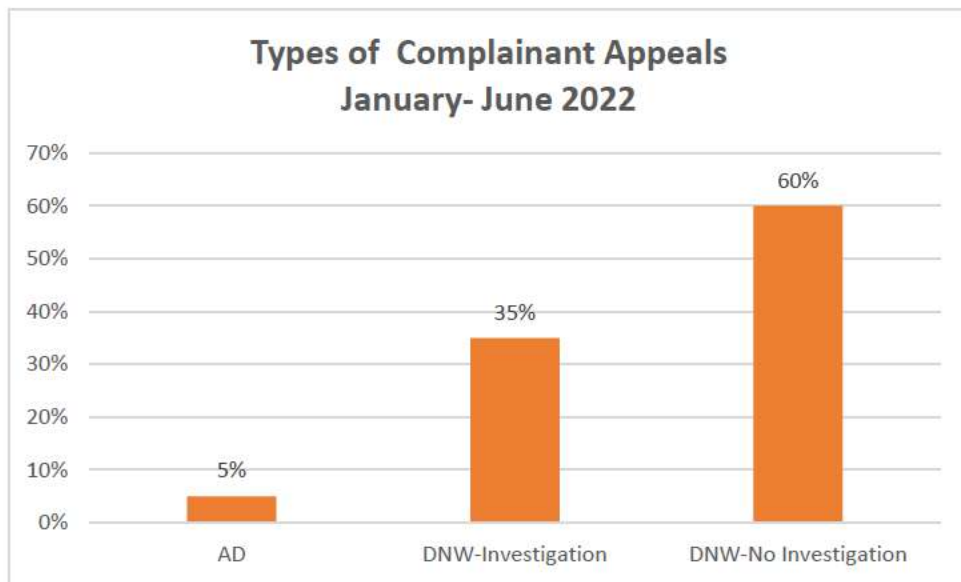
There were also differing LPRB and MSBA proposals in the last sentence of Comment paragraph 6 to Rule 7.2, which are set forth below. The Rules and Comments attached to the Court’s May 13, 2002 order include the MSBA Comment paragraph [6] and not the LPRB proposal, which would require referral services to obtain and use the ABA Lawyer Referral Logo and Tagline. The subcommittee recommends that MSBA comment paragraph [6] should be recommended to the Court and not the LPRB comment [6]. Discussions with the OLPR Director and staff indicate that OLPR would accept approval from an appropriate regulatory authority other than the ABA. Consequently, the LPRB proposal is unnecessarily restrictive and does not appear to reflect the prosecution position of the OLPR.

MSBA Comment [6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A

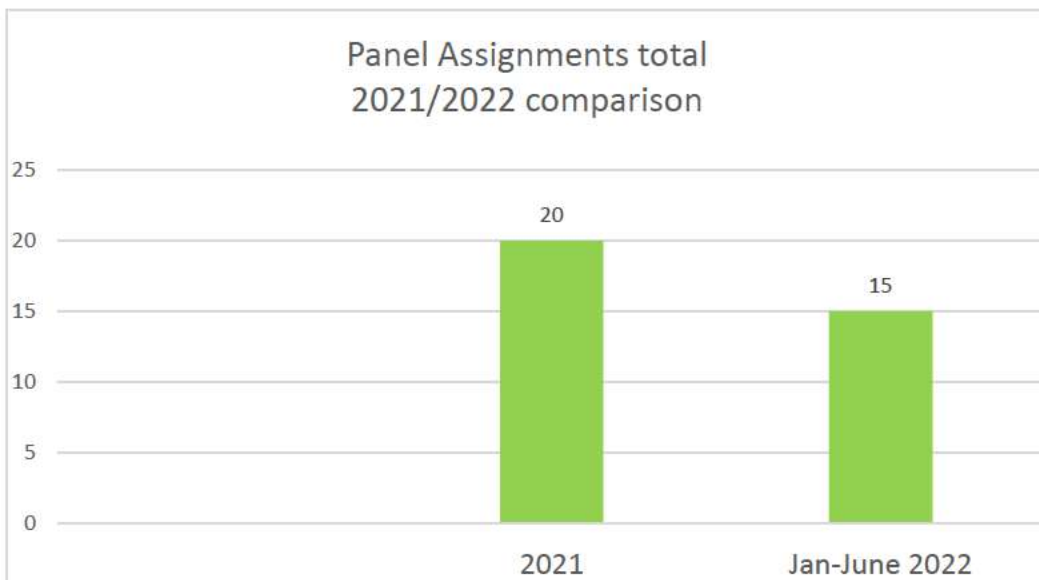
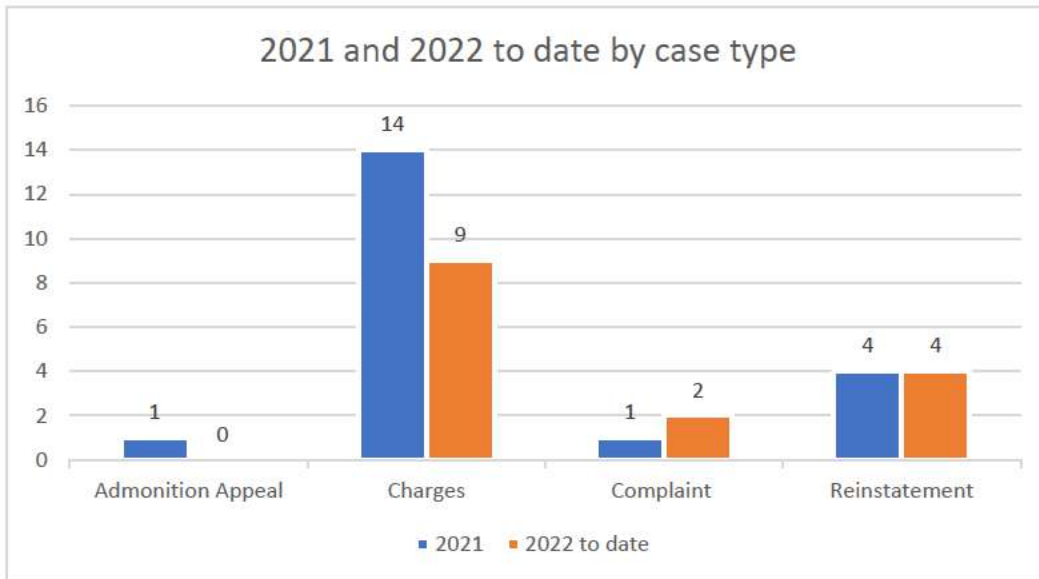
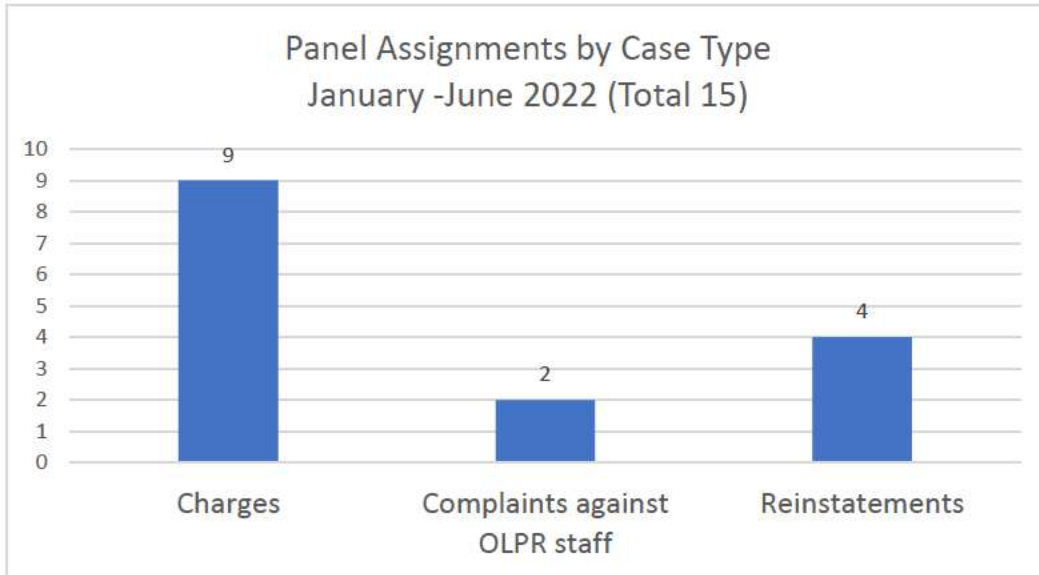
lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Qualified referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act.

LPRB Comment [6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Qualified referral services are consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public. In order to constitute a qualified lawyer referral service in Minnesota, the referral service must show compliance with the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services by obtaining certification to use the American Bar Association Lawyer Referral Logo and Tagline.

Complainant Appeals 2022



Panel Assignments



LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

445 MINNESOTA STREET, SUITE 2400
ST. PAUL, MINNESOTA 55101-2139

TELEPHONE (651) 296-3952
TOLL-FREE 1-800-657-3601
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[Lawyers Board Directory](#)

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD 2023 Public Meetings

Lawyers Professional Responsibility Board meetings are scheduled for the following dates and locations:

<u>Date</u>	<u>Location</u>
Friday, January 27, 2023*	TBD
Friday, April 28, 2023*	TBD
Friday, July 28, 2023*	TBD
Friday, October 27, 2023*	TBD

*Lunch is served for Board members at 12:00 noon. The public meeting starts at approximately 1:00 p.m.

OLPR Dashboard for Court And Chair

	Month Ending June 2022	Change from Previous Month	Month Ending May 2022	Month Ending June 2021
Open Files	487	6	481	441
Total Number of Lawyers	337	2	335	339
New Files YTD	517	101	416	477
Closed Files YTD	511	95	416	478
Closed CO12s YTD	71	16	55	65
Summary Dismissals YTD	253	59	194	207
Files Opened During June 2022	101	21	80	96
Files Closed During June 2022	95	34	61	86
Public Matters Pending (excluding Resignations)	45	3	42	36
Panel Matters Pending	14	2	12	14
DEC Matters Pending	97	3	94	90
Files on Hold	15	8	7	15
Advisory Opinion Requests YTD	834	130	704	1054
CLE Presentations YTD	24	4	20	29
Files Over 1 Year Old				
Total Number of Lawyers	152	5	147	102
Total Number of Lawyers	93	3	90	72
Files Pending Over 1 Year Old w/o Charges	64	-9	73	45
Total Number of Lawyers	45	-5	50	31

	2022 YTD	2021 YTD
Lawyers Disbarred	2	4
Lawyers Suspended	9	11
Lawyers Reprimand & Probation	4	2
Lawyers Reprimand	1	2
TOTAL PUBLIC	16	19
Private Probation Files	2	2
Admonition Files	44	59
TOTAL PRIVATE	46	61

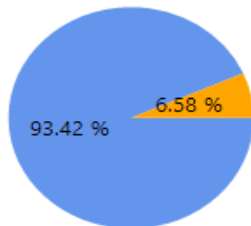
FILES OVER 1 YEAR OLD

Year/Month	OLPR	AD	PAN	HOLD	SUP	SCUA	REIN	TRUS	Total
2017-03				1		1			2
2018-04						1			1
2018-06					1				1
2018-07					2				2
2018-08					2				2
2018-10	2								2
2018-12	1					1			2
2019-03					1	2			3
2019-04	3		1						4
2019-05					3				3
2019-06					1	1			2
2019-07	1				1	1			3
2019-08	1								1
2019-09					3				3
2019-10			1		1	2			4
2019-11	1								1
2019-12			1						1
2020-01	4								4
2020-02	3					1			4
2020-03			1			2			3
2020-04					1				1
2020-05	1				2	1			4
2020-06			1		2				3
2020-07	1					1			2
2020-08	1				5	1			7
2020-09	3				3	1			7
2020-10	2		1		2				5
2020-11	1								1
2020-12	1		1		2	2			6
2021-01	5				2	1			8
2021-02	1			1	2		1		5
2021-03	7			1	2	2	1		13
2021-04	6		1	1	2				10
2021-05	7			6	4	1			18
2021-06	12	1						1	14
Total	64	1	8	10	44	22	2	1	152

	Total	Sup. Ct.
Total Cases Under Advisement	22	22
Sub-total of Cases Over One Year Old	130	47
Total Cases Over One Year Old	152	69

Active v. Inactive

■ Active 142
■ Inactive 10



All Pending Files as of Month Ending June 2022

Year/Month	SD	DEC	REV	OLPR	AD	PAN	HOLD	SUP	SCUA	REIN	RESG	TRUS	Total
2017-03							1		1				2
2018-04									1				1
2018-06								1					1
2018-07								2					2
2018-08								2					2
2018-10				2									2
2018-12				1					1				2
2019-03								1	2				3
2019-04				3		1							4
2019-05								3					3
2019-06								1	1				2
2019-07				1				1	1				3
2019-08				1									1
2019-09								3					3
2019-10						1		1	2				4
2019-11				1									1
2019-12						1							1
2020-01				4									4
2020-02				3					1				4
2020-03						1			2				3
2020-04								1					1
2020-05				1				2	1				4
2020-06						1		2					3
2020-07				1					1				2
2020-08				1				5	1				7
2020-09				3				3	1				7
2020-10				2		1		2					5
2020-11				1									1
2020-12				1		1		2	2				6
2021-01				5				2	1				8
2021-02				1			1	2		1			5
2021-03				7			1	2	2	1			13
2021-04				6		1	1	2					10
2021-05				7			6	4	1				18
2021-06				12	1							1	14
2021-07				9				1		1			11
2021-08				22		1		1				1	25
2021-09			1	14			1						16
2021-10				13		1							14
2021-11		2		19				2					23
2021-12		3	1	13		2	2			1			22
2022-01		9	1	13			2					1	26
2022-02		5		21									26
2022-03		11	2	11		1			1	2			28
2022-04		28	1	16		1				2			48
2022-05		18		18									36
2022-06	13	21	1	18							6	1	60
Total	13	97	7	251	1	14	15	48	23	8	6	4	487

ALL FILES PENDING & FILES OVER 1 YR. OLD

SD	Summary Dismissal
DEC	District Ethics Committees
REV	Being reviewed by OLPR attorney after DEC report received
OLPR	Under Investigation at Director's Office
AD	Admonition issued
ADAP	Admonition Appealed by Respondent
PROB	Probation Stipulation Issued
PAN	Charges Issued
HOLD	On Hold
SUP	Petition has been filed.
S12C	Respondent cannot be found
SCUA	Under Advisement by the Supreme Court
REIN	Reinstatement
RESG	Resignation
TRUS	Trusteeship

**OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY**


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June 2, 2022

TO: The Honorable Lorie Skjerven Gildea, Chief Justice
The Honorable G. Barry Anderson, Associate Justice
The Honorable Natalie E. Hudson, Associate Justice
The Honorable Margaret H. Chutich, Associate Justice
The Honorable Anne K. McKeig, Associate Justice
The Honorable Paul C. Thissen, Associate Justice
The Honorable Gordon Moore, Associate Justice

FROM: Susan M. Humiston
Director  Humiston, Susan
Jun 2 2022 4:23 PM

CC: Dan Ostdiek, Finance Director
Jeanette Boerner, LPRB Chair
Nancy Helmich, CSB Chair

SUBJECT: FY22/23 Budget Updates on behalf of The Lawyers Professional
Responsibility Board/Office of Lawyers Professional Responsibility and
the Minnesota Client Security Board

I respectfully submit the FY22/23 mid-biennium update for the Lawyers Professional
Responsibility Board/Office of Lawyers Professional Responsibility and the Minnesota
Client Security Board.

cmw



AT A GLANCE

- FY22 revenue is projected to be slightly below budget based on less than expected judgment payments.
- FY22 expenses are below budget by \$300,000. Budgeted expenses of \$50,000 for a new website and \$20,000 for the ABA consultation will carry forward to FY23.
- The OLPR is currently budgeted for 13 attorneys (including the Director), 5 paralegals, one investigator, one auditor, one Office Administrator, nine staff and two law clerks.
- Primary stakeholders are the Supreme Court, the LPRB, licensed Minnesota attorneys and the public who hire lawyers.

Background:

The OLPR and LPRB serve approximately 30,000 licensed lawyers (26,000 active) and the Minnesota public who consume legal services. In calendar 2021, the OLPR received 946 complaints, modestly higher than in 2020. 28 lawyers were publicly disciplined, down from 33 the previous year. Complaints year to date in 2022 have been trending upward modestly. Public discipline and private discipline for 2022 are comparable to prior years.

In addition to its disciplinary functions, the OLPR performs several administrative functions, such as staffing an ethics hotline utilized more than 2,000 times annually, running a large probation department supervising approximately 100 lawyers

annually, administering an overdraft trust account program, as well as handling attorney resignations, judgment and collections for sanctioned attorneys, administration of the Professional Firms Act, acting as trustee for disabled or deceased attorneys when others are not available to transition practices, and staff serves as frequent speakers at CLEs throughout the State.

FY2022/23 Revenue Update:

The Court reallocated \$1.5M in Client Security funds to the OLPR/LPRB, and increased attorney registration fees by 3% beginning October 1, 2022, to address the fact that the Office has largely exhausted its reserve. Because the reserve is still adequate to cover projected expenses through the biennium, the \$1.5M transfer has been delayed. The primary revenue resource for the OLPR is lawyer registration. Overall revenue projections are trending on target.

FY2022/23 Expenditures Update:

Expenses are estimated to be favorable to budget by \$300,000. Expenses relating to a new website (\$50,000) and the ABA consultation (\$20,000) will carry forward to FY23. Areas of increased expenses were witness fees (including expert witnesses), transcripts and temporary help during a parental leave of absence, and referee salaries.

Conclusion:

Even without the reallocation of \$1.5M from the CSB, the OLPR/LPRB has sufficient funds to cover expenditures through the end of the biennium, although the reserve has been largely depleted.

FY2022/23 Budget Update

MN Lawyers Professional Responsibility Board

v2 6/1/2022

Appropriation: J650LPR

Account	FY18 Actual a	FY19 Actual b	FY20 Actual c	FY21 Actual d	FY22 Budget e	FY22 Projected f	FY23 Budget g
Balance In	2,911,444	2,346,087	2,035,997	1,469,760	1,168,882	1,168,882	717,185
Revenue:							
Law Prof Resp Attmy Judgmnts	24,001	28,310	29,548	26,918	28,945	17,000	29,813
Other Agency Deposits	26,899	24,168	24,164	25,013	26,886	26,000	27,693
Law Prof Resp Misc	49,880	42,771	25,138	76,189	22,890	18,000	23,577
Attorney's Registration	3,150,783	3,352,084	3,446,296	3,500,557	3,424,656	3,467,162	3,447,582
Attorney's Registration 3% Increase 10/1/22							146,068
Law Prof Resp Bd Prof Corp	72,425		67,350	65,775	67,903	62,577	69,940
Proposed Transfer from the Client Security Board					1,500,000		
Subtotal Revenue	3,323,988	3,447,332	3,592,496	3,694,452	5,071,280	3,590,739	3,744,672
Expenditures:							
Balance Out (Ending Cash Balance)	3,889,345	3,757,422	4,158,733	3,995,329	4,334,715	4,042,436	4,386,790
	2,346,087	2,035,997	1,469,760	1,168,882	1,905,448	717,185	75,068
FY23 Adjustment							-
Final FY23 Reserve Balance							75,068

Notes:

1.5M transfer has not been made. Projected biennium Ending Cash Balance with transfer is \$1,575,068.

FY2022/23 Budget Update

MN Lawyers Professional Responsibility Board

v2.6/1/2022

Appropriation: J650LPR
 Findept. ID: J653500B

Account	FY18 Actual Expenditures a	FY19 Actual Expenditures b	FY20 Actual Expenditures c	FY21 Actual Expenditures d	FY22 Budget Expenditures e	FY22 Projected Expenditures f	FY23 Budget Expenditures g
Full Time	2,815,371	2,800,141	3,241,787	3,146,944	3,325,734	3,011,842	3,535,587
PT, Seasonal, Labor Svc	200,379	220,535	138,417	173,042	95,892	215,535	99,198
OT Pay	3,022	2,845	283	816	3,000	4,033	3,000
Other Benefits	66,139	41,688	11,384	37,394	25,797	92,056	
PERSONNEL	3,084,910	3,065,209	3,391,870	3,358,196	3,450,422	3,323,465	3,637,785
Space Rental, Maint., Utility	344,225	352,573	359,420	243,393	371,448	372,010	379,448
Printing, Advertising	9,896	10,537	10,694	4,638	10,000	8,311	10,625
Prof/Tech Services Out Ven	27,957	28,339	26,991	18,149	96,115	108,943	42,922
IT Prof/Tech Services	165,964	41,108	149,599	68,609	79,175	54,300	34,500
Computer & System Svc	38,835	41,483	51,782	51,832	51,813	47,700	53,434
Communications	22,556	24,870	23,237	19,564	23,765	24,622	25,164
Travel, Subsistence In-St	13,630	8,309	5,617	970	6,775	2,000	7,050
Travel, Subsistence Out-St	18,998	16,925	16,414		20,000	1,098	20,600
Employee Dev't	20,002	9,723	11,596	5,660	9,240	7,023	9,540
Agency Prov. Prof/Tech Svc							
Claims Paid to Claimants							
Supplies	60,435	48,326		41,952	66,408	32,194	68,469
Equipment Rental	3,035	3,513	55,932	3,125	2,150	2,166	2,275
Repairs, Alterations, Maint	6,921	11,218	3,036	9,765	34,998	14,733	8,425
Other Operating Costs	69,636	47,776	6,652	61,839	54,905	36,771	56,552
Equipment Capital	1,386	45,572	40,728		25,000		
Equipment-Non Capital	960	1,943	5,165	106,736	32,500	7,100	30,000
Construction				900			
Reverse 1099 Expenditure							
OPERATING	804,435	692,214	766,862	637,133	884,292	718,971	749,005
TOTAL	3,889,345	3,757,422	4,156,733	3,995,329	4,334,715	4,042,436	4,386,790

Notes:



AT A GLANCE

- The FY22 expense budget for claims was \$350,000. Payouts for FY22 are projected to around \$15,000, significantly favorable to budget.
- As of May 3, 2022, the CSB approved five claims involving two attorneys, for a total of \$14,550. The Board denied 3 claims. Additional claims are scheduled to be on the Board's June 20, 2022, agenda. A total of 15 claims are pending as of May 3, 2022.
- To date, the Board has approved \$8,659,340.05 on 698 claims against 195 lawyers since its inception.
- The Fund has a projected reserve of approximately \$3.6M at the end of the biennium, with \$1.5M of that allocated for transfer at the appropriate time to the LPRB/OLPR.

Background:

The Client Security Fund was established July 1, 1987, by the Minnesota Supreme Court to compensate individuals who have been victims of attorney dishonesty during the course of an attorney-client relationship in the State of Minnesota. The Fund is administered by a seven-person Board. OLPR staff provide administrative support to the Board.

The Board may reimburse up to \$150,000 per claim; there is no per attorney cap. To qualify for reimbursement, a claimant must show money or property was provided to counsel, and the loss was caused by the dishonest conduct of counsel. Reimbursement covers actual loss but does not cover the cost of recovery. Non-compensable losses also include those that sound in negligence or are more appropriately considered a fee dispute.

FY2022/23 Revenue Update:

Revenue projections are modestly below target. Interest earnings are running below budget while restitution from lawyers is running slightly above. Based upon consultation with Finance, to continue to generate interest income, the \$1.5M allocated to the LPRB/OLPR remains with the CSB.

FY2022/23 Expenditures Update:

It is anticipated that the Board will approve approximately \$15,000 in awards (on a budget of \$350,000). A new website (\$50K budgeted expenses) is planned by FY23. Unfortunately, the RFP issued in FY22 failed to generate any interest.

Conclusion:

We remain fortunate to have a financially healthy fund available to pay claims.

FY2022/23 Budget Update

MN Client Security Board

VI 5/5/2022

Appropriation: J650CSB

Account	FY18 Actual a	FY19 Actual b	FY20 Actual c	FY21 Actual d	FY22 Budget e	FY22 Projected f	FY23 Budget g
Balance In	4,119,044	3,976,990	3,898,938	3,980,737	3,976,360	3,976,360	3,988,510
Revenue:							
ITC Interest Earnings	62,380	91,139	68,371	17,049	20,000	11,000	20,000
Restitution from Attorneys	34,514	73,685	44,840	25,458	25,000	27,000	25,000
Attorney's Registration	178,275	179,292	10,020	2,276		1,200	
Proposed Transfer to Lawyers Professional Responsibility Board					(1,500,000)		
Subtotal Revenue	275,169	344,117	123,231	44,784	(1,455,000)	39,200	45,000
Expenditures:							
	417,224	422,168	41,432	49,161	433,550	27,050	383,550
Balance Out (Ending Cash Balance)	3,976,990	3,898,938	3,980,737	3,976,360	2,087,810	3,988,510	3,649,960

FY23 Adjustment

-

Final FY23 Reserve Balance

3,649,960

Notes:

1.5M transfer has not been made. Projected biennium Ending Cash Balance with transfer is \$2,149,996.

FY2022/23 Budget Update

MN Client Security Board

V1 5/5/2022

Appropriation: J650CSB
 Findept. ID: J653700B

Account	FY18 Actual Expenditures c	FY19 Actual Expenditures d	FY20 Actual Expenditures c	FY21 Actual Expenditures d	FY22 Budget Expenditures e	FY22 Projected Expenditures f	FY23 Budget Expenditures g
Full Time							
PT, Seasonal, Labor Svc							
OT Pay							
Other Benefits							
PERSONNEL	-	-	-	-	-	-	-
Space Rental, Maint., Utility							
Printing, Advertising							
Prof/Tech Services Out Ven	1,865	2,380	493	839	1,550		1,550
IT Prof/Tech Services			1,238	2,963	50,000		
Computer & System Svc							
Communications							
Travel, Subsistence In-St							
Travel, Subsistence Out-St	869	1,505			5,500		5,500
Employee Dev't	895	6,350			1,500		1,500
Agency Prov. Prof/Tech Svc	43,874	17,865	16,992	15,358	20,000	10,000	20,000
Claims Paid to Claimants	363,564	389,645	21,500	29,176	350,000	14,550	350,000
Supplies	46	4					
Equipment Rental				106			
Repairs, Alterations, Maint	3,338	75			3,000		3,000
State Agency Reimb.							
Other Operating Costs	2,773	4,344	1,210	495	2,000	2,500	2,000
Equipment Capital							
Equipment-Non Capital							
Reverse 1099 Expenditure							
OPERATING	417,224	422,168	41,432	49,161	433,550	27,050	383,550
TOTAL	417,224	422,168	41,432	49,161	433,550	27,050	383,550

Notes:

\$50,000 for website rebuild will be carried over to FY23

**ANNUAL REPORT OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

**ANNUAL REPORT OF THE
OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY**

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July 2022

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I. INTRODUCTION AND HIGHLIGHTS.

Pursuant to Rules 4(c) and 5(b), Rules on Lawyers Professional Responsibility (RLPR), the Lawyers Professional Responsibility Board (LPRB) and the Director of the Office of Lawyers Professional Responsibility (OLPR) report annually on the operation of the professional responsibility system in Minnesota. This report is made for the period from July 2021 to June 2022 (FY2022), which represents the Board's and the Office's fiscal year. The majority of the statistical information, however, is based upon calendar year 2021, unless otherwise noted.

A Note from Board Chair Jeanette Boerner

The LPRB plays an important and independent role in the lawyer disciplinary system. While the LPRB shares in the mission to protect the public and enhance the ethical practice of law, it has a separate and distinct role from the Office of Lawyers Professional Responsibility. Many reference the "Board" as the agency responsible for all lawyer disciplinary matters, when in fact the role of the LPRB is far more narrowly defined. The LPRB does not investigate or prosecute disciplinary matters, give advisory opinions or regulate the lawyer disciplinary system. Instead, the LPRB is a check on the system providing both complainants and respondents the important service of neutral review of OLPR actions. Our decisions are independent, and some are appealable to the Minnesota Supreme Court. In addition to our adjudicatory role, we create important policy and rule changes to further our mission.

The LPRB is comprised of public and attorney members who volunteer hundreds of hours each year to this important service. Attorney members reflect a range of legal practice areas that include family, probate, corporate, civil, criminal, constitutional, ethics and mediation. Public members bring invaluable experience in the areas of legislative policy, corporate leadership, writing, law enforcement, engineering, victim advocacy and computer forensics. This broad range of experience enhances the quality of our decision-making.

In July 2021, the Board restructured its internal Committees to align with our vision and streamline efforts. We currently have three Committees: (1) Training, Education and Outreach; (2) Rules and Opinions; and (3) Diversity and Inclusion. Each Committee has an appointed Chair who devotes additional time to facilitating meetings and work groups, writing proposals and organizing events.

Our Training, Education and Outreach Committee (TEO) is chaired by Landon Ascheman. To ensure continuity and high-performance, this Committee leads the training, mentoring and support of our Board members. This year, the TEO focused on a few key initiatives. First, the TEO has facilitated the completion of our updated and user-friendly 17-page reference manual. This manual ensures that new Board members have a ready resource in navigating assigned matters and provides existing Board members a great resource when new issues are presented. Second, just this year, the Committee has hosted six LPRB member trainings for our two new members who joined the Board in February 2022. Experienced Board members partnered to educate and field questions on all aspects of the work we do from complainant appeals to reinstatement hearings. Many experienced Board members joined in these trainings for a refresher and to offer additional insights. In addition to team building, it was a tremendous educational opportunity. Moving forward, the TEO Committee will look for ways to reach out to the broader legal community to be a resource for more training and educational opportunities.

Our Rules and Opinions Committee (RO) is chaired by Dan Cragg. This Committee is consistently busy reviewing new proposed policy and rule changes on both a national and statewide level. The RO works collaboratively on rule and policy changes with the OLPR, the Minnesota State Bar Association, and other interested stakeholders, but also takes independent positions to further our mission. Last year, Committee Chair Cragg drafted and argued before the Supreme Court a proposed change to Rule 7, Minnesota Rules of Professional Conduct. In the coming months, the

RO Committee will seek long over-due amendments to the Rules on Lawyers Professional Responsibility to better reflect current practice and procedures. The time, energy and commitment in bringing forward these changes cannot be overstated.

Finally, our Diversity and Inclusion Committee is chaired by Michael Friedman. This Committee has been heavily focused on recruiting diverse Board members and helping to create a sustainable recruitment model for years to come. As Board member service is limited to two terms, it is crucial that the Board actively and continuously recruit new members who are reflective of the community we serve. One significant process change encouraged by our liaison, Justice Hudson, is to interview and thoroughly vet every candidate who applies for a Board position. This gives candidates a meaningful opportunity to share their experiences and answer important questions about their commitment to this work and likewise ensures we have the best possible candidates to serve. This new process was highly successful yielding two excellent new Board appointments. Our current Board membership is 13% diverse, which is a 200% increase since February 2021. Finally, the DI Committee, among other projects, is working to refine the LPRB's mission statement to reflect our deep commitment to increase diversity and inclusivity within the Board and the work we do.

The LPRB's Executive Committee is responsible for the oversight of the Board. In addition to the Board Chair, the Executive Committee members include Vice-Chair Susan Rhode, attorney member Allan Witz, and public members Antoinette Watkins and Ginny Klevorn. This Committee meets regularly and is responsible for managing Board operations which include mentoring and advising Board members, reviewing Board work product to assure high quality, examining data received from the OLPR, assigning Panel matters and complainant appeals, addressing conflicts, developing and communicating policy with stakeholders, maintaining and safeguarding Board data and acting as liaisons for our three Committees.

In addition to committee work and Board meetings, Board members are responsible for reviewing and presiding in many matters. One key role for individual Board members is deciding complainant appeals. The material that is included in reviewing these appeals can be voluminous, particularly if there was a lengthy investigation performed by the OLPR or a District Ethics Committee. From January 1, 2022, to June 14, 2022, Board members have been assigned 61 complainant appeals. The average turnaround time for a Board decision on these appeals is 21.4 days. Of the appeals decided, 85% have been affirmed and 15% have been sent back for further investigation.

Another key LPRB role is to handle Panel matters. The LPRB has six Panels each with a Panel Chair who handle probable cause determinations for public discipline, respondent admonition appeals, reinstatement hearings and internal ethics complaints against OLPR staff. In 2021, the Panels were assigned 20 Panel matters, with probable cause determinations constituting most assignments. From January 1, 2022, to June 14, 2022, the Panels have been assigned 12 matters, with probable cause determinations and reinstatements constituting most matters assigned. Each Panel has a Chair who has the heightened responsibility of coordinating dates, authoring decisions, convening Panels and presiding over contested matters.

I would be remiss if I did not reflect on the challenges this past year has presented with changing responsibilities and public scrutiny. Stepping into the Chair role in a time of instability and uncertainty has been challenging. Having the support of the Board's liaison, Justice Hudson and my exceptional Board colleagues who have remained united and focused on our mission, have afforded me the opportunity to lead with conviction. As a Board, we pledge to fulfill our independent mission, but also maintain professional and collaborative working relationships with the OLPR, Court, members of the legal bar and community. We proceed with diligence and integrity in each case we are assigned as we recognize that both members of the public and licensed

attorneys have a vested interest in the outcome. It is truly a privilege to work with such a talented and committed group of Board members who work tirelessly without compensation to ensure a fair and just disciplinary system.

Highlights from the Office of the Director.

Fiscal year 2022 was a challenging but ultimately solid year for the OLPR. New complaints were up modestly year over year, but still generally lower and on par with the general decline we have seen in annual case numbers for the last several years. Whether this trend will continue is anyone's guess. Speaking engagements and advisory opinion requests have returned generally to pre-pandemic levels.

Public discipline was down slightly, with 28 attorneys receiving public discipline. Private discipline was very similar to 2020, although fewer cases were appropriate for private probation than in previous years. The trend for private discipline remains that the more seasoned attorneys are the ones who receive the most discipline, as compared to their more junior colleagues. Specifically, attorneys practicing between 11-20 years received the most private discipline. This year we saw public discipline more evenly broken out amongst the varying practice levels. In 2021, we only had one lawyer transferred to disability inactive status in lieu of discipline, compared to five in 2020. Trusteeships, when lawyers pass away without a succession plan or abandon their practices for a variety of reasons, continue to rise.

Oral arguments and discipline hearings transitioned back to in-person, although some remained remote or hybrid, consistent with the Court's operational orders. Most District Ethics Committees continue meeting remotely preferring the convenience of virtual meetings, but others have resumed in-person meetings, appreciating the value of in-person discussion. The annual Seminar in September 2021 was hybrid. The 2022 Seminar will be held in-person with a virtual option at the Wilder Foundation Center in St. Paul.

In July 2021, the Court amended Rules 4 and 5 of the RLPR. Rule 4 was amended to clarify the Board’s responsibility for policy governance while guiding the Director with advice and recommendations. The amendments to Rule 5 place responsibility for day-to-day operations of the Office with the Director, guided as necessary by either the Board or State Court Administration.

Substantively, the most frequently violated rules are communication (Rule 1.4) and diligence (Rule 1.3), with retainer agreement and handling of fees (Rule 1.5 and Rule 1.15(a)) continuing to grow in prevalence. Clients continue to submit the greatest number of complaints (followed by adverse parties), and the most frequent areas of practice generating complaints remain criminal law and family law, followed by litigation and probate. Client confidentiality, conflicts of interest, communication, trust accounts and withdrawal from representation are the most frequent topics addressed on the Office’s advisory opinion line.

The first half of 2022 remains generally consistent with 2021 in matters of public attorney discipline. Two attorneys year to date have been disbarred. As of June 30, 2022, a total of 16 attorneys have been publicly disciplined: two disbarred, nine suspended, four publicly reprimanded and placed on probation, and one reprimanded. Private discipline year to date is down from 2021, and is modestly down from recent years.

Complaint Filings.

The number of complaints received in 2021 was 946, up from 930 in 2020. Closings were down year over year (909 v. 969), for a calendar year-end file inventory of 479. Tables outlining these and related statistics are at A. 3 - A. 10.

Files open at start of 2021:	442
Complaints received in 2021:	946
Files closed in 2021:	909
Files open at end of 2021:	479

Complaint filings for the first six months of 2022 are ahead of 2021 numbers.

Public and Private Discipline.

In 2021, 28 lawyers were publicly disciplined: four attorneys were disbarred, 17 were suspended, four were reprimanded and placed on probation, and three were reprimanded. The four disbarred attorneys were Barry Blomquist, Howard Kleyman, Nicholas Schutz and William Sutor. The disbarments in 2021 were notable because, similar to 2020, the misconduct went beyond the intentional misappropriation of client funds, the most common reason for disbarment, to include participating in very serious financial schemes.

During 2021, 88 admonitions were issued. Pursuant to Rule 8(d)(2), RLPR, if “the Director concludes that a lawyer’s conduct was unprofessional but of an isolated and non-serious nature, the Director may issue an admonition.” Prior year totals are as follows:

	2014	2015	2016	2017	2018	2019	2020	2021
Admonitions	143	115	115	90	117	107	82	88
Total Files Closed	1248	1332	1264	1073	1115	1029	969	906
%	11%	9%*	9%	8%	10%*	10%	8%*	10%

*Percentage amount corrected

The areas of misconduct involved in admonitions are set forth in Table V at A. 6.

There were also nine matters closed with private probation in 2021, down significantly from the 20 matters closed with private probation in 2020.

Annual Professional Responsibility Seminar and Continuing Legal Education Presentations.

The annual Professional Responsibility Seminar was held on September 17, 2021. Sessions included a presentation on reinstatement and redemption, Hennepin County’s racial equity impact tool, an update from Justice Natalie Hudson, a resource quick hit presentation by Joan Bibelhausen of Lawyers Concerned for Lawyers, as well as sessions

on how the OLPR follows or departs from District Ethics Committee recommendations, and commonly misunderstood or misapplied rules. The Volunteer of the Year Award was also presented to Board member Allan Witz for his work and assistance on Board member training. The annual Seminar is both a “thank you” to individuals who volunteer or have volunteered in the discipline system, and an important training and outreach program for the Office.

Each year, attorneys in the Office devote substantial time to CLE presentations and other public speaking opportunities in an effort to proactively educate the bar about professional responsibility issues. A full list of those engagements can be found at A. 17 – A. 19. This year, staff spoke at 45 events, devoting over significant time to educating the profession.

II. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Board Members.

The LPRB is composed of 23 volunteer members, which includes the Chair, 13 lawyers, and 9 nonlawyers. The terms of Board members are staggered so that there is roughly equal turnover in members each year. Board members are eligible to serve two three-year terms (plus any stub term if applicable). Terms expire on January 31.

Board member Susan Stahl Slieter resigned her position in November of 2021. Her term was due to expire in January 2022. Jeanette Boerner’s seat was also open, as she was appointed Chair. Jordan Hart and Clifford Greene were appointed to the Board. Landon Ascherman, Katherine Holmen, Tommy Krause, Kristi Paulson, William Pentelovitch and Bruce Williams were reappointed to second terms to expire in 2025. Kristi Paulson and William Pentelovitch filled stubs terms and are eligible for another three-year reappointment. A complete listing of Board members and their backgrounds as of June 30, 2022, is attached at A. 1 – A. 2. Associate Supreme Court Justice Natalie Hudson continues as liaison justice to the Board and Office.

Executive Committee.

The Board has a five-member Executive Committee. The Committee currently consists of Chair Jeanette Boerner, Vice-Chair Susan Rhode, Allan Witz, Ginny Klevorn and Antoinette Watkins.

Panels.

All members of the Board, other than Executive Committee members, serve on one of six Panels which make discipline probable cause determinations, reinstatement recommendations and handle complainant and admonition appeals. The Board members who act as Panel Chairs are currently: Daniel Cragg, Ben Butler, Landon Ascheman, Kristi Paulson, Bruce Williams and Bill Pentelovitch.

Standing Committees.

The Board has three standing committees. As noted by Chair Boerner in her remarks, the Board made several revisions in FY22 to better align its committee structure with Board priorities. The Opinions Committee and Rules Committee were combined. The Rules and Opinion Committee, chaired by Dan Cragg, makes recommendations regarding the Board's issuance of opinions on issues of professional conduct pursuant to Rule 4(c), RLPR, and recommendations regarding possible amendments to the MRPC and the RLPR. The DEC and Training Committee was renamed and refocused. The Training, Education and Outreach Committee, chaired by Landon Ascheman, facilitates efforts to recruit and train discipline volunteers in all parts of the discipline system. The Equity, Equality and Inclusion Committee was also renamed. The Diversity and Inclusion Committee, chaired by Michael Friedman, focuses on recruitment of diverse Board and DEC volunteers, as well as the larger issue of how to examine and eliminate bias in the discipline system and promote equality. All committees were active in FY22.

III. DIRECTOR'S OFFICE.

A. Budget.

Expenditures for the fiscal year ending June 30, 2022, are projected to be approximately \$4 million. The projected reserve balance at the end of FY22 is projected to be approximately \$717,000. FY22 expenses were favorable to budget, but revenues were not favorable to budget given the prudent delay in reallocating \$1.5 million from the Client Security Board, which will be made when necessary as reserve funds with the Client Security Board earn interest.

The Director's Office budget is funded primarily by lawyer registration fees (\$128 for most lawyers), and therefore is not dependent upon legislative dollars. FY22 projected revenue from all sources is almost \$3.6 million. The Office will continue to utilize its reserve to fund the revenue shortfall, and will come close, as noted above, to exhausting its reserve over the biennium. To address the funding shortfall, in June 2019, the Court reallocated \$6 of the annual registration fee from the Client Security Board to the OLPR, in addition to approving the \$1.5 million reallocation from the Client Security Board as needed. In May 2021, the Court also approved modest increases in lawyer registration fees going forward to ensure overall funding for the various Boards tasked with regulation of the profession, while also directing the Boards to continue to focus on cost containment, cost sharing and economies where available.

B. Personnel.

The Director's Office employs 13 attorneys including the Director, five paralegals, an investigator, an auditor, an office administrator, nine support staff and two law clerks (*see* organizational chart at A. 20). Personnel highlights in FY22 include the retirement of a long-term employee (paralegal supervisor Lynda Nelson), the departure of five attorneys (Jennifer Bovitz, Amy Halloran, Cassie Hanson, Taylor Mehr and Bryce Wang), and the addition of seven attorneys (Joseph Ambroson, Krista Barrie, Caitlin Guilford, Joanna Labastida, Deanna Natoli, Jennifer Peterson and Pa Nhia Vang), a paralegal (Debra Gotziaman), an auditor (Annette Winrick) and a law clerk

(Henry Capuano). Given the number of new team members, training has been an important focus of FY22. The Court reappointed Susan Humiston as Director in March 2022 for another two-year term.

C. Website and Lawyers Professional Responsibility Board Intranet.

The OLPR website continues to be updated regularly to ensure it remains current. While the site contains a substantial amount of useful information regarding the discipline system, as well as services provided by the Director's Office, it is old and not mobile-friendly. A Request for Proposals for a new website was published in February 2022, but did not yield many bids. Work to find a vendor and build a new website will continue into FY23. Attached at A. 21 is a recent printout of the home page for the website.

The LPRB and DEC intranet (SharePoint) sites are used by Lawyers Board members, DEC Chairs and volunteer investigators and run on a SharePoint 2013 platform. Alternative options are currently being explored, as all sites need to be transitioned away from SharePoint 2013 by no later than April 2023. The Director's Office provides regular training to new and current Board members and DEC volunteers on the use and navigation of the sites. The Office also employs a DEC/SharePoint Coordinator as the main contact for volunteers regarding questions about the sites as well as their volunteer service. The Office has incorporated slides in its Continuing Legal Education presentations to promote volunteerism in the discipline system.

D. Complainant Appeals.

Under Rule 8(e), RLPR, a dissatisfied complainant has the right to appeal most dismissals and all private discipline dispositions. Complainant appeals are reviewed by a Board member, other than members of the Board's Executive Committee, as assigned by the Board Chair. During 2021, the Director's Office received 132 complainant

appeals, compared to 137 appeals received in 2020. A breakdown of the 132 determinations made by reviewing Board members in 2021 is as follows:

		<u>%</u>
Approve Director's Disposition	125	95
Direct Further Investigation	6	4
Instruct Director to Issue an Admonition	0	0
Instruct Director to Issue Charges	1	1

Approximately 150 clerical hours were spent in 2021 processing and routing of appeal files. A limited amount of attorney time was expended in reviewing appeal letters and responding to complainants.

E. Probation.

The probation department administers private and public probation in conjunction with attorney discipline. In 2021, the Director opened 19 new probations, 11 of which were public and 8 private. Nearly 70% of the new public probations were supervised, whereas 25% of the new private probations were supervised. Seven of the new probations were ordered as a condition of reinstatement to the practice of law.

In 2021, the Director filed no petitions for revocation of probation and for further discipline. This is a decrease from the two petitions for revocation filed in 2020.

Probations involving mental health and chemical dependency remain an ongoing concern. In 2021, four of the 19 new probations, or 21%, involved lawyers with mental health issues and/or substance/alcohol use issues. Of the 81 open probations in 2021, approximately 22% percent (18 probations) implicated consideration of lawyer wellness issues—either as part of the underlying disposition, or as a specific term of probation monitoring.

The Court transferred no probationers to disability inactive status. Ten of the new probations, or 53%, resulted from violations of safekeeping of property. Four of the new 2021 probations involved experienced lawyers who had 20 or more years of

practice, four with 30 or more years of practice, and five with 40 or more years of practice.

During 2021, 23 Minnesota attorneys served as volunteer probation supervisors. Their volunteer service to assist lawyers in need is greatly appreciated. Six attorneys and five paralegals staff the probation department, and consistently commit between 40-50 hours collectively per week. Additional probation statistics are provided at A. 15-A. 16.

F. Advisory Opinions.

Advisory opinions are available to all licensed Minnesota lawyers and judges, and out-of-state attorneys with questions about Minnesota's rules. Advisory opinions are limited to prospective conduct. Questions or inquiries relating to past conduct, third-party conduct (i.e., conduct of another lawyer) or questions of substantive law are not answered. Advisory opinions are not binding upon the Lawyers Board, the Supreme Court or other third-parties; nevertheless, if the facts provided by the lawyer requesting the opinion are accurate and complete, compliance with the opinion would likely constitute evidence of a good faith attempt to comply with the professional regulations. As a part of Continuing Legal Education presentations by members of the Director's Office, attorneys are reminded of the advisory opinion service and encouraged to make use of it. The advisory opinion service remains one of the most valuable outreach tools to the profession the Office has.

In 2021, the Director's Office received 2004 requests for advisory opinions, compared to 1,700 in 2020, a significant increase of 18%. Advisory opinion requests appear to be back to pre-pandemic levels. (A. 11 - A. 12.) Table XIII at A. 13 shows the areas of inquiry of opinions.

In 2021, the Director's Office expended 435 assistant director hours in issuing advisory opinions. This compares with 414 hours in 2020. Dissolution/custody and

criminal matters were the most frequently inquired about areas of law, then litigation and estate planning/wills and trusts. Client confidentiality (Rule 1.6) was the most frequent area of specific inquiry, along with conflicts of interest (Rule 1.7), communication (Rule 1.4) and conflict-former clients (Rule 1.9).

G. Overdraft Notification.

Pursuant to Rule 1.15(j) – (o), MRPC, lawyer trust accounts, including IOLTA accounts, must be maintained in eligible financial institutions approved by the Director’s Office, and the bank must agree to report all overdrafts on trust accounts to the Director’s Office. Administration of the trust account overdraft program includes books and records reviews and auditing. Individualized education is also provided through the overdraft program to target specific deficiencies and to ensure compliance with Rule 1.15, MRPC, and Appendix 1.

Thirty-seven account overdraft notices were reported to the Director in 2021, which was four less than the number (41) reported in 2020. During 2021, the Director converted five overdraft inquiries into disciplinary files. The most common reasons for opening a disciplinary file were shortages (3) and commingling (1), which are often the result of significant record-keeping deficiencies. Additional reasons to open a discipline file included improper books and records, failure to cooperate, and improper use of a trust account for personal/business expenses. The Director closed 36 overdraft inquiries in 2021. Of these closures, 31 were closed without a disciplinary investigation. In 17 of these 31 closures, or 55 percent, the Director made recommendations regarding the attorney’s trust account practices.

In 2021, the overdraft inquiries closed without a disciplinary investigation were closed for the following reasons:

Overdraft Cause	No. of Closings
Check written in error on TA	4
Bank error	11
Fraudulent charges	3
Late deposit	3
Mathematical/clerical error	9
Other	1

A total of 145.25 hours – 33.5 hours of attorney time and 111.75 of auditor/staff time – was spent administering the overdraft program in 2021. This was a slight increase from the 141.25 hours spent in 2020. The increase in time, despite the decrease in the number of overdrafts, is attributable to training of new staff, updating bank agreements, and collaborative meetings between the OLPR and the IOLTA team to clarify and streamline processes.

One attorney and one paralegal have historically staffed the overdraft program. The paralegal who has administered the overdraft program since its inception retired mid-year. The Office hired a forensic auditor, who took over the paralegal’s overdraft program responsibilities. The forensic auditor’s responsibilities include conducting the Office’s disciplinary and probationary trust and business account books and records reviews and audits, with additional paralegal backup.

Since the inception of the trust account overdraft program in 1990 through 2021, approximately¹ 3,074 overdrafts have been reported to the Director. Of those total overdrafts, 381, or 12%, were converted into disciplinary investigations. Those 381 disciplinary investigations were resolved as follows:

¹Data for the years 1990 and 1991 is not available so the number of reported overdrafts for those years has been estimated.

Public Dispositions:

Disbarment	25
Suspension	83
Public reprimand/probation	40
Disability Inactive Status	5
TOTAL	153

Private Dispositions:

Private probation	127
Admonition	54
Panel admonition	4
Dismissals	30
TOTAL	215

(13 of the 381 disciplinary investigations were ongoing at the conclusion of 2021.)

H. Judgments and Collections.

In 2021, judgments totaling \$28,685 were entered in 31 disciplinary matters. The Director's Office collected a total of \$24,206.17 from judgments and orders entered during or prior to 2021. Of the amount collected in 2021, \$3,048.95 was received through the Department of Revenue's revenue recapture program.

In 2020, judgments totaling \$25,397.58 were entered in 27 disciplinary matters. The Director's Office collected a total of \$27,428.65 from judgments and orders entered during or prior to 2020. Although the amount collected in 2021 was less than the amount collected in 2020, it is consistent with amount collected in 2018 (\$24,008) and 2019 (\$24,579).

I. Disclosures.

The disclosure department responds to written requests for attorney disciplinary records. Public discipline is always disclosed. Private discipline is disclosed only with

an executed authorization from the affected attorney. In addition, the Director’s Office responds to telephone requests for attorney public discipline records. Public discipline information is also available through the OLPR website. Informal telephone requests and responses are not tabulated. The following formal requests were received in 2021:

	<u>No. of Requests</u>	<u>No. of Attorneys</u>	<u>Discipline Disclosed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	239	239	14	3
B. Individual Attorneys	442	442	19	5
C. Local Referral Services				
1. RCBA	1	1	0	0
2. Hennepin County	0	0	0	0
D. Governor’s Office	27	67	2	3
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	115	115	1	0
F. F.B.I.	35	36	1	0
G. MSBA: Specialist Certification Program	13	128	6	5
H. Miscellaneous Requests	17	28	2	0
TOTAL	889	1056	45	16
(2020 totals for comparison)	646	868	36	3

J. Trusteeships.

Rule 27(a), RLPR, authorizes the Supreme Court to appoint the Director as trustee of an attorney’s files or trust account when no one else is available to protect the clients of a deceased, disabled or otherwise unavailable lawyer. In FY22, significant resources of the Office were dedicated to inventorying and returning client files, and otherwise administering the trusteeship department of the Office. Although it can be burdensome, stepping in to assist former clients of deceased lawyers remains a value service to the profession and family members of deceased attorneys that the Office is proud to provide.

In February 2021, the Director was appointed trustee over the client files belonging to disabled attorney Steven B. Szarke. The Director conducted an inventory of the files, contacted clients whose files were less than seven years old and/or contained a valuable original document(s), and returned or destroyed the files pursuant to the clients' wishes. This trusteeship was closed in December 2021 and the Director's retention schedule for the remaining files is detailed below.

In May 2021, the Director was appointed trustee over the client files belonging to deceased attorney David O.N. Johnson. The Director conducted an inventory of the files, contacted clients whose files were less than seven years old and/or contained a valuable original document(s), and returned or destroyed the files pursuant to the clients' wishes. This trusteeship was closed in December 2021 and the Director's retention schedule for the remaining files is detailed below.

In August 2021, the Director was appointed trustee over the client files and client trust account belonging to deceased attorney Aleksandra Ljubisavljevic. The Director is finalizing her review of the trust account records and has completed her inventory of the files. The Director is currently contacting clients whose files are less than seven years old and/or contain a valuable original document(s). The Director will then return or destroy the files pursuant to the clients' wishes.

In September 2021, the Director was appointed trustee over the client files and client trust accounts belonging to deceased attorney Patricia G. Mattos. The Director is finalizing her review of the trust account records and has completed her inventory of the files. In the near future, the Director will begin contacting clients whose files are less than seven years old and/or contain a valuable original document(s). The Director will then return or destroy the files pursuant to the clients' wishes. The Director has already returned approximately 20 files to clients who have called the Office since Ms. Mattos' passing.

In February 2022, the Director was appointed trustee over the client files belonging to deceased attorney Edward H. Rasmussen. The Director recently took possession of the files and will begin her inventory of those files in the near future.

In June 2021, the Director closed the trusteeship over disbarred attorney Boris A. Gorshteyn. All client files were more than seven years old, none contained valuable original documents and, thus, were destroyed pursuant to the Court's order.

The Director continues to retain the following client files:

- Rachel Bengtson-Lang trusteeship – valuable original documents are eligible for expunction in August 2023.
- Ronald Resnik trusteeship – valuable original documents are eligible for expunction in August 2023.
- Jan Stuurmans trusteeship – 37 files are eligible for expunction in June 2022, with the exception of documents the Director determines to be of value, which are eligible for expunction in June 2024.
- Francis E. Muelken trusteeship – 291 files are eligible for expunction in June 2024.
- Joel Ray Puffer trusteeship – 16 files are eligible for expunction in July 2022, with the exception of documents the Director determines to be of value, which are eligible for expunction in July 2024.
- David A. Lingbeck trusteeship – 108 files are eligible for expunction in October 2023, with the exception of documents the Director determines to be of value, which are eligible for expunction in October 2025.
- David J. Van House trusteeship – 187 files are eligible for expunction in December 2023, with the exception of documents the Director determines to be of value, which are eligible for expunction in December 2025.
- David O.N. Johnson trusteeship – 20 files are eligible for expunction in December 2024, with the exception of documents the Director determines to be of value, which are eligible for expunction in December 2026.
- Steven B. Szarke trusteeship – 16 files are eligible for expunction in December 2024, with the exception of documents the Director determines to be of value, which are eligible for expunction in December 2026.

K. Professional Firms.

Under the Minnesota Professional Firms Act, Minn. Stat. § 319B.01 to 319B.12, professional firms engaged in the practice of law for profit must file an initial report and annual reports thereafter demonstrating compliance with the Act. The Director's Office has handled the reporting requirements under this statute since 1973. Annual reports are sought from all known legal professional firms, which include professional corporations, professional limited liability corporations and professional limited liability partnerships. The filing requirements for professional firms are described on the OLPR website.

Professional firms pay a filing fee of \$100 for the first report and a \$25 filing fee each year thereafter. In reporting year 2020 (December 1, 2020—November 30, 2021), there were 75 new professional firm filings. Fees collected from professional firm filings are included in the Board's annual budget. As of May 31, 2022, the Director's Office received \$61,200 from 2,265 professional firm filings during fiscal year 2022. There were 41 new professional firm filings for the period of December 1, 2021—May 31, 2022. The Director's Office received \$65,575 during fiscal year 2021.

An assistant director, paralegal, and administrative clerk staff the professional firms department. For fiscal year 2022 (as of May 31, 2022), the total attorney work time for overseeing the professional firms department was 55 hours. The total non-attorney time was 553 hours.

IV. DISTRICT ETHICS COMMITTEES (DECs).

Minnesota is one of only a few jurisdictions in the United States which continues to extensively use local volunteers to conduct the preliminary investigation of the majority of ethics complaints. The Supreme Court Advisory Committee considered the continued vitality of the DEC system in 2008 and determined that the Minnesota system works well and strongly urged its continuation. Each DEC corresponds to the MSBA

bar district, and each is assigned a staff lawyer from the OLPR as a liaison to that DEC. Currently, there are approximately 235 DEC volunteers.

Initial review of complaints by practitioners and nonlawyers is valuable in reinforcing confidence in the system. The overall quality of the DEC investigative reports remain high. For calendar year 2021, the Director's Office followed DEC recommendations in 85% of investigated matters which were closed during the year. Many of the matters in which the recommendation was not followed involved situations in which the DEC recommended a particular level of discipline, but the Director's Office sought an increased level of discipline. This typically involved attorneys with prior relevant discipline that was not known, and thus, not considered by the DEC in making its recommendation. These matters are counted as not following the DEC recommendation.

In 2021, the monthly average number of files under DEC consideration was 86, fluctuating between a low of 64 and a high of 105. The year-to-date average for 2022 is 87, as of April 2022. Rule 7(c), RLPR, provides a 90-day goal for completing the DEC portion of the investigation. For calendar year 2021, the DEC's completed 220 investigations, taking an average of four months to complete each investigation.

For calendar year 2021, of the completed DEC investigations statewide, the following dispositions were made (measured by the number of files, rather than lawyers):

Determination discipline not warranted	144
Admonition	55
Private probation	1

The annual seminar for DEC members will be held this year on Friday, September 23, 2022. All DEC members, plus members of the bench and bar with connection to the discipline system, are invited. Active discipline system volunteers attend the seminar at no cost.

Rule 3(a)(2), RLPR, requires that at least 20 percent of each DEC be nonlawyers. The rule's 20 percent requirement is crucial to the integrity of the disciplinary system and to the public's perception that the system is fair and not biased in favor of lawyers. Compliance with that requirement has improved since 2011, when 11 of the 21 DECs did not meet the 20 percent nonlawyer membership requirement. However, as of May 1, 2022, six districts are not in full compliance. Additionally, one DEC is focused on recruiting new members as several current members have exceeded their term limits. The Office and Board continue to work with these districts to bring them into compliance.

V. SUMMARY.

FY22 was a year where the OLPR team was called upon to demonstrate its overall resilience and commitment to the mission of the Office. The team persevered through an on-going pandemic, as well as numerous other challenges, to continue to deliver on its commitment to conducting fair investigations and prosecuting discipline where warranted. Despite the challenges, the Office has been able to recruit and train high quality personnel, continue its day-to-day operations effectively as demonstrated in this report, and remains committed and energized by its mission of strengthening the profession and protecting the public.

The Minnesota Supreme Court conducts periodic reviews of its lawyer discipline system. This year, the Court has asked the American Bar Association's Standing Committee on Professional Regulation to consult on Minnesota's discipline system. The consultation examines the structure, operations, and procedures in place with the goal of providing constructive suggestions for ways to optimize the efficiency and effectiveness of Minnesota's lawyer discipline system. The consultation is in process at the time of this report, with the recommendations to be provided to the Court in September 2022.

The Office echoes the comments of Board Chair Boerner and joins with her in thanking Justice Natalie Hudson for her liaison work, as well as expressing our thanks to the entire Court for its steadfast commitment to ensuring the legal profession is well-regulated. Together we look forward to a collaborative and productive relationship with all stakeholders in our shared commitment to a high-functioning attorney discipline system.

For the Board:

/s/Jeanette M. Boerner

JEANETTE M. BOERNER
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

For the OLPR:

/s/Susan M. Humiston

SUSAN M. HUMISTON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Jeanette M. Boerner, Minneapolis - Chair. Attorney member. Term expires January 31, 2023. Serves on LPRB Executive Committee and Equity, Equality & Inclusion Committee. Director of Hennepin County Adult Representation Services. Area of law: 26 years' experience in criminal and child protection defense work.

Landon J. Ascheman, St. Anthony - Attorney member. MSBA nominee. Term expires January 31, 2025. Serves on LPRB Training, Education and Outreach Committee and Equity, Equality & Inclusion Committee. Served on Fourth District Ethics Committee for three years. Founder of Ascheman Law, LLC. Area of law: Criminal.

Benjamin J. Butler, St. Paul - Attorney member. MSBA nominee. Term expires January 31, 2024. Serves on LPRB Rules Committee. Managing Attorney, Office of the Minnesota Appellate Public Defender. Area of expertise: Criminal law.

Daniel J. Cragg, Minneapolis - Attorney member. MSBA nominee. Term expires January 31, 2023. Serves on LPRB Rules and Opinions Committee. Partner at Eckland & Blando, LLP. Member of MSBA's Rules of Professional Conduct Committee since 2014.

Michael Friedman, Minneapolis - Public member. Term expires January 31, 2023. Serves on LPRB Opinion Committee and Equity, Equality & Inclusion Committee. Served on Hennepin County District Ethics Committee nearly seven years. Executive Director of Legal Rights Center. Former Board Chair of the Minneapolis Civilian Police Review Authority.

Clifford M. Greene, Minneapolis - Attorney member. Partial term expires January 31, 2023. Retired from practice of law in 2020. Co-founded Greene Espel LLP. Regularly counseled and defended government agencies and official in disputes involving high-profile claims and significant precedent. Serves as an ADR neutral. Areas of practice: complex business, employment, and product liability actions, with special focus on federal practice and procedures.

Jordan Hart, St. Louis Park - Public member. Term expires January 31, 2025. Licensed doctoral level clinical psychologist for twenty years. Owner of private practice. Served on the Board of Directors for the Association of Family and Conciliation Courts for the past four years. Current member of the Minnesota ADR Ethics Board. Also a member of the Minnesota Psychological Association (where she previously served for three years on their Ethics Committee).

Katherine A. Brown Holmen, Eagan - Attorney member. Term expires January 31, 2025. Serves on LPRB Training, Education and Outreach Committee. Served on Second District Ethics Committee for six years. Attorney at Dudley and Smith, P.A. Area of practice: Personal Injury.

Peter Ivy, Chaska - Attorney member. Term expires January 31, 2023. Chair of LPRB Rules and Opinions Committee. Serves as Chief Deputy Carver County Attorney. Carries a felony caseload and provides legal advice to all Carver County officials and divisions. Serves as Co-Chair of the Minnesota County Attorneys Association Ethics Committee. Area of practice: Criminal and in-house counsel to county divisions.

Virginia Klevorn, Plymouth - Public member. Term expires January 31, 2023. Serves on LPRB Executive Committee and Equity, Equality & Inclusion Committee. Served on Fourth District Ethics Committee for three years. Business management consultant specializing in alternative dispute solution services. Minnesota House Representative for District 44A.

Tommy A. Krause, Virginia - Public member. Term expires January 31, 2025. Serves on LPRB Executive Committee and Equity, Equality & Inclusion Committee. Served on 20th District Ethics Committee for six years. Serves as Vice President on the Board of Directors for Range Mental Health Center and as President of the Virginia Area United States Bowling Congress Association. Served as member of the Board of the Northern St. Louis County Habitat for Humanity. Retired law enforcement officer for the Virginia Police Department. Areas of expertise: Criminal and internal investigations.

Mark Lanterman, Minnetonka - Public member. Term expires January 31, 2021. Serves on the LPRB Training, Education and Outreach Committee. Chief Technology Officer for Computer Forensic Services. A former sworn law enforcement investigator assigned to the United States Secret Service Electronic Crimes Task Force who has also served as a neutral computer forensic analyst in both federal and state court. Faculty at the Mitchell Hamline School of Law, the University of St. Thomas School of Law, the National Judicial, College the Federal Judicial Center in Washington D.C., and the University of Minnesota's Security Technologies Program. Completed postgrad studies in cybersecurity at Harvard University and is certified as a Seized Computer Evidence Recovery Specialist (SCERS) by the Department of Homeland Security. Areas of expertise: digital forensics and cybersecurity.

Paul J. Lehman, Minnetonka - Public member. Term expires January 31, 2023. Serves on LPRB Training, Education and Outreach Committee. Member of Minnesota Client Security Board. Served on Hennepin County District Ethics Committee for three years.

Kristi J. Paulson, Burnsville - Attorney member. MSBA nominee. Term expires January 31, 2025. Serves on LPRB Training, Education and Outreach Committee. President of Kristi J. Paulson, Chartered Law Firm since 1998. Minnesota Rule 114 Qualified Mediator and Arbitrator since 2017.

William Z. Pentelovitch, Minneapolis - Attorney member. Term expires January 31, 2025. Serves on LPRB Equity, Equality & Inclusion Committee. Partner at Maslon, LLP. Trial lawyer for more than 46 years. Fellow, International Academy of Trial Lawyers and 2020 Recipient of Lifetime Achievement Award from Minnesota State Bar Association. Served on HCBA District Ethics Committee. Served eight years on Civil Trial Certification Council of the MSBA. Area of expertise: Complex business litigation.

Andrew N. Rhoades, Woodbury - Public member. Term expires January 31, 2024. Serves on LPRB DEC and Training Committee. Assistant Federal Security Director at Minneapolis-St. Paul International Airport.

Susan C. Rhode, Minneapolis - Vice Chair. Attorney member. First term expires January 31, 2021. Serves on LPRB Rules and Opinions Committee. Served as Fourth District Ethics Committee Chair for six years. Partner at Moss & Barnett. Area of practice: Family law focusing on complex financial issues in dissolution matters.

Geri C. Sjoquist, Tower - Attorney member. MSBA nominee. Term expires January 31, 2024. Adjunct at Mitchell Hamline School of Law. Serves on Equity, Equality and Inclusion Committee. Rule 114 Qualified Neutral. Founder of Sjoquist Law LLC. Area of law: civil, family.

Mary L. Waldkirch Tilley, Marine on St. Croix - Public member. Term expires January 31, 2023. Serves on LPRB Equity, Equality & Inclusion Committee. Retired Victim Services Supervisor with Washington County.

Antoinette M. Watkins, Minneapolis - Public member. Term expires January 31, 2024. Serves on LPRB DEC and Training Committee. Regional Director for Wells Fargo Institutional Retirement and Trust, Northeast and Mid-Atlantic Territory. Ongoing and ad hoc volunteer for various organizations within the Twin Cities.

Bruce R. Williams, Virginia - Attorney member. Term expires January 31, 2025. Serves on LPRB Executive Committee and Equity, Equality & Inclusion Committee. Served as Twentieth District Ethics Committee Chair from 2011 to 2017. Served as Chair for the Supreme Court Board of Continuing Legal Education from 2001 - 2002. Appointed to the Minnesota Supreme Court Advisory Committee to Review the Lawyer Discipline System in July 2007. Handles serious felony matters as part-time attorney for the Sixth District Public Defenders Office in Virginia, Minnesota since 1990. Sole practitioner. Areas of expertise: General litigation, family, criminal defense. Certified as a criminal trial specialist since 2005.

Allan Witz, Rochester - Attorney member. Second term expires January 31, 2023. Chairs the LPRB Training, Education and Outreach Committee. Licensed to practice law in Minnesota, Florida, Michigan, and South Africa (inactive). Served three years on the Third District Ethics Committee. Former Chair of the Third District Bar Association Fee Dispute Resolution Committee. Former President of the Olmsted County Bar Association. Former President of the Third District Bar Association. Principal practice areas: Business law, estate planning and immigration law.

Julian C. Zebot, Minneapolis - Attorney member. MSBA nominee. Term expires January 31, 2023. Serves on LPRB Rules and Opinions Committee. Co-General Counsel and Ethics Partner for Maslon LLP. Served on the Hennepin County District Ethics Committee for more than 10 years. Served as Vice Chair of the Ethics and Malpractice Committee within the ABA Real Property Trust & Estate Section for the past several years.

Table I
Complaint Statistics 2000–2021

	Files	Files
<u>Year</u>	<u>Opened</u>	<u>Closed</u>
2000	1362	1288
2001	1246	1277
2002	1165	1226
2003	1168	1143
2004	1147	1109
2005	1150	1148
2006	1222	1171
2007	1226	1304
2008	1258	1161
2009	1206	1229
2010	1366	1252
2011	1341	1386
2012	1287	1287
2013	1256	1279
2014	1293	1248
2015	1210	1332
2016	1215	1264
2017	1110	1073
2018	1107	1115
2019	1003	1029
2020	930	969
2021	946	909

TABLE II
Supreme Court Dispositions and Reinstatements 2012-2021
Number of Lawyers

	Disbar.	Susp.	Reprimand Probation	Reprimand	Dismissal	Reinstated	Reinstated Denied	Disability	SC AD/Aff	Other	Total
2012	6	26	8	1	1	7	-	-	-	-	49
2013	11	28	9	4	-	14	-	2	-	-	68
2014	6	22	6	5	-	10	1	0	0	1***	51
2015	6	47	8	4	-	14	-	1	-	-	80
2016	6	27*	4	6	2	20	2	2	1	1***	71*
2017	5	26	5	4	-	12*	-	3	1	1****	57*
2018	8	23	8	6	-	12	-	6	1	1***	65
2019	5	22	4	4	-	10	1	1	1	-	48
2020	3	24	5	1	-	10*	-	5	-	1**	49*
2021	4	17	4	3	-	8	2	1	-	-	39

*Number corrected

**Stayed Disbarment

***Reinstatement dismissed

****Supreme Court Probation Extended

TABLE III
Disbarments, Suspensions, Probations and Reinstatements 2012-2021

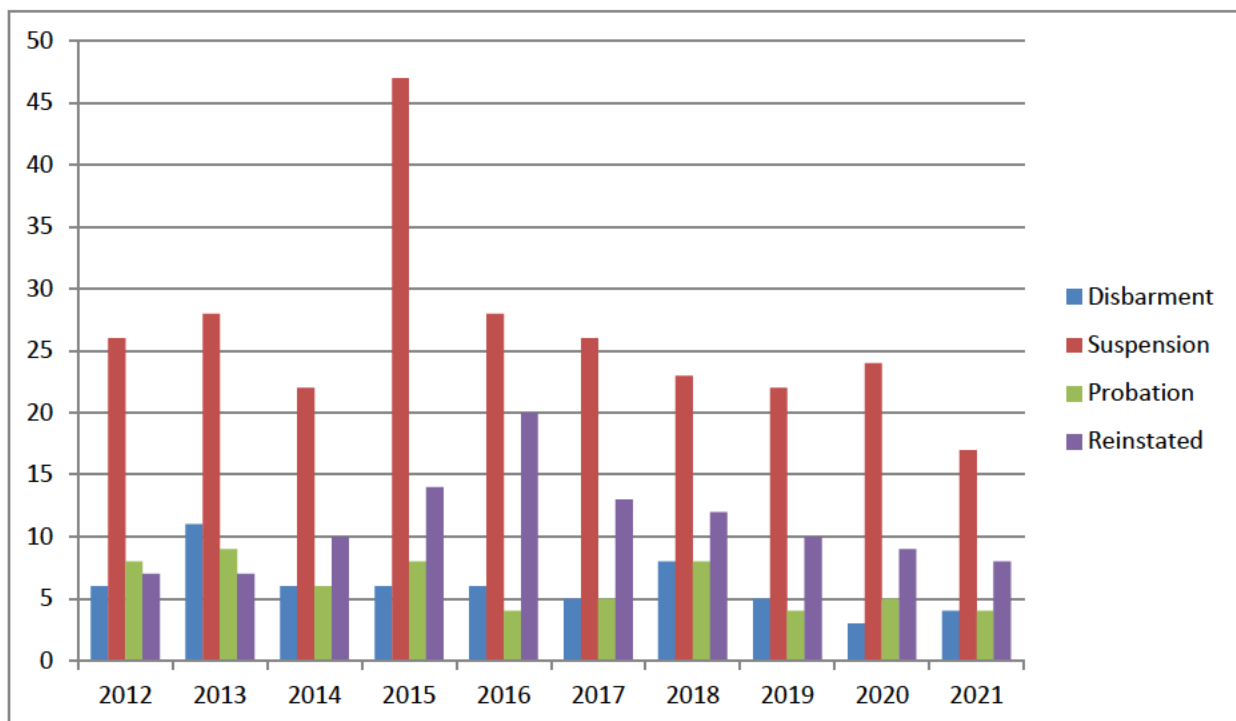
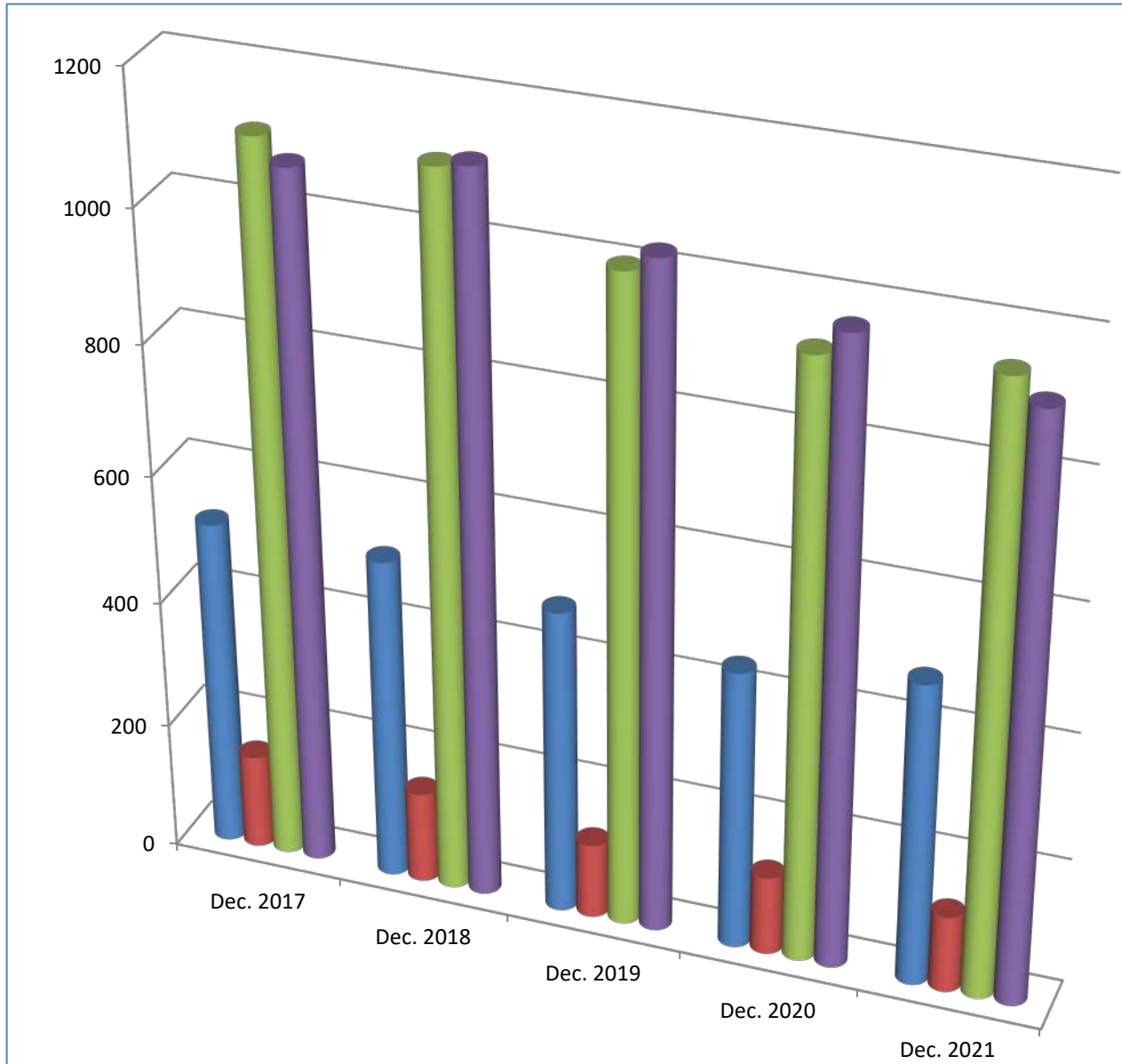


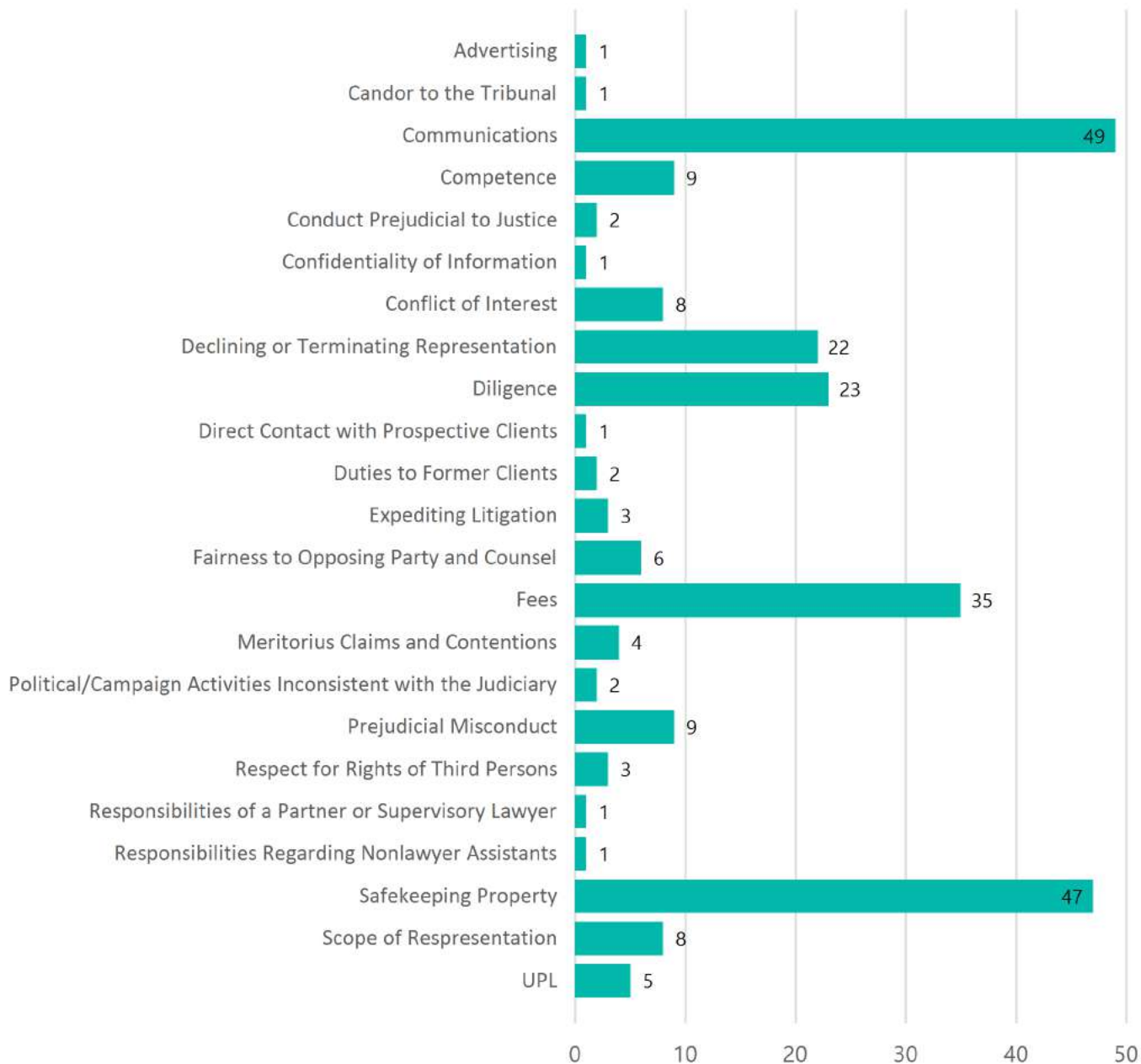
TABLE IV
File Openings, Closings and Year Old Files 2017-2021



	Dec. 2017	Dec. 2018	Dec. 2019	Dec. 2020	Dec. 2021
■ Total Open Files	517	509	482	442	479
■ Cases at Least One Year Old	149	145	119	125	122
■ Complaints Received YTD	1,110	1,107	1,003	930	946
■ Files Closed YTD	1,073	1,115	1,029	969	909

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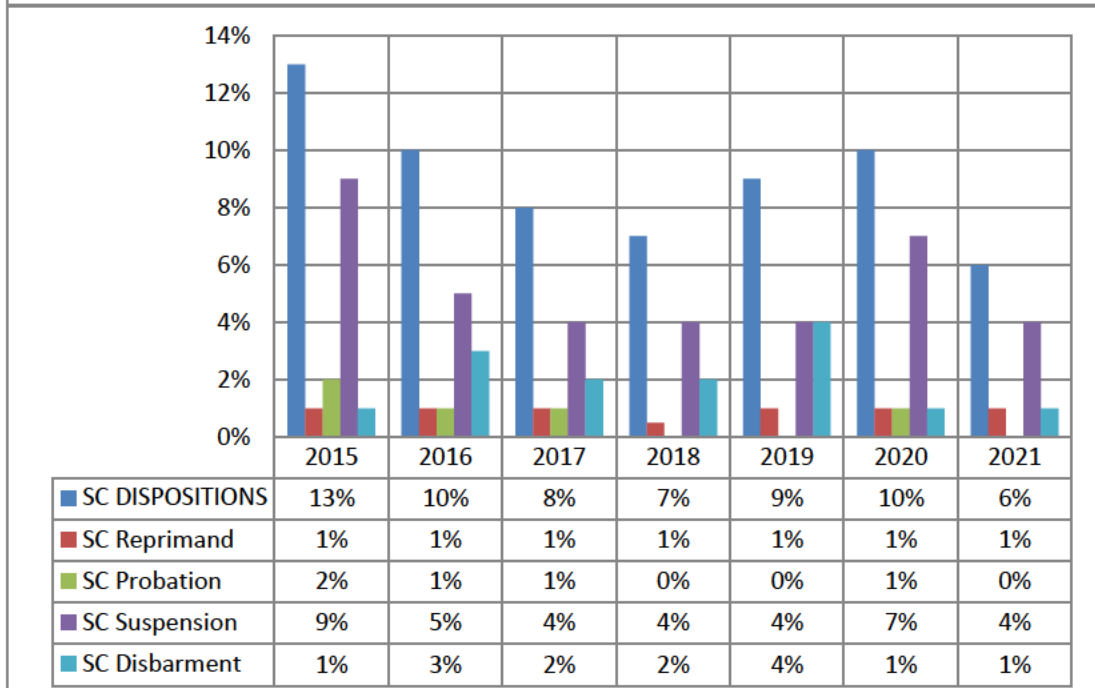
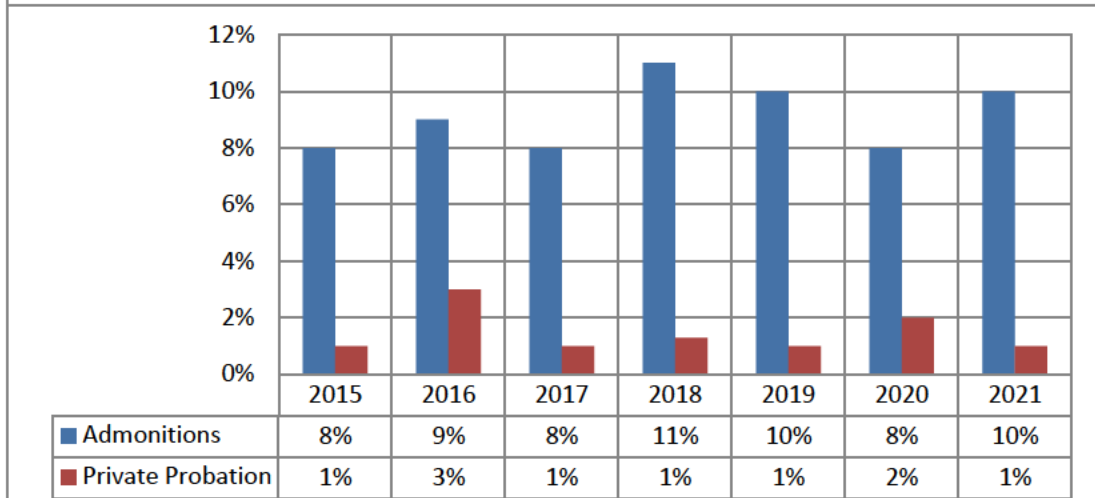
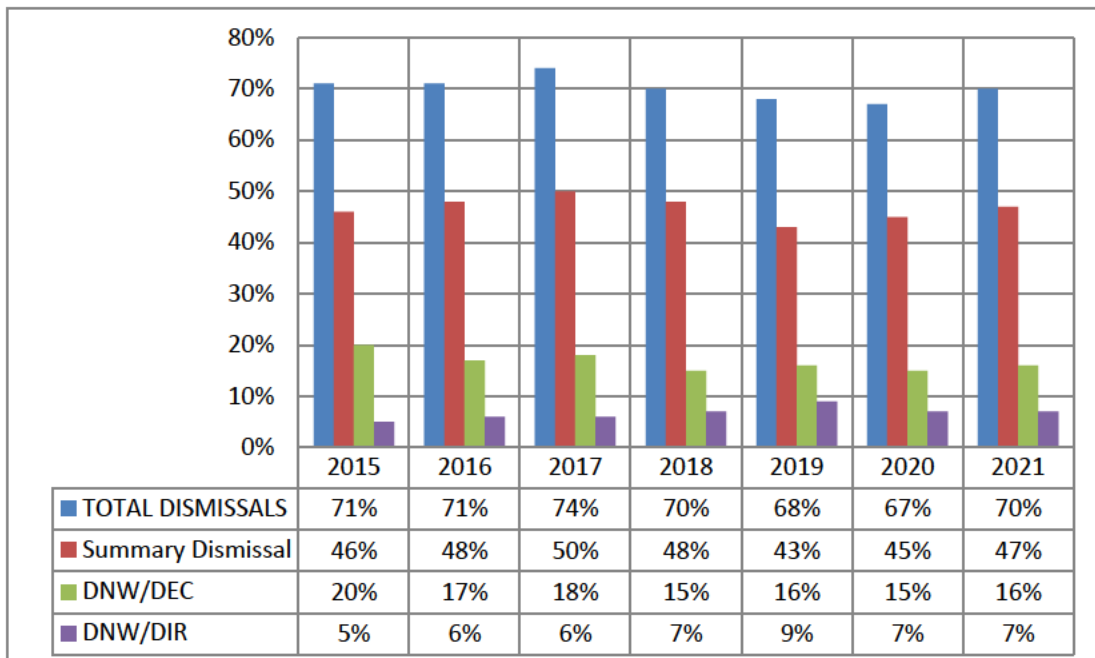
TABLE V: AREAS OF MISCONDUCT – ADMONITIONS 2021 *



* Between 1/1/2021 AND 12/31/2021, the Office issued 88 admonitions involving 243 rule violations.

This chart reflects the number of rule violations involved in those 88 admonitions, organized by area of misconduct.

TABLE VI
Percentage of Files Closed



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TABLE VII: AVERAGE YEARS OF PRACTICE FOR LAWYERS DISCIPLINED - 2020

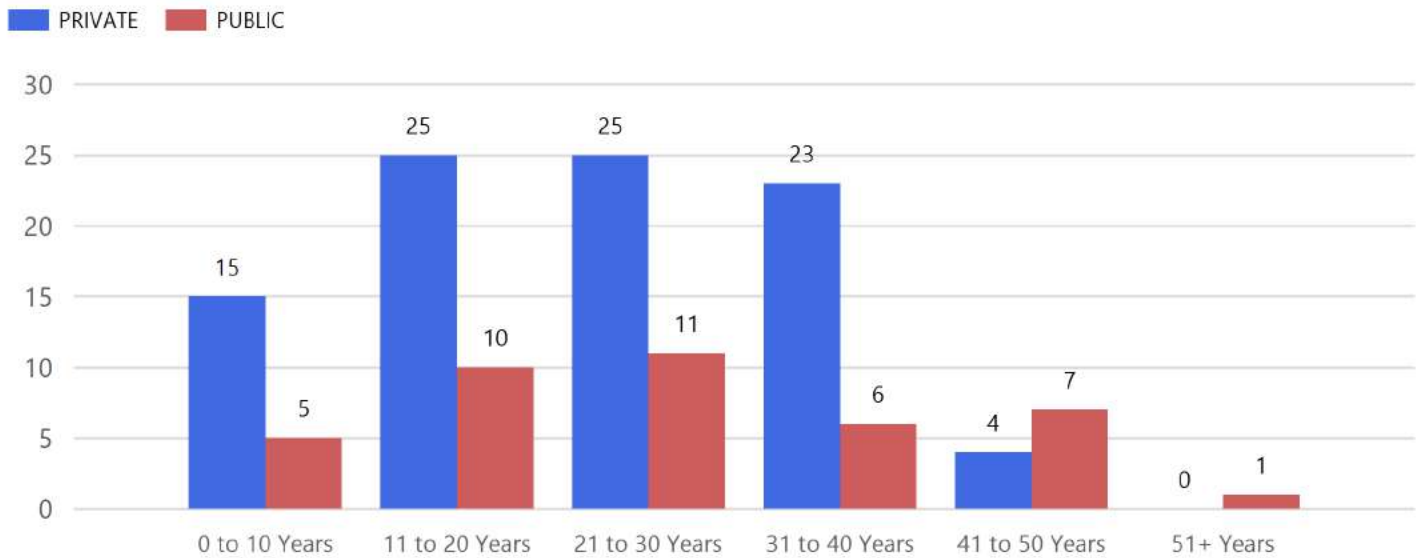


TABLE VII: AVERAGE YEARS OF PRACTICE FOR LAWYERS DISCIPLINED - 2021

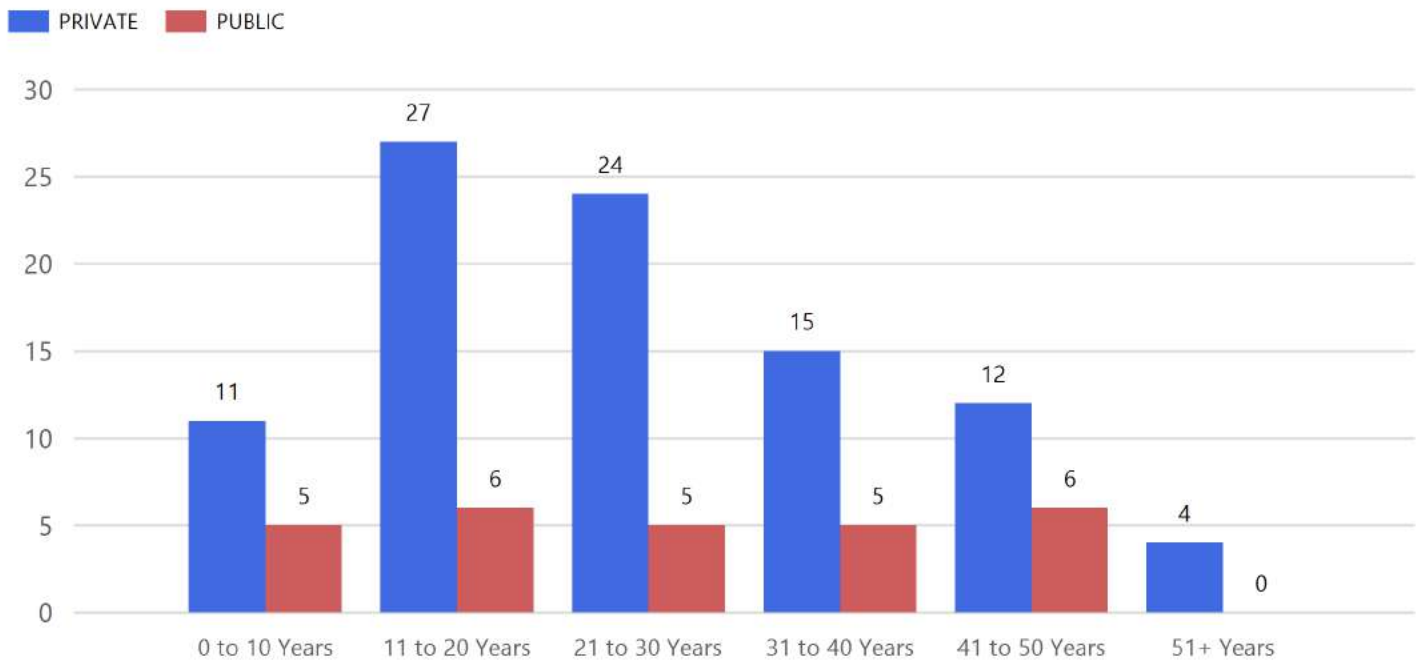
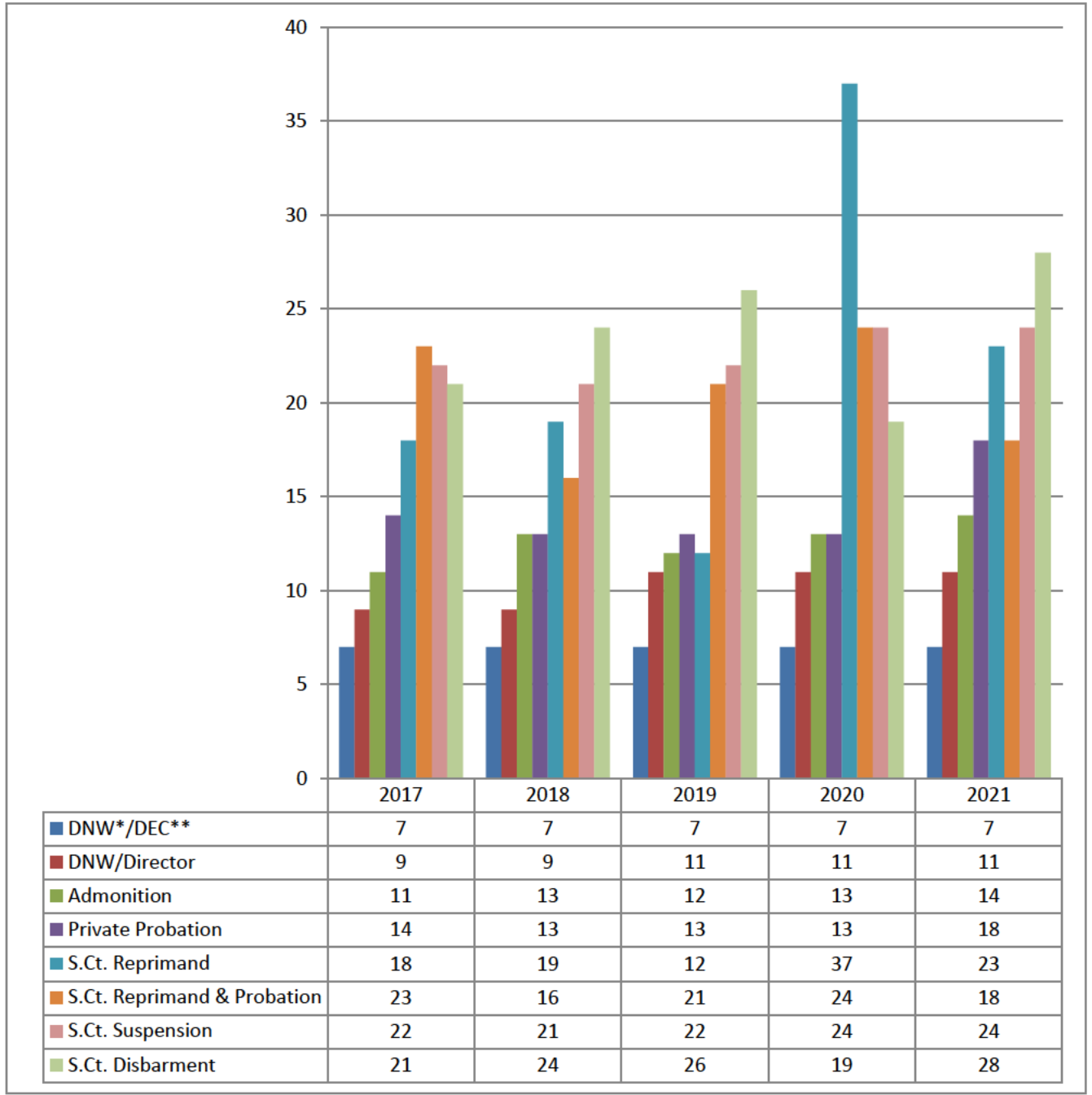


TABLE IX
Average Number of Months File was Open at Disposition



*Discipline Not Warranted

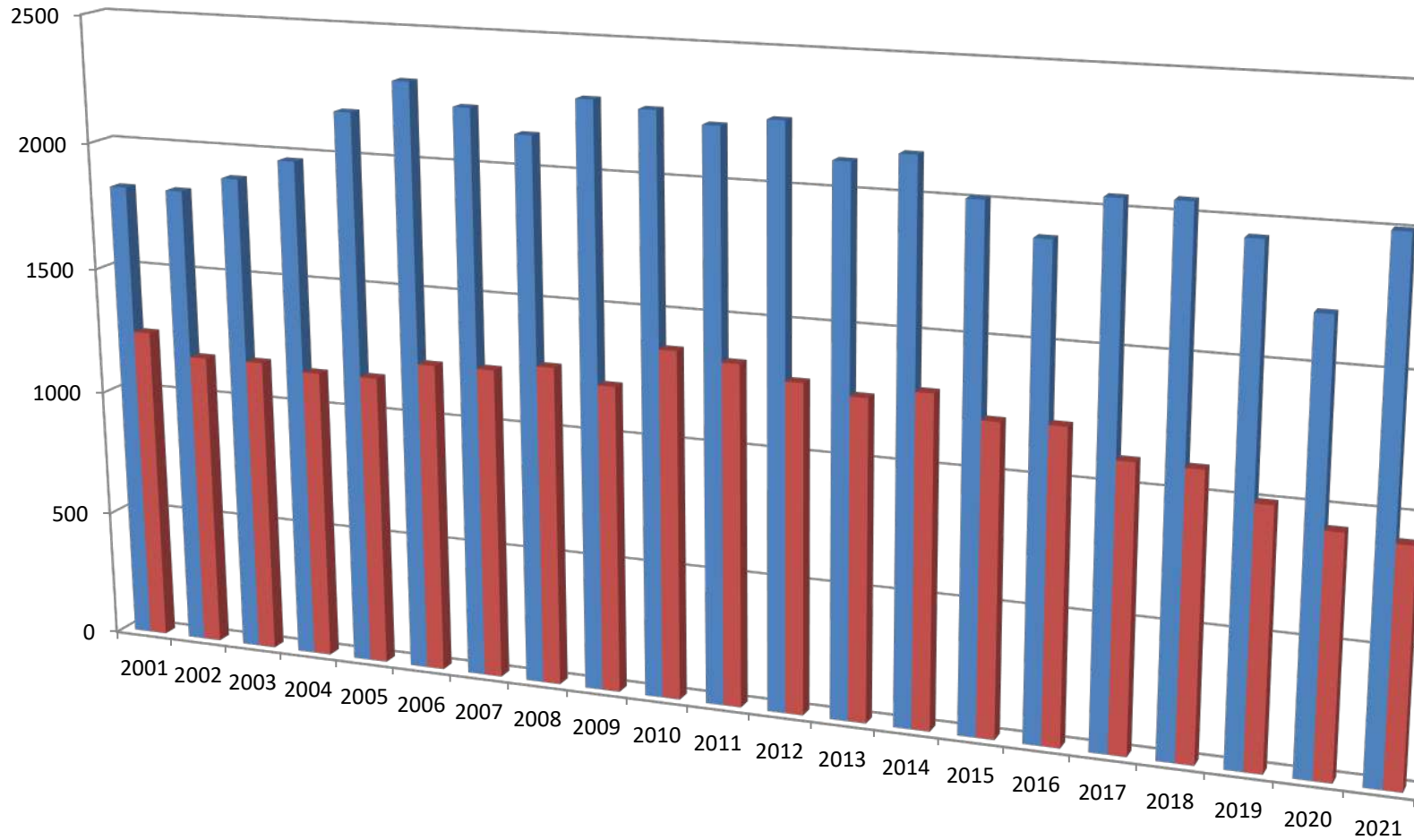
**District Ethics Committee (includes DEC Investigation files further investigated by the Director)

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TABLE X: PUBLIC DISCIPLINE DECISIONS 2021

Determination Year	Disbarments	Suspensions (all)	Reprimand and Probations	Reprimands	Year Total
1987	5	18	4	7	34
1988	4	21	7	5	37
1989	5	18	8	3	34
1990	8	27	9	10	54
1991	8	14	10	6	38
1992	7	17	7	5	36
1993	5	15	12	3	35
1994	8	5	7	0	20
1995	6	27	8	4	45
1996	4	27	5	0	36
1997	10	16	6	2	34
1998	15	18	10	2	45
1999	3	12	5	0	20
2000	6	19	10	2	37
2001	3	15	9	2	29
2002	4	18	6	1	29
2003	6	15	4	0	25
2004	5	10	3	1	19
2005	6	22	6	1	35
2006	8	26	10	5	49
2007	5	22	6	1	34
2008	4	18	13	2	37
2009	5	23	4	6	38
2010	7	9	7	3	26
2011	2	18	5	2	27
2012	6	26	8	1	41
2013	11	28	9	4	52
2014	6	22	6	5	39
2015	6	46	8	4	64
2016	6	27	4	6	43
2017	5	26	6	4	41
2018	8	23	8	6	45
2019	5	22	4	4	35
2020	3	24	5	1	33
2021	4	17	4	3	28
Total	209	711	243	111	1274

TABLE XI
Advisory Opinion Requests Received
and
Number of Complaints Opened
2001 – 2021



	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
■ Advisory Opinions Received	1824	1825	1889	1974	2177	2307	2223	2135	2282	2258	2215	2249	2116	2156	2012	1888	2051	2057	1943	1700	2004
■ Complaints Opened	1246	1165	1168	1147	1150	1222	1226	1257	1206	1365	1337	1287	1253	1293	1210	1216	1110	1107	1003	930	909

TABLE XII
Advisory Opinions 1991-2021

YEAR	OPINIONS GIVEN BY TELEPHONE	OPINIONS GIVEN IN WRITING	TOTAL OPINIONS GIVEN	OPINIONS DECLINED	TOTAL
1991	1083 (84%)	23 (2%)	1106 (86%)	186 (14%)	1292
1992	1201 (86%)	15 (1%)	1216 (87%)	182 (13%)	1398
1993	1410 (87%)	16 (1%)	1426 (88%)	201 (12%)	1627
1994	1489 (84%)	10 (1%)	1499 (85%)	266 (15%)	1765
1995	1567 (87%)	22 (1%)	1589 (89%)**	206 (11%)**	1795
1996	1568 (88%)	16 (1%)	1584 (89%)	199 (11%)	1783
1997	1577 (90%)	15 (1%)	1592 (91%)	165 (9%)	1757
1998	1478 (91%)	23 (1%)	1501 (92%)	131 (8%)	1632
1999	1464 (90%)	17 (1%)	1481 (91%)	154 (9%)	1635
2000	1600 (90%)**	28 (2%)	1628 (92%)**	142 (8%)	1770*
2001	1682 (92%)	9 (1%)**	1691 (93%)	133 (7%)	1824
2002	1695 (93%)	15 (1%)**	1710 (94%)	115 (6%)	1825
2003	1758 (93%)	9 (0%)**	1767 (94%)	122 (6%)**	1889
2004	1840 (93%)	3 (0%)**	1843 (93%)	131 (7%)	1974
2005	2041 (94%)	1 (0%)**	2042 (94%)	135 (6%)	2177
2006	2119 (92%)	2 (0%)**	2121 (92%)	186 (8%)	2307
2007	2080 (94%)	2 (0%)**	2082 (94%)	141 (6%)	2223
2008	1982 (93%)	2 (0%)**	1984 (93%)	151 (7%)	2135
2009	2137 (94%)	1 (0%)**	2138 (94%)	144 (6%)	2282
2010	2134 (95%)	2 (0%)	2136 (95%)	122 (5%)	2258
2011	2080 (99%)	2 (0%)	2082 (94%)	133 (6%)	2215
2012	2137 (95%)**	4 (0%)	2141 (95%)	108 (5%)	2249
2013	1976 (93%)	3 (0%)	1979 (94%)	137 (6%)	2116
2014	2020 (94%)	1 (0%)	2021 (94%)	135 (6%)	2156
2015	1866 (93%)	3 (0%)	1869 (93%)	143 (7%)	2012
2016	1770 (94%)	2 (0%)	1772 (94%)	116 (6%)	1888
2017	1912 (93%)	1 (0%)	1913 (93%)	138 (7%)	2051
2018	1901 (92%)**	3 (0%)	1904 (93%)	153 (7%)	2057
2019	1850 (95%)	5 (0%)	1855 (95%)	88 (5%)	1943
2020	1623 (95%)	1 (0%)	1624 (96%)	76 (4%)	1700
2021	1915 (96%)	1 (0%)	1916 (96%)	88 (4%)	2004

* 2000 totals revised to reflect additional AOs that were not previously included.

** Percentage amount corrected.

Table XIII			
Advisory Opinions Subject Matter by Rule			
Rule	Description	2020	2021
1.1	Competence	22	60
1.2	Scope of Representation	57	97
1.3	Diligence	18	12
1.4	Communication	112	183
1.5	Fee Agreements and Fees - Generally	113	122
1.6	Client Confidentiality	297	337
1.7	Conflict of Interest - Generally	261	327
1.8	Conflict of Interest - Transactions	67	84
1.9	Conflict - Former Clients Generally	151	182
1.10	Imputed Disqualification - Generally	44	57
1.11	Government Lawyer Conflicts Generally	25	24
1.12	Former Judges & Law Clerks	8	10
1.13	Organization as Client	14	22
1.14	Disabled Client - Generally	42	39
1.15	Trust Accounts - Generally	196	165
1.16	Withdrawal from Representation	244	362
1.17	Sale or Termination of Law Practice	17	15
1.18	Prospective Clients	54	34
2.1	Advisor	0	1
2.4	Lawyer Serving as 3rd Party Neutral	1	0
3.1	Meritorius Claims	14	23
3.2	Expediting Litigation	0	2
3.3	Candor Toward the Tribunal	41	50
3.4	Fairness to Opposing Counsel	20	46
3.5	Contact with jurors or venire	6	2
3.6	Trial Publicity	0	3
3.7	Attorney as Witness	10	26
3.8	Special Prosecutor Duties	5	12
4.1	Candor to Others	13	17
4.2	Contact with Represented Party	74	77
4.3	Contact with Unrepresented Party	39	46
4.4	Respect for Third Persons' Rights	26	19
5.1	Supervisory Lawyers	4	7
5.2	Subordinate Lawyers	3	1
5.3	Non-Lawyer Employees	7	13
5.4	Professional Independence	18	12
5.5	Unauthorized Practice	63	82
5.6	Covenants Not to Compete	2	5
5.7	Responsibilities Regarding Law Related	9	5
5.8	Employment of Suspended Attorney	4	1
6.1	Voluntary Pro Bono	0	5
6.2	Accepting Appointments	0	2
6.3	Legal Services Organizations	0	2
6.5	Pro Bono Limited Legal Services Programs	1	3
7.1	Advertising Generally	30	37
7.2	Technical Requirements	17	27
7.3	Solicitation Generally	17	20
7.4	Specialization	2	2
7.5	Letterhead & Firm Name	23	23
8.1	Admission and Discipline	2	1
8.2	Legal Officials	4	2
8.3	Duty to Report Attorney Misconduct	59	93
8.4	Misconduct	43	74
99	Dormant File Procedures	107	111
	Totals	2406	2984

OLPR SUMMARY OF PUBLIC MATTERS DECIDED

DETERMINATION DATES BETWEEN: 1/1/2021 AND 12/31/2021

39 DECISIONS INVOLVING 64 FILES

Supreme Court Disbarment	4 ATTORNEYS	5 FILES
BLOMQUIST, BARRY L	A19-1461	1
KLEYMAN, HOWARD S	A20-1304	2
SCHUTZ, NICHOLAS B	A21-0046	1
SUTOR, WILLIAM K	A20-1240	1
Supreme Court Suspension	17 ATTORNEYS	40 FILES
BUTLER, WILLIAM B	A20-0918	2
ESSIEN, MICHAEL A	A21-0018	3
FRANK, L W	A21-0351	2
GUNTHER, THOMAS H	A21-0989	1
KENNARD, ALFONSO	A20-1247	1
KOOTZ, KIP W	A21-0352	2
LOHSE, DAVID J	A17-1941	3
MACDONALD, MICHELLE L	A20-0473	3
MAGNUS, RYAN B	A20-1649	4
MCCLOUD, SAMUEL A	A20-0089	1
MULLIGAN, D G	A19-1932	1
RUFFENACH, MICHAEL R	A20-1081	3
SWANSON, RICHARD L	A20-1027	2
THAO, NOM FUE	A20-1501	2
THOMPSON, MARCEL L	A20-0776	1
TROST, DANIEL R	A21-0783	1
VANMEVEREN, BRIAN S	A20-1484	8
Supreme Court Reprimand/Probation	4 ATTORNEYS	5 FILES
KRAKER, DAVID L	A21-0003	1
LARSON, JANE J	A21-0928	1
LO, SIA	A20-1652	2
SIEGEL, BROOKS R	A21-0600	1

Supreme Court Reprimand	3 ATTORNEYS	3 FILES
BIERSDORF, DANIEL J	A20-0875	1
FOSTER, CARMEANN D	A20-1552	1
HALE, LEILA L	A21-0651	1
Supreme Court Disability Status	1 ATTORNEYS	1 FILES
CUMMISKEY, DAVID R	A21-0137	1
Reinstated	2 ATTORNEYS	2 FILES
BRADEN, ALEX F	A20-1631	1
NASTROM, KARL S	A20-0926	1
Reinstatement/Probation	6 ATTORNEYS	6 FILES
BOSSE, RICHARD E	A19-0595	1
KOOTZ, KIP W	A21-0352	1
LONDON, JOSHUA S	A20-1436	1
ONYEMEH SEA, BOBBY G	A20-0147	1
UPIN, JEFFREY D	A19-1104	1
VANMEVEREN, BRIAN S	A20-1484	1
Reinstatement Denied	2 ATTORNEYS	2 FILES
TIGUE, RANDALL D	A19-1603	1
VAN SICKLE, DAVID M	A20-0577	1

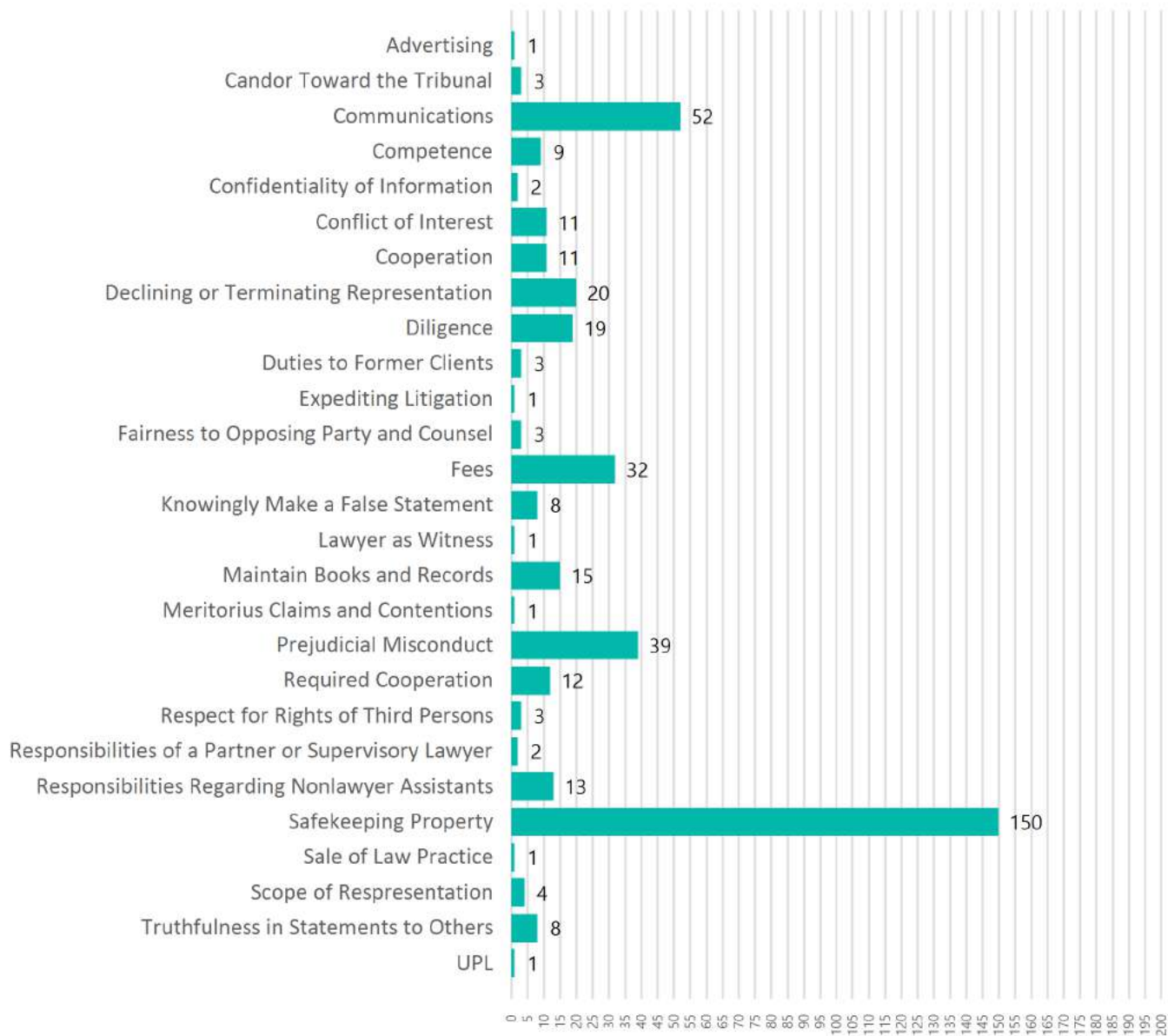
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PROBATION STATISTICS

	Files	Total
TOTAL PROBATION FILES OPEN DURING 2021		
PUBLIC SUPERVISED PROBATION FILES - 36%	29	
PUBLIC UNSUPERVISED PROBATION FILES - 19%	15	
PUBLIC PROBATION FILES TOTAL - 55%		44
PRIVATE SUPERVISED PROBATION FILES - 17%	14	
PRIVATE UNSUPERVISED PROBATION FILES - 28%	23	
PRIVATE PROBATION FILES TOTAL - 45%		37
TOTAL PROBATION FILES OPEN DURING 2021		81
TOTAL PROBATION FILES		
Total Open Probation Files as of 1/1/2021		62
Total Probation Files Opened in 2021		19
Total Probation Files Closed in 2021		-24
Total Open Probation Files as of 12/31/2021		57
TOTAL PROBATION FILES OPENED IN 2021		
PUBLIC SUPERVISED PROBATION FILES	8	
PUBLIC UNSUPERVISED PROBATION FILES	3	
PUBLIC PROBATION FILES TOTAL		11
PRIVATE SUPERVISED PROBATION FILES	2	
PRIVATE UNSUPERVISED PROBATION FILES	6	
PRIVATE PROBATION FILES TOTAL		8
TOTAL PROBATION FILES OPENED DURING 2021		19

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PROBATION AREAS OF MISCONDUCT - 2021



* Between 1/1/2021 AND 12/31/2021, there were 81 probations involving 425 rule violations.

This chart reflects the number of rule violations involved in those 81 probations, organized by area of misconduct.

**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2021 – June 2022**

Date	Topic	Location	Organization	Initials
7/20/21	Ethics for Employment Lawyers – 6 Ethics Hot Topics and How to Approach Them	Webcast	Minnesota CLE	SMH
7/27/21	Ethics of Virtual Law Practice ABA Formal Opinion 498	Zoom	West Metro CLE	BTT KKC
8/4/21	2020 in Review: An Update on Ethics	Hibbing	Twentieth District Ethics Committee	NSF
8/5/21	How to Prosecute Bad Behavior on Social Media	Zoom	NOBC	JSB
8/25/21	Criminal Justice Institute: Safekeeping Property, Funds and Files	Webcast	Minnesota CLE	SMH
9/15/21	Trust Accounts & Financial Records (& Where It All Goes Wrong)	Zoom	Washington County Law Library	JHB
9/17/21	Professional Responsibility Seminar	Minneapolis	Office of Lawyers Professional Responsibility	SMH JSB KKC BTT
9/29/21	Ethical Issues in Remote Practice	Zoom	Minnesota State Bar Association	KKC
10/5/21	Ethics Issues in Labor and Employment Practice	Zoom	Minnesota CLE	JSB
10/12/21	Ethics: How Consumer Bankruptcy Attorneys Can Avoid Ethics Complaints	Webinar	Minnesota CLE	SMH
10/26/21	Advising Clients with Dementia and Other Memory Impairments	Webinar	Minnesota CLE	KKC
11/4/21	PR Issues for the PR's Counsel	Zoom	Ramsey County Bar Association	KKC
11/17/21	Employment A to Z: Common Ethical Pitfalls for Employment Lawyers and How to Avoid Them	Webcast	Minnesota CLE	SMH
11/18/21	Misdemeanor Defense Project and Ethical Considerations	Zoom	Ramsey County Bar Association	KKC JDP
11/19/21	Ethics for Government Lawyers	Webcast	Minnesota State Bar Association	JHB
12/3/21	5 Ethics Tips From the Office of Lawyers Professional Responsibility	Zoom	Minnesota CLE	KKC
12/7/21	Ethics for Practitioners During COVID-19	Webinar	Minnesota State Bar Association	KKC PV
12/8/21	Ethics for Paralegals	Zoom	Minnesota Paralegal Association	KKC PKL
12/17/21	Advanced Contract Issues for In-House Counsel	Zoom	Minnesota CLE	SMH

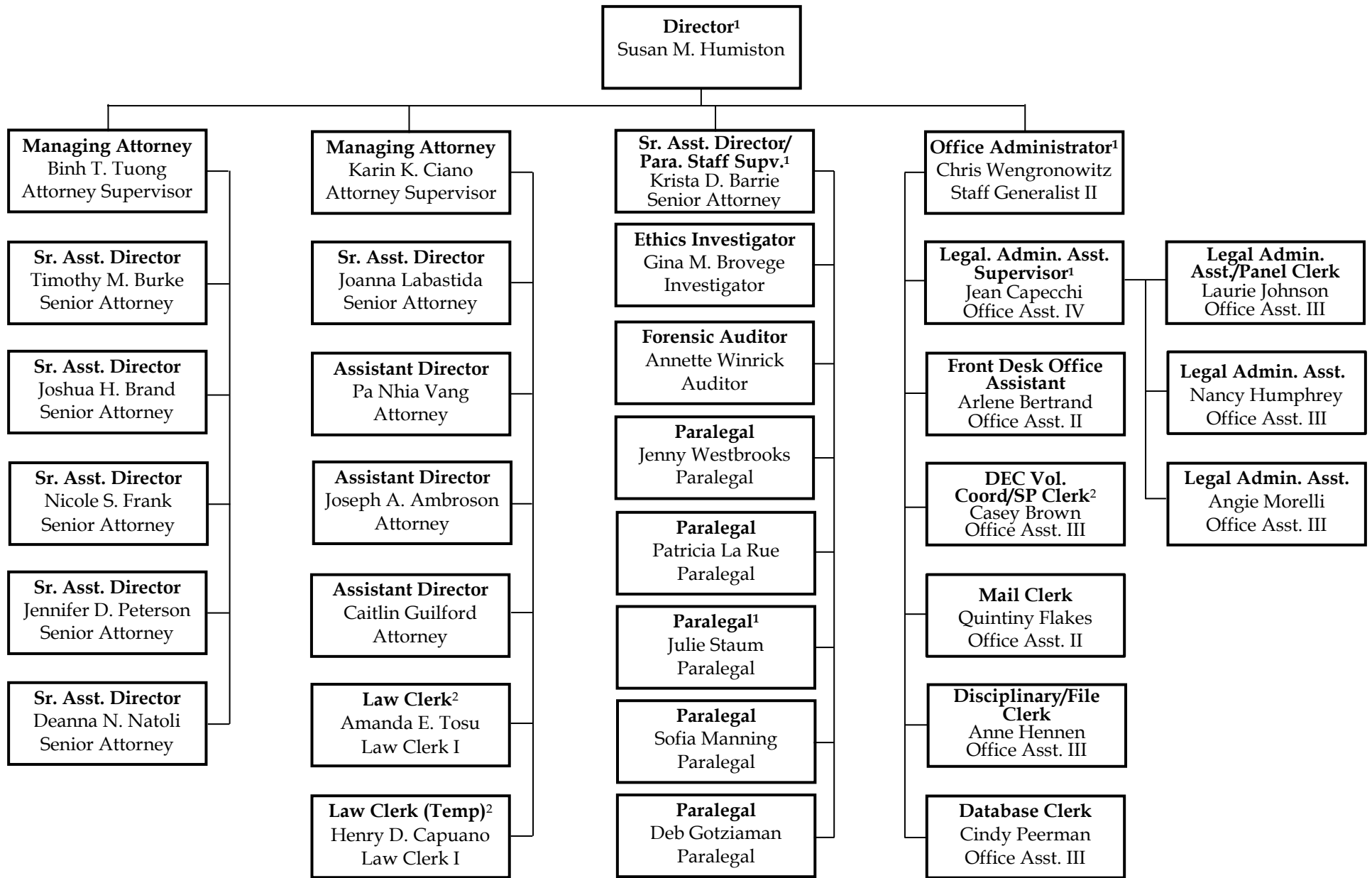
**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2021 – June 2022**

1/12/22	Counselor-at-Law: Ethical Considerations for Lawyers Whose Clients Have Increased Stress and Mental Health Challenges	Online	Anoka County Bar Association	NSF JAA
1/13/22	The 2022 New Lawyer Experience	Online	Minnesota CLE	KKC
1/13/22	Estate Planning for the Estate Planning Attorney: Solo and Small Firm Succession Stories and Strategies.	Zoom	Ramsey County Bar Association	BTT
1/20/22	Misdemeanor Defense Project and Ethical Considerations	Zoom	Ramsey County Bar Association	KKC JDP
1/22/22	Ethics FY22 Minnesota USAR-MNNG CLE	Arden Hills	Minnesota National Guard	JHB
2/7/22	Common Issues in Attorney Discipline Matters	Zoom	University of St. Thomas School of Law – Mentorship Class	NSF
2/10/22	Ethical and PR Issues for Public Defenders	Webinar	Hennepin County Public Defender’s Office	SMH JDP
2/10/22	The Lawyer Discipline System, the Work of the Office of Lawyers Professional Responsibility and Volunteer Opportunities	St. Paul	St. Paul Sunrise Rotary Club	KKC
2/11/22	Ethics & COVID	Zoom	Dakota County Law Clerks	DNN JHB
2/15/22	Unbundled Law Presentation	Zoom	Minnesota State Bar Association	KKC
2/17/22	Family Law Institute Rule 1.4 and Public Record Access	Zoom	Minnesota CLE	SMH
3/1 or 3/2/22	Professional Responsibility in Real Estate Matters	Zoom	Minnesota CLE	BTT
3/4/22	Attracting and Retaining Clients and Ethics Considerations	Minneapolis	African Diaspora Attorneys in Minnesota	SMH
3/7/22	Ethics and the Office of Lawyers Professional Responsibility	Live Online	Roseville Rotary Club	JHB
3/15/22	Proposed Changes to the Rules of Ethics, and Other Developments Every Attorney Needs to Know	Zoom	Minnesota CLE	SMH
3/29/22	Litigating Probate & Trusts Disputes in 2022 – Let’s Get Technical!	Live Online	Minnesota CLE	KKC
4/15/22	Year in Review	Zoom	Hennepin County Law Library	BTT

**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2021 – June 2022**

5/11/22	How to Avoid Ethics Complaints – Keeping the Fundamentals in Mind	In Person--MPLS	Minnesota CLE	SMH
5/11/22	A Year in Review: Update on Attorney Discipline Matters	Minneapolis	Minnesota CLE	BTT JDP
5/13/22	DEC Chairs Symposium	Zoom	OLPR	SMH TMB BTT JHB NSF KKC
5/18/22	Ethics and Technology	Zoom	Minnesota State Bar Association	BTT
5/26/22	Professional Separation: Ethical Perspectives on Helping Clients Without Taking on Their Problems	Zoom	Legal Aid of Olmsted County	SMH JAA
6/7/22	Understanding Minnesota Appellate Practice and Procedure Series: Ethical Issues in Appellate Practice	Webcast	Minnesota CLE	KKC
6/14/22	Ethics: Advising Clients with Dementia and Other Memory Impairments	Online	Minnesota CLE	KKC
6/14/22	Succession Planning for Solo Attorneys	Live Online	Minnesota CLE	BTT
6/20/22	How to Start and Build Your Law Practice: A Guide to New Beginnings in the New Normal	Minneapolis	Minnesota CLE	KKC

Office of Lawyers Professional Responsibility FY22 Organizational Chart



¹ Also Client Security Board Staff

² Part-time position

³ Not administratively subject to Director's Office.

Office pays percentage of their salary



MINNESOTA

Lawyers Professional Responsibility Board Office of Lawyers Professional Responsibility

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[Court Announces Public Member Vacancy on Client Security Board](#)

[OLPR Courtroom COVID-19 Procedures](#)

[Clifford Greene and Jordan Hart Appointed to Lawyers Board](#)

[Save the Date - September 23, 2022, Lawyers Professional Responsibility Seminar](#)

[Frequently Asked Ethics Questions Regarding a Public Defender Strike](#)

[2021 LPRB OLPR Seminar Available on-Demand](#)

[Congratulations to Allan Witz 2021 Volunteer of the Year](#)

[COVID FAQs](#)

[Court Amends Rules 4 and 5, Rules on Lawyers Professional Responsibility, effective July 14, 2021](#)

What's New

["PRIVATE DISCIPLINE in 2021," MN Bench and Bar, April 2022](#)

["ABA Opinion 500 takes on language access in the client-lawyer relationship," MN Bench and Bar, March 2022](#)

["PUBLIC DISCIPLINE in 2021," MN Bench and Bar, January/February 2022](#)

["Potential ethics rule changes," MN Bench and Bar, December 2021](#)

["Lawyer neutrals and other people's money," MN Bench and Bar, November 2021](#)

["Trust account overdrafts: what you need to know," MN Bench and Bar, October 2021](#)

["Pandemic legal ethics, part 2," MN Bench and Bar, September 2021](#)

["Lawyer Well-Being: Prescribing sleep \(Part 2\), Minnesota Lawyer, March 2019](#)

[Lawyer Well-Being: Sleep - an amazing breakthrough for lawyers," Minnesota Lawyer, March 2019](#)

Quick Links

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Legal References

[MN RULES OF PROFESSIONAL CONDUCT](#)

[FOR LAWYERS ONLY: ADVISORY OPINIONS](#)

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**ANNUAL REPORT
OF THE
MINNESOTA
CLIENT SECURITY BOARD**

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CHAIR**

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July 2022

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I. YEAR IN REVIEW.

Rule 1.10, Rules of the Minnesota Client Security Board, provides:

At least once a year and at such other times as the Supreme Court may order, the Board shall file with the Court a written report reviewing in detail the administration of the Fund, its operation, its assets and liabilities.

This thirty-fifth annual report of the Minnesota Client Security Board covers the Board’s fiscal year, FY2022, which began July 1, 2021, and ended on June 30, 2022.

The Client Security Board approved five (5) claims this year involving two (2) attorneys, in the total amount of \$14,550 (*see* Appendix 1, A. 1-2). These claims involved the following attorneys:

<u>Attorney</u>	<u>No. of Claims</u>	<u>Amount</u>
Peter Gilbert Lennington	4	\$13,250
David Walter Olson	1	\$1,300

Fifteen (15) new claims were filed this fiscal year. Eight (8) claims were carried over from the previous year. In addition to the five (5) claims which were approved for payment, three (3) claims were denied. FY22 continued for the fourth fiscal year a recent string of low volume claim years. At the end of June 2022, fifteen (15) claims against eleven (11) different lawyers remain pending before the Board. In most instances, related disciplinary or civil proceedings are pending, completion of which the Board is awaiting prior to being able to resolve the claim. Overall, after 35 years of approving claims, the Board has now approved payment of \$8,659,340.05 on 698 claims against 195 lawyers (*see* Appendix 4, A. 6-12).

The Fund continues to be fiscally healthy.

II. THE CLIENT SECURITY BOARD AND ITS PROCEDURES

Board Members. As of June 30, 2022, the following individuals served on the Board (*see* Appendix 3, A. 4-5):

<u>Name</u>	<u>City</u>	<u>Term Expires</u>
Nancy L. Helmich, Chair	Minneapolis	June 30, 2022 (second term)
Cassandra J. Bautista	Eagan	June 30, 2024 (first partial term)
Nancy Zalusky Berg	Minneapolis	June 30, 2024 (first term)
Paul J. Lehman	Minnetonka	June 30, 2023 (second term)
Cheryl M. Prince	Duluth	June 30, 2023 (first term)
Nathan B. Shepherd	Minneapolis	June 30, 2025 (second term)
Robert P. Webber	Minneapolis	June 30, 2023 (first term)

Nancy L. Helmich, a public member from Minneapolis, Minnesota, served as Board Chair for the past year. Ms. Helmich’s tenure on the Board ended on June 30, 2022, with the conclusion of her second term of service. Ms. Helmich has dedicated many years to Minnesota’s discipline system as a public member, first on the Lawyers Professional Responsibility Board, and then on the Client Security Board. As the first non-lawyer Chair in the Board’s history, Ms. Helmich demonstrated the important role public members have in maintaining the integrity of Minnesota’s discipline system. At its June 2022 annual meeting, Paul Lehman was elected as Board Chair. Mr. Lehman resides in Minnetonka and is beginning his sixth year of service on the Board. He is the second public member in the Fund’s history to serve as Chair.

During the current fiscal year, Cassandra Bautista, an MSBA nominee, was appointed to the Board for a first, partial term; attorney member Nancy Zalusky Berg was appointed to the Board for a full term—her first, and MSBA nominee Nathan Shepherd was appointed to a second term. The Court is currently seeking one public member to fill the vacancy on the Board left by the conclusion of Ms. Helmich’s tenure.

The MSBA nominates three of the five attorney members. Ms. Bautista, Mr. Shepherd and Mr. Webber serve as the MSBA nominees. Ms. Helmich and

Mr. Lehman served as the Board's public members. The Board's liaison justice from the Court is Justice Natalie Hudson.

Funding and Budget Procedures. Currently, no portion of lawyer registration funds are allocated to the Client Security Fund as the fund remains sufficient to cover anticipated losses. In 1998, the Supreme Court recommended an informal range for the balance of the Fund of \$1.5 million and \$2.5 million, with the Board to report to the Court if the Fund falls, or is projected to fall, outside of these figures. The Board projects a fiscal year-end balance of approximately \$3.6 million in June 2022. A reallocation of up to \$1 million to the Lawyers Professional Responsibility Board (LPRB) approved in June 2019, and subsequently increased to \$1.5 million in FY22, remains with the Board to continue generating interest income; this sum will be reallocated when needed by the LPRB.

The Board does not directly handle any funds or the investment of the Fund. The assessment is collected through the Office of Lawyer Registration and placed into a segregated fund within the State Treasury. The funds receive interest but due to falling interest rates, interest income has significantly declined year over year.

Based upon the information presently available to the Board concerning pending claims or known potential claims as well as historical budgeting practices, the Board budgeted \$350,000 for claim payments next year. The Board budgeted \$83,550 for all non-claim expenses, including staff services, supplies, and representation at national client protection conferences. Included in this amount is funding for a new website, which has been deferred for several years and remains delayed because a Request For Proposal (RFP) issued in FY22 failed to generate interest. It is hoped that the website update will take place in FY23. In most years, the Board has spent less than the budgeted amount on non-claim expense items. (Appendix 2, A. 3.)

Administration. The Office of Lawyers Professional Responsibility provides staff services to the Client Security Board. Susan Humiston continues to serve as Director of the Client Security Board, and was reappointed to this position in 2022. Senior Assistant Director Krista Barrie and Ethics Investigator Gina Brovege also provide services. With the assistance of the Director and Senior Assistant Director, paralegal Julie Staum handles the day-to-day operations of the Fund including contact with respondents and claimants and investigation of claims. OLPR staff also provide administrative and bookkeeping services to the Board at no cost; substantive support is provided by the OLPR at an hourly rate.

Following each meeting, the Board issues a press release regarding claims approved pursuant to the Board's policy. The press releases are also posted on the Board's website to provide public information about the Board's activities at <http://csb.mncourts.gov>. The website contains answers to frequently asked questions (FAQs), the Board's rules, the claim form (in multiple languages), staff directory, copies of the current and past annual reports and an updated list of attorneys against whom claims have been paid, similar to that at Appendix 4 (A. 6-12). The website also has links to articles written about the Client Security Board. The website is scheduled for a complete update as it is not mobile friendly.

The Minnesota Attorney General provides legal services to the Client Security Board in enforcing its subrogation rights against attorneys where claims have been paid, or against any third persons from whom payments may be legally obtained. Assistant Attorney General Scott Grosskreutz represents the Board in subrogation matters. The Board pays no attorney fees for this representation, but is responsible for direct costs of collection efforts and litigation. Where appropriate, the Attorney General also assists the Board in being listed as a victim in criminal restitution orders. The

Board thanks the Minnesota Attorney General for its excellent representation of the Board.

Also as a part of the collection process, the Board may forward matters to the Minnesota Department of Revenue (MDOR), which has a division created to assist government agencies in their collection work. Although the Attorney General continues to handle most matters for the Board that are contested, or that appear capable of prompt resolution, other matters are referred to MDOR.

Claims Procedure. Claims are initiated by the submission of a claim to the Director's Office on forms approved by the Board. The forms are provided to the claimant along with a brochure which explains the process. The claim form, brochure and copies of the Board's rules are also available via the Board's website. The claim form and brochure are available in English, Spanish, Hmong, Karen and Somali, and may be translated to other languages as necessary.

After a claim is submitted, the respondent attorney is provided an opportunity to respond in writing. The Board also has access to all lawyer disciplinary files, from which considerable information may be obtained.

Generally, attorney disciplinary proceedings against the respondent attorney will have been completed before any Client Security Fund payment is made. The Board relies heavily, although not exclusively, upon findings made in related lawyer disciplinary actions, or in related civil or criminal cases, whenever possible. The Board has no aggregate limit on the amount that may be paid per lawyer. The maximum payment per claim is \$150,000, one of the highest limits in the country. It appears to remain a sufficient maximum amount.

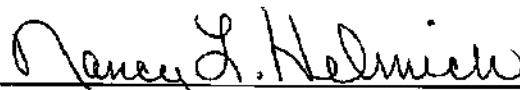
If a claim is denied, the claimant and respondent are notified in writing of the Board's determination and reasoning. The claimant has the right to request

reconsideration and a discretionary meeting with the Board, so that all claimants have a full opportunity to present the merits of their claim.

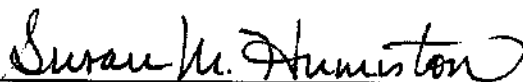
III. GOALS AND OBJECTIVES

No major funding issues are anticipated this coming year, even considering reallocation (at a date to be determined) of a large portion of the funding reserve. The Board has experienced members who continue to provide sound leadership, and the amount of funds in reserve appears to be sufficient to provide a generous pool from which qualifying claims can be satisfied. The Board remains generally caught up on its claims, with the claims that remain pending being new claims, or claims where related disciplinary proceedings are pending. The Board continues to monitor the efficacy of collection efforts against lawyers owing money to the Fund. The anticipated website update will provide the Board with the opportunity to refresh outward facing materials to ensure clarity of communications with the public regarding the purposes and availability of the Fund. The Board also continues to consider potential rule changes to ensure the rules fully facilitate the purpose of the Fund and represent best practices nationally. The Board has identified outreach to the public and bar to promote the existence of the Fund as a Board priority.

Respectfully submitted,



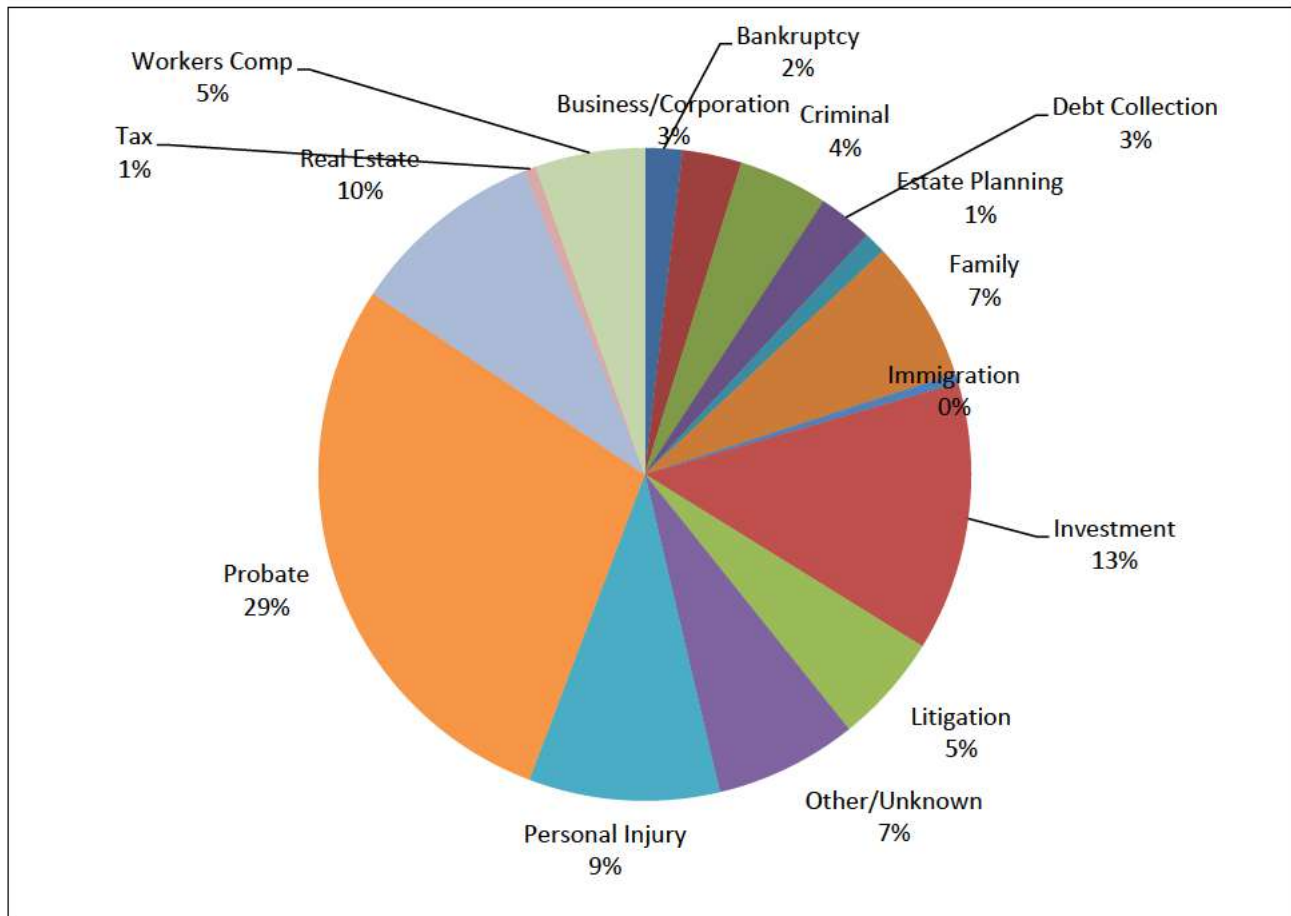
NANCY L. HELMICH, CHAIR
MINNESOTA CLIENT SECURITY BOARD



SUSAN M. HUMISTON, DIRECTOR
MINNESOTA CLIENT SECURITY BOARD

Awards of Reimbursement - July 1, 1987, through June 30, 2022

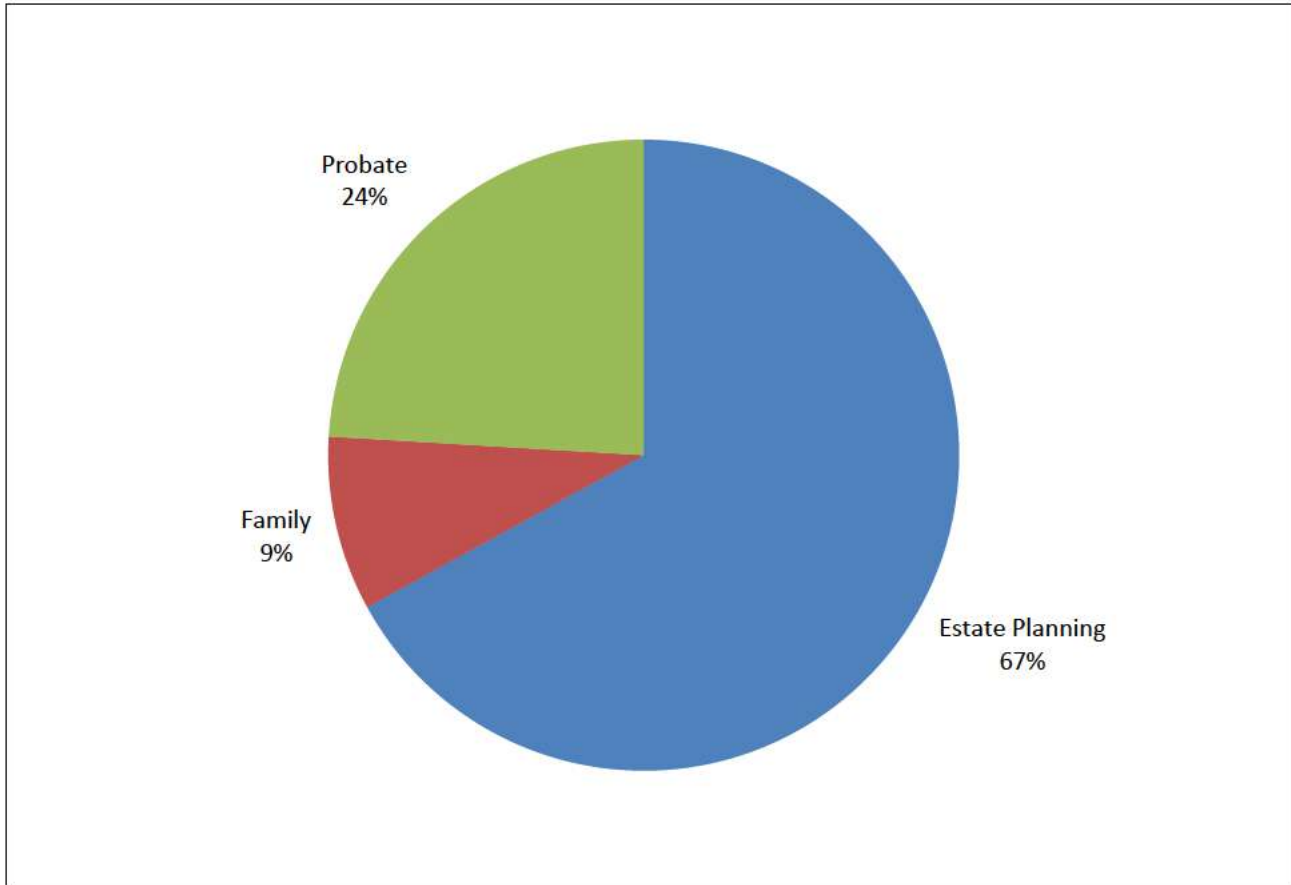
This table summarizes, by area of law, all claims for reimbursement approved by the Board since 1987



AREA OF Law	Sum of Awards	Amount of Awards
Bankruptcy	34	\$160,727.61
Business/Corporation	16	\$253,107.40
Criminal	81	\$385,156.48
Debt Collection	38	\$232,607.30
Estate Planning	10	\$94,701.68
Family	122	\$606,800.85
Immigration	21	\$41,490.00
Investment	17	\$1,154,609.47
Litigation	50	\$470,149.42
Other/Unknown	91	\$610,505.27
Personal Injury	65	\$818,871.96
Probate	71	\$2,474,773.01
Real Estate	50	\$835,162.62
Tax	12	\$51,312.28
Workers Comp	20	\$469,364.70
Grand Total	698	\$8,659,340.05

Awards of Reimbursement - July 1, 2021, through June 30, 2022

This table summarizes, by area of law, all claims for reimbursement approved by the Board during fiscal year 2022.



AREA OF Law	Sum of Awards	Amount of Awards
Estate Planning	3	\$9,750.00
Family	1	\$1,300.00
Probate	1	\$3,500.00
Grand Total	5	\$14,550.00

CLIENT SECURITY FUND FINANCIAL HISTORY

Fiscal Year	Contribution by Bar	Investment Income	Restitution	Number of Claims Paid	Amt. Paid to Claimants	Other Expenses	Balance Year End
2005	\$253,728	\$53,390	\$31,018	7	\$195,025	\$37,885	\$2,452,410
2006	\$255,894	\$110,597	\$87,217	17	\$234,848	\$44,375	\$2,626,895
2007	\$288,725	\$148,689	\$73,744	2	\$135,417	\$52,996	\$2,949,637
2008	\$320,403	\$147,062	\$135,226	9	\$168,905	\$63,134	\$3,320,289
2009	\$49,419	\$90,905	\$128,285	15	\$120,656	\$47,736	\$3,420,506
2010	\$15,976	\$30,574	\$68,558	4	\$305,500	\$46,854	\$3,183,261
2011	\$353,085	\$18,996	\$34,977	23	\$58,156	\$55,038	\$3,477,125
2012	\$330,519	\$18,786	\$62,523	21	\$117,620	\$56,108	\$3,715,293
2013	\$345,109	\$20,016	\$31,401	27	\$383,002	\$37,810	\$3,691,007
2014	\$354,256	\$18,050	\$37,951	18	\$383,712	\$61,898	\$3,655,654
2015	\$351,384	\$19,199	\$55,427	12	\$137,786	\$91,151	\$3,852,727
2016	\$355,992	\$27,033	\$43,441	11	\$53,516	\$67,526	\$4,160,401
2017	\$350,556	\$42,083	\$40,058	66	\$414,721	\$62,333	\$4,119,044
2018	\$178,275	\$62,380	\$31,514	29	\$363,564	\$53,660	\$3,976,990
2019	\$179,292	\$91,139	\$73,685	7	\$389,645	\$32,523	\$3,898,938
2020	\$10,020	\$68,371	\$44,840	5	\$21,500	\$19,932	\$3,980,737
2021	\$2,276	\$17,049	\$25,458	7	\$29,176	\$19,985	\$3,976,360
2022 (thru 6/30/22)	\$1,234	\$12,756	\$26,120	5	\$14,550	\$6,997	\$4,003,577

Minnesota Client Security Board Members 1987-2022

BOARD MEMBERS

*Kathleen Clarke Anderson	Minneapolis	2010-2017
*Sister Mary Madonna Ashton	St. Paul	1992-1998
Timothy H. Baland	Anoka	2018-2021
Dana Banwer	Minneapolis	2011-2014
Robert B. Bauer	Apple Valley	2013-2019
Cassandra J. Bautista	Eagan	2022-present
Nancy Zalusky Berg	Minneapolis	2021-present
Gregory M. Bistram	Minneapolis	2014-2019
Bailey W. Blethen	Mankato	1991-1997
Daniel L. Bowles	Edina	1994-2000
*Sandra Brown	Minnetonka	1990-1996
Kim Buechel Mesun	St. Paul	1993-1999
Kenneth D. Butler	Duluth	2008-2014
Richard I. Diamond	Minnetonka	1997-2003
Gary G. Fuchs	Eagan	2002-2008
Amber N. Garry	Minneapolis	2015-2017
Gilbert W. Harries	Duluth	1987-1991
*Sheldyn M. Himle	Minneapolis	2008-2010
*Nancy L. Helmich	St. Paul	2016-present
Sharon G. Hobbs	Sartell	2018-2021
*Jean L. King	St. Paul	1987-1992
Kevin J. Kolosky	Minneapolis	2017-2018
Timothy J. Kuntz	South St. Paul	1996-2002
Earle F. Kyle IV	Minneapolis	1993-1996
*Paul J. Lehman	Minnetonka	2017-present
Robert T. Lund	Bloomington	2003-2009
*Beverly K. McKinnell	St. Paul	1996-2002
*Mary L. Medved	Shoreview	2010-2016
Richard A. Nethercut	Harmony	2006-2012
Timothy M. O'Brien	Minneapolis	2007-2013
Melvin I. Orenstein	Minneapolis	1987-1993
*Constance S. Otis	St. Paul	1987-1990
Paul C. Peterson	Minneapolis	2009-2015
*Judith A. Pinke	Minneapolis	1998-2004
Cheryl M. Prince	Duluth	2019-present
Michael T. Rengel	Fergus Falls	2001-2007
*Bonnie R. Russ	St. Paul	2004-2010
Daniel L. Rust	Crookston	1995-2001
Warren R. Sagstuen	Minneapolis	2000-2000
*Sally D. Sawyer	Minneapolis	2002-2008
Nathan B. Shepherd	Minneapolis	2019-present
Ronald B. Sieloff	St. Paul	1987-1994

Harriet J. Sims	Minneapolis	2005-2011
Daniel A. Tollefson	Becker	2012-2018
James B. Vessey	Minneapolis	1987-1993
Nancy L. Vollertsen	Rochester	1987-1995
John S. Watson	Minneapolis	2000-2006
Robert P. Webber	Minneapolis	2020-present
Margaret L. Westin	Minneapolis	1999-2005
Stuart T. Williams	Minneapolis	2014-2020

*Public Members

CSB Claims by Attorney (Approved)

Respondent	Number of Claims	Approved Amount	Disciplinary Action	City
Aase, William J.	20	\$93,935.15	Deceased	Maplewood
Amdahl, Charles O.	2	\$10,000.00	None	Minneapolis
Anderson, Arne D.	4	\$4,950.00	Suspended	Duluth
Anderson, Harold W. E.	2	\$39,258.97	Disbarred	Grand Forks
Andrew, John M.	2	\$100,000.00	Disbarred	Shoreview
Barta, Loren M.	3	\$8,947.93	Suspended	Prior Lake
Batdorf, Richard K.	1	\$50,000.00	Disbarred	Minneapolis
Belfay, Roger Lincourt	1	\$3,600.00	Deceased	St. Paul
Benson, John T.	1	\$50,000.00	Disbarred	St. Paul
Berg, James L.	8	\$73,529.03	Disbarred	Minneapolis
Berndt, Deno W.	16	\$588,012.94	Disbarred	Minneapolis
Bieter, Thomas	2	\$1,500.00	Disability/Inactive	Duluth
Brehmer, David L.	7	\$7,656.25	Disbarred	Bloomington
Brost, Linda A.	1	\$10,000.00	Disbarred	St. Paul
Brudvig, Thomas M.	4	\$3,365.00	Suspended	Roseville
Buchanan, Shana Gail	4	\$16,100.00	Disability/Inactive	St. Paul
Campbell, Dyan L.	5	\$2,953.53	Suspended	North St. Paul
Carpenter, Gregory A.	1	\$1,000.00	Suspended	Minneapolis
Chacon, Jeanne T.	1	\$700.00	Disbarred	Shakopee
Clark, Jill E.	1	\$1,000.00	Disability/Inactive	Golden Valley
Cohen, Sr., Edward M.	1	\$2,245.83	Disbarred	St. Louis Park
Coleman, Richard J.	1	\$1,000.00	Public Reprimand/Probation	West St. Paul
Corbin, Michael J.	1	\$1,250.00	Deceased	Faribault
Crissey, Heidi	1	\$3,000.00	Suspended	Stillwater
Danna, Anthony A.	3	\$81,625.00	Disbarred	St. Paul
Davis, Daniel A.	3	\$44,486.66	Disbarred	Edina
Day, Richard G.	2	\$1,000.00	Suspended	Edina
DeRycke, Eric A. L.	1	\$2,000.00	Disbarred	Lake Benton
Douglas, Bruce C.	11	\$225,309.60	None	Edina

CSB Claims by Attorney (Approved) (Cont'd.)

Respondent	# of Claims	Approved Amount	Disciplinary Action	City
Dovolis, Helen A.	16	\$78,317.19	Disbarred	Minneapolis
Drummer, Mary Ellen	2	\$4,856.83	Deceased	Bloomington
Duchon, James Carl	3	\$2,900.00	Suspended	Edina
Duggins, Terrence Patrick	6	\$27,300.00	Disability/Inactive	Roseville
Dygert, Robert W.	3	\$70,491.00	Disbarred	Minneapolis
Engwall, Gregory B.	6	\$474,262.18	None	Winthrop
Erickson, Bruce E.	2	\$1,995.00	Suspended	Winona
Feldman, John H.	2	\$12,954.00	Disbarred	Minneapolis
Flanagan, John J.	6	\$113,626.59	Disbarred	St. Paul
Flodine, Michael T.	1	\$3,000.00	Suspended	St. Paul
Fox, Kristi Ann	1	\$2,527.00	Disability/Inactive	Eagan
Frants, Michael	3	\$29,827.72	Disbarred	Minneapolis
Freeman, Theresa A.	2	\$3,587.50	Suspended	Edina
French, Rodney M.	6	\$4,062.50	Suspended	Minneapolis
Fru, Joseph Awah	1	\$1,600.00	Disbarred	Fridley
Garcia, Albert A., Jr.	11	\$34,840.00	Disbarred	Minneapolis
Getty, Paris DonRay	5	\$24,278.00	Disbarred	St. Paul
Goldstein, Robert Mark	4	\$11,173.40	Disbarred	St. Paul
Gomsrud, Richard G.	1	\$700.00	Suspended	St. Paul
Gorshteyn, Boris A.	3	\$21,105.79	Suspended	Excelsior
Graham, Timothy E.	3	\$6,257.98	Disbarred	Rochester
Gronbeck, David	1	\$500.00	Suspended	Minneapolis
Grzybek, John E.	1	\$750.00	Disbarred	St. Paul
Gurstel, Norman K.	33	\$147,270.05	Disbarred	Edina
Haefele, Richard J.	1	\$400.00	None	Chaska
Handorff, Thomas Francis	23	\$41,661.23	Deceased	Minneapolis
Hansen, Dale Allen	2	\$26,809.00	Disbarred	Anoka
Hanvik, James T.	1	\$264.00	Suspended	Minneapolis
Harnois, Michael D.	2	\$1,999.00	Disability/Inactive	Duluth
Harp, Reynaud L.	2	\$3,702.00	Disbarred	St. Paul
Harrigan, Thomas G.	2	\$131,356.46	Disbarred	Edina

CSB Claims by Attorney (Approved) (Cont'd.)

Respondent	# of Claims	Approved Amount	Disciplinary Action	City
Hatling, John Allen	3	\$7,721.65	Deceased	Fergus Falls
Heikens, Steven G.	2	\$12,800.00	Suspended	Minneapolis
Heikkila, Neil D.	2	\$90,916.82	Disbarred	Hopkins
Hendricksen, Harald F.	2	\$17,875.00	Suspended	Annandale
Henke, David E.	1	\$1,000.00	Suspended	Spring Lake Park
Henline, Roy B.	4	\$232,041.54	Disbarred	White Bear Lake
Hobbs, Nathaniel P.	4	\$5,701.00	Suspended	Minneapolis
Hollender, R. Fred	1	\$2,227.74	None	Minneapolis
Holt, Mark David	4	\$468,933.12	Disbarred	North Oaks
Hoover, Michael J.	1	\$1,500.00	Disability/Inactive	Minneapolis
Hulstrand, Jr., George E.	2	\$2,600.00	Disbarred	Willmar
Hummel, Tucker Joseph	1	\$10,794.04	Disbarred	Bloomington
Hunter, James W.	5	\$21,900.00	Disbarred	Minneapolis
Isaacs, Clark F.	1	\$535.78	Disbarred	St. Paul
Jellinger, Richard	1	\$1,000.00	Disbarment (stayed) Suspended	Anoka
Joanis, William J.	1	\$91,166.31	None	Minneapolis
Johnson, Richard W.	2	\$9,362.00	Disbarred	Red Wing
Johnson, Ronald J.	1	\$7,196.71	Disbarred	Hopkins
Jones, Matthew Harvey	1	\$3,500.00	Suspended	Chanhassen
Kadinger, George M.	2	\$1,500.00	Suspended	St. Paul
Karlsen, Bent	2	\$4,200.00	Suspended	Detroit Lakes
Kaszynski, William P.	1	\$550.00	Disbarred	St. Paul
Kerschbaum, Anthony J.	3	\$2,000.00	Suspended	Minneapolis
Kinnunen, Steven J.	1	\$500.00	Suspended	Minneapolis
Klane, Murray R.	1	\$94,647.88	Disbarred	Minnetonka
Kramer, Jeremy Thomas	1	\$83.58	Disbarred	Owatonna
LaChapelle, Arthur W.	2	\$18,400.00	Disbarred	St. Paul
Ladd, William L.	13	\$49,542.60	Disbarred	Minneapolis
Larsen, Dean D.	1	\$40,000.00	Disbarred	Eden Prairie
Larson, Gregory K.	2	\$3,250.00	None	Little Falls

CSB Claims by Attorney (Approved) (Cont'd.)

Respondent	# of Claims	Approved Amount	Disciplinary Action	City
Leino, Stanley J.	6	\$9,921.06	Suspended	Scandia
Lennington, Peter G.	4	\$13,250	Disbarred	St. Paul
Levenstein, Eli C.	1	\$368.00	Suspended	Minneapolis
Logan, Diana S.	3	\$560.00	Suspended	Minneapolis
Lohse, David Jason	1	\$900.00	Suspended	Golden Valley
Lundeen, Steven P.	6	\$5,574.00	Disbarred	Minneapolis
Magadance, Pamela M.	1	\$585.00	None	St. Paul
Marden, Steven K.	5	\$16,863.31	None	St. Paul
Maresh, Thomas F.	1	\$6,500.00	Disbarred	Eden Prairie
Marshall, Gary L.	7	\$24,170.00	Disbarred	Hoffman
Martinez, Michael Lee	1	\$2,500.00	Suspended	St. Paul
Matson, Jesse David	5	\$32,370.00	Disbarred	Detroit Lakes
McCarthy, Justin H.	2	\$58,679.24	Disbarred	St. Louis Park
McCormick, David L.	3	\$16,500.00	Suspended	Minneapolis
McGrath, F. Patrick	1	\$1,128.00	Suspended	St. Paul
McLean, Nathan K.	11	\$20,257.00	Suspended	St. Paul
McNabb, Gerald	13	\$147,866.06	Disbarred	St. Paul
Merlin, Carol Sue	1	\$500.00	Suspended	Minneapolis
Meshbeshier, Richard M.	2	\$5,500.00	None	Minnetonka
Moe, Carlton E.	1	\$89,325.52	Disbarred	West St. Paul
Moe, Paul Arthur	1	\$15,957.28	Disbarred	Minnetonka
Mohammad, Murad Mowaffak	4	\$20,500.00	Disbarred	Minneapolis
Montgomery Montez, Angela	1	\$3,950.00	Suspended	Cottage Grove
Morgeson, Sr., Dennis John	8	\$547,922.67	Disability/Inactive	Edina
Mortensen, William C.	2	\$7,764.00	Disability/Inactive	St. Louis Park
Mose, William G.	2	\$400.00	Suspended	Bloomington
Mulvahill, James P.	1	\$15,000.00	Disbarred	Wayzata
Murphy, Gerald W.	9	\$4,980.99	Disbarred	Duluth
Nelson, John A.	3	\$245,024.03	Disbarred	Willmar

CSB Claims by Attorney (Approved) (Cont'd.)

Respondent	# of Claims	Approved Amount	Disciplinary Action	City
Norberg, Amy Beth	1	\$3,100.00	Suspended	Maple Grove
Olsen, Lawrence E.	1	\$50,000.00	Disbarred	Bloomington
Olson, David Walter	1	\$1,300	Deceased	Wahkon
Orlins, Peter I.	11	\$419,843.39	Disbarred	Richfield
Ornstein, Mitchell R.	1	\$919.75	Suspended	Minneapolis
Ostfield, Benjamin J.	3	\$15,297.72	Disbarred	Minneapolis
Ostroot, Timothy V.	1	\$1,200.00	Disbarred	Champlin
Palm, Dennis Lee	2	\$4,080.00	Disability/Inactive	Little Canada
Pang, Gary Y.	3	\$6,323.00	Disbarred	Minneapolis
Pearson, Kenneth R.	2	\$39,000.00	Disbarred	Golden Valley
Pegg, J. C.	1	\$2,500.00	Reprimanded	Owatonna
Petry, Rickie Leonard	1	\$2,000.00	Suspended	Minneapolis
Pierce, Brian T.	1	\$2,500.00	Disbarred	Lakefield
Pitzele, Mark D.	3	\$16,419.84	Disbarred	St. Louis Park
Ploetz, John W.	2	\$108,494.71	Disbarred	St. Paul
Plowman, George E.	4	\$81,144.77	Disbarred	Prior Lake
Polt, Thomas M.	3	\$17,082.02	Disbarred	Eyota
Poppe MacKenzie, Jill Alane	1	\$1,357.50	Suspended	Ohio
Pucel, Cherylyn T.	1	\$3,500.00	Suspended	Minneapolis
Pyles, David A.	1	\$16,450.00	Suspended	Bloomington
Rambow, Paul Roland	4	\$89,974.08	Disbarred	Minnetonka
Ramler, George C.	1	\$1,500.00	Disbarred	Chanhasen
Randall, Michael H.	2	\$4,708.00	Disbarred	Brooklyn Center
Rebeau, Gregory J.	1	\$3,911.50	Suspended	St. Paul
Redburn, David Timothy	2	\$3,100.00	Suspended	Brooklyn Park
Resnik, Ronald	17	\$69,836.00	Disbarred	Brooklyn Center
Revering, Calandra Faye	1	\$600.00	Suspended	Maple Grove
Rhodes, Bradley C.	2	\$1,850.00	Disbarred	Aitkin
Rhodes, Julia K. Satterlee	3	\$6,250.00	Suspended	Hopkins
Riggs, George C.	2	\$1,350.00	None	Blaine

CSB Claims by Attorney (Approved) (Cont'd.)

Respondent	# of Claims	Approved Amount	Disciplinary Action	City
Rondestvedt, Stephen J.	23	\$853,189.12	Disbarred	Minneapolis
Rothstein, Morry N.	3	\$7,500.00	Disbarred	Minneapolis
Rueb, Terry H.	1	\$15,000.00	Suspended	Burnsville
Ruttger III, Max J.	1	\$25,678.15	Disbarred	Brainerd
Rymanowski Jr., Joseph A.	4	\$7,862.00	Disbarred	St. Paul
Saltzstein, Geoffrey R.	2	\$56,235.00	Disbarred	Edina
Samborski, Steve C.	23	\$231,829.50	Disbarred	Minnetonka
Sampson, Mark A.	20	\$404,742.04	Disbarred	Fridley
Sayaovong, Amoun Vang	1	\$3,500.00	Disbarred	Milwaukee, WI
Schmitt, Martha G.	1	\$14,624.62	Suspended	Minneapolis
Scott, John O.	2	\$57,821.34	None	Perham
Seiler, Victor P.	1	\$2,810.77	None	Minneapolis
Sheffey, Ralph E.	1	\$5,000.00	Suspended	Rochester
Simonet, William B.	5	\$50,411.56	Disbarred	Stillwater
Simonson, Paul L.	1	\$2,360.23	Disbarred	Minneapolis
Singer, Michael G.	1	\$63,000.00	Suspended	Minneapolis
Skonnord, James T.	5	\$2,349.26	Suspended	St. Paul
Smith, Glenn L.	3	\$139,391.05	Disbarred	Edina
Smith, Thomas Tippet	1	\$141.50	Suspended	Bemidji
Soderberg, James W.	1	\$557.87	Suspended	Winona
Soronow, Steven F.	18	\$28,180.00	Suspended	Minneapolis
Stockman, William L.	1	\$25,000.00	Disbarred	Duluth
Stottler, Travis D.	3	\$18,262.00	Suspended	Lino Lakes
Strid, Dennis W.	1	\$1,197.00	Suspended	Minneapolis
Sullivan, Kevin P.	1	\$200.00	Suspended	Elk River
Swerine, Brian A.	8	\$23,645.40	Disbarred	Brainerd
Swokowski, Jay G.	4	\$7,724.50	Disbarred	Anoka
Szarke, Steven B.	1	\$1,876.38	Disability/Inactive	Buffalo
Tackett, John Wade	1	\$4,500.00	Deceased	Minneapolis
Thompson, Joel R.	2	\$6,160.00	Suspended	Detroit Lakes
Udeani, Ignatius C.	1	\$1,000.00	None	Bloomington

CSB Claims by Attorney (Approved) (Cont'd.)

Respondent	# of Claims	Approved Amount	Disciplinary Action	City
Ulanowski, Lawrence W.	2	\$2,249.00	Disbarred	Brainerd
Ulstad, Bjorn	1	\$2,500.00	None	St. Paul
Van House, David J.	1	\$300.00	Suspended	Shoreview
Vaught, Samuel M.	2	\$85,685.71	Suspended	St. Paul
Verbrick, Michael D.	2	\$5,000.00	Disability/Inactive	St. Paul
Vinitzky, Richard S.	2	\$20,000.00	Disability/Inactive	St. Paul
Voss, Barry V.	4	\$37,400.00	Disbarred	Edina
Walker Jr., Samuel	5	\$19,945.00	Disbarred	St. Paul
Weber, Deborah A.	1	\$1,300.00	None	Minneapolis
Weems, Mark T.	7	\$70,901.64	Disbarred	Shoreview
Weisberg, Robert Scott	2	\$9,848.52	Suspended	St. Louis Park
Wheat, Donald A.	4	\$106,141.37	Disbarred	Eagan
White, Thomas Joseph	2	\$13,400.00	Disbarred	Minneapolis
Wolff, Erin Marie	1	\$100.00	Disbarred	Eden Prairie
Woroby, Maria Katherine	5	\$14,490.00	Disability/Inactive	St. Paul
Wyant, Bruce P.			Disbarred	<i>see Morgeson</i>
Wylde, John R.	1	\$3,775.00	None	Minneapolis
Total Respondents 195	698	\$8,659,340.05		

TAXES, PROFESSIONAL DEBT, CHILD SUPPORT, AND LAWYER DISCIPLINE

BY SUSAN HUMISTON ✉ susan.humiston@courts.state.mn.us



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Security Board. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

As I write this column, income taxes are due. Did you file on time? If not, did you request an extension of the date on which to file? If you're also an employer, have you kept up with your quarterly employer withholding filing and payment obligations, both federal and state? If not, there may be professional responsibility issues to address in addition to issues raised by taxing authorities.

Since 1972, failure to file individual income tax returns is professional misconduct for lawyers warranting, in many instances, public discipline.¹ Although there is no specific ethics rule on this issue, the court has held:

[W]e hold that the failure to file income tax returns represents a violation of a lawyer's oath of office and further represents a violation of the [Rules of Professional Conduct], and that it will be the subject of disciplinary proceedings.... Lawyers in this state should henceforth understand clearly that the type of violation under consideration here is the proper subject of consideration by the Board of Professional Responsibility and this court, and that disciplinary proceedings are mandatory in all cases of failure to file income tax returns.²

Neither a criminal conviction nor a specific finding of willfulness is required. Rule 10(d), Rules on Lawyers Professional Responsibility (RLPR), authorizes a Lawyers Board panel to find probable cause for public discipline on a motion (that is, without any input from the respondent attorney) for certain serious misconduct, including "repeated non-filing of personal income tax returns." So it remains incumbent on all licensed attorneys to timely file their federal and state individual income tax returns or face potential disciplinary consequences.

The Court is generally less focused on failure to pay individual taxes (as long as timely filings are made), as the Court does not want the discipline system to serve as a collection unit of taxing authorities. Lawyers who serve as employers should take very seriously, however, their obligation to make required filings *and* timely pay employer withholdings.

In 1987, the Court extended its holding concerning failure to file tax returns to include em-

ployer withholding returns.³ Additionally, the Court subsequently made clear that failure to remit withholdings is treated more seriously than failing to pay one's own taxes, as the lawyer "essentially converts to his own use temporarily money belonging to his employees which he withheld from paychecks and placed in his business checking account."⁴

Timely filing all tax returns and promptly paying employee withholdings are important professional obligations that should not be taken lightly.

Professional debt

It is also misconduct for lawyers to fail to pay professionally incurred debt, such as court-reporter charges, interpretation services, or expert fees, to name a few. Where a judgment has been obtained against a lawyer, failure or refusal to pay the debt is considered conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d), MRPC.⁵ The existence of a judgment is key, however. Absent a prior judgment, the Office will not investigate such debt—again so as not to become a collection agency. The Office also does not generally get involved in non-law, non-tax-related financial obligations (with one exception, noted below).

Maintenance or child support obligations

Rule 30, Rules on Lawyers Professional Responsibility (RLPR), provides for an administrative suspension of an attorney's license upon notice that a lawyer is not in compliance with maintenance or child support obligations, where the attorney has not entered into and become compliant with a payment plan for such obligations. This does not happen frequently, but it does occur, and suspension is mandatory upon the necessary showing. This is in accord with legislation that mandates suspension of other professional licenses for the same conduct.

Conclusion

Failure to promptly file tax returns, pay law-related judgments, and remain current with family support obligations can all lead to discipline (or an administrative suspension), as such conduct is viewed as contrary to professional obligations. While neither the Court nor this Office is interested in being overly involved in the financial lives of lawyers, there are certain financial obligations so closely tied to respect for the law and the administration of justice that discipline may be warranted. ▲

NOTES

- ¹ *In re Bunker*, 199 N.W.2d 629 (Minn. 1972).
- ² *Id.* at 631-32. In general, the court has held that failure to file a tax return can constitute criminal conduct under Rule 8.4(b), Minnesota Rules of Professional Conduct (MRPC), or conduct prejudicial to the proper administration of justice under Rule 8.4(d), MRPC.
- ³ *In re Johnson*, 414 N.W.2d 199 (Minn. 1987).
- ⁴ *In re Gurstel*, 540 N.W.2d 838, 841 (Minn. 1995).
- ⁵ *In re Stanbury*, 561 N.W.2d 507, 510 (Minn. 1997).

ADVERTISING RULE CHANGES

BY SUSAN HUMISTON ✉ susan.humiston@courts.state.mn.us



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Security Board. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

Effective September 1, 2022, the section of the ethics rules colloquially called the “advertising rules” will undergo substantial revisions. Notably, most instances of the word “advertising” are gone from the rules, with a broader focus on *information* relating to a lawyer’s services. Let’s review the changes.

Rule 7.1: Communications Concerning a Lawyer’s Services

The cardinal rule remains the same: “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services.” The rule continues to state: “A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.”

Remember, this rule applies to all communications about the lawyer’s services, whether in writing on your website bio or through verbal communications you have with clients or prospective clients at any point. Do not try and upsell your experience or expertise. Make sure all claims regarding your credentials, experience, and services are grounded in facts you can substantiate. It should go without saying, but if you have not done something before, do not claim that you have done so. Take care not to mislead by omitting relevant facts that place any statement in context.

Rule 7.2: Communications Concerning a Lawyer’s Services: Specific Rules

New Rule 7.2 is substantially revised, starting with the title. No longer called “Advertising,” the rule addresses specific issues, building on the cardinal rule of Rule 7.1—be truthful and non-misleading. Rule 7.2 carries forward the prohibition against paying for referrals, except in specifically delineated situations. Lawyers may still pay for the reasonable costs of advertisements. Lawyers can pay the usual charges of a legal services plan.

Lawyers may also pay the usual charges of a lawyer referral service, both not-for-profit lawyer referral services (which has always been permissible) and now also the reasonable costs of other “qualified” lawyer referral services. “Qualified” services can be for-profit referral services that are qualified by the regulatory authorities. As stated in the petition to the Court, the purpose

of qualification is generally to ensure the referral service is: (1) consumer-oriented; (2) provides unbiased referrals to lawyers with appropriate experience in the subject matter of the representation; and (3) affords other client protections, such as complaint procedures or malpractice insurance requirements. The ABA has such a qualified referral program, which many non-profit and for-profit referral services use to show they are qualified within the meaning of the rule.

Perhaps most notably, new Rule 7.2(b)(5) allows nominal “thank you” gifts as an exception to the general prohibition against paying anything of value for recommendations. Specifically, lawyers may now give a “nominal gift as an expression of appreciation” as long as those nominal gifts are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.

We frequently receive questions on the ethics hotline about how to ethically thank someone for a referral. Before September 1, 2022, the answer was a nice written thank you. Now you can provide, for example, a gift card to Target or to a local restaurant as a thank you for the referral. What is nominal is not defined but it should be something one would consider to be a token of appreciation. Remember, there is no such thing as ethically permissible finder’s fees in Minnesota or otherwise paying for referrals. You may share attorney’s fees with an attorney not in your firm if you comply with Rule 1.5(e), Minnesota Rules of Professional Conduct (MRPC). Otherwise, you should not be providing anything of value (beyond that approved in Rule 7.2) for a referral or recommendation.

In the changes effective September 1, 2022, the Court also maintained the “specialist” language previously in Rule 7.4(c), moving it to Rule 7.2. As a reminder, a lawyer cannot state or imply that they are a specialist or certified as a specialist in a particular field of law unless they identify the certifying organization and disclose whether it is accredited by the Minnesota Board of Legal Certification. You may remember from a prior article that there was debate between the state bar, the Lawyer’s Board, and others as to use of the term “specialist” or the phrase “certified as a specialist.” The Court continued with the status quo but moved the text from Rule 7.4 to Rule 7.2.

Finally, in another rule expansion that should

be noted by the bar, for all communications relating to the lawyer's services in any media, lawyers need to include the name of the individual lawyer or law firm responsible for the communication (this has always been the case) as well as contact information (this is new). So please remember to include some form of contact information to ensure that questions regarding content can be addressed.

Notably absent from the revised rules is a requirement that anything be marked "Advertising Material." Yay! Keep the language if you like, but it is no longer ethically required.

Rule 7.3: Solicitation of Clients

There are several changes to Rule 7.3 worth your attention. The rule now includes a definition of "solicitation" in Rule 7.3(a) as "a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person whom the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter." Thus, solicitation is specific to a communication that is directed at someone you know or should know needs a lawyer and includes an offer to provide legal services.

The rule then narrows the prohibited solicitation to "live person-to-person contact." The exceptions to the prohibition were also expanded to make live contact permissible if: the person contacted live is a lawyer; a person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or a person who routinely uses for business purposes the type of legal services offered. The rule maintains the prohibition against any solicitation if the target has made known the desire not to be solicited or the solicitation involves coercion, duress, or harassment.

Importantly, the rule no longer covers live person-to-person efforts to secure business if made generally and not to individuals known to be in need of particular legal services. Further, "live person-to-person contact" can mean in person, or real-time telephonic or Zoom-like communications, but it is not meant to cover chat rooms, text messages, or other written communications that recipients may easily disregard.

Together, these changes broaden the population of individuals that can be personally contacted to request work, hopefully facilitating business development efforts, while maintaining the portions of the rule designed to prohibit overreach toward individuals in need of legal services at a time when they are vulnerable to potential undue influence.

Since the ABA expanded the model advertising rules in 2018 (most of which Minnesota is adopting now), questions and experience led the ABA to provide further guidance on solicitation, particularly around the supervision obligations relating to solicitation. In April 2022, the ABA issued Formal Opinion 501 on solicitation. It is worth your time if you have decided to use individual lead generators or other personnel to expand your marketing efforts.

It is well-settled that lawyers supervising others—whether they are lawyers or non-lawyers, employees, contract personnel, or vendors—have an ethical obligation to make reasonable efforts to ensure that all persons working with the lawyer are trained to comply with the ethics rules, including the expanded solicitation rules. Further, a lawyer cannot do through others that which they cannot do themselves. Helpfully, the opinion goes through several hypotheticals of permissible and impermissible solicitation examples.

Conclusion

The new rules regulating communications about a lawyer's services streamline and simplify our obligations and are a welcome update. Please take the time to familiarize yourself with the changes. Most of us market ourselves or our services and, particularly if you wish to up your marketing game or expand your lead-generation work, you should make sure that you and the others with whom you are associated understand the new rules of engagement. As noted in the Court's May 13, 2022 order adopting the changes to the text of the rules (available on our website), the comments are still a work in process as of the writing of this article, so please watch our website for additional updates. And as always, please contact us if you have questions regarding your ethical obligations at 651-296-3952, or www.lprb.mncourts.gov ▲

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