

STATE OF MINNESOTA
BOARD OF CONTINUING LEGAL EDUCATION

ANNUAL REPORT - FY 87/8

C 2-84-2163

OFFICE OF
APPELLATE COURTS

JUN 30 1988

FILED

TO: SUPREME COURT OF MINNESOTA

INTRODUCTION:

During FY 88, the CLE Board added 3 new members:

James W. Krause was replaced by Jeffrey D. Kuhn of Glenwood;

Judge Jonathan G. Lebedoff was replaced by Judge Charles A. Flinn,
Jr., of Ramsey County;

Mary Ann McCoy was replaced by Elizabeth Franklin of Cloquet.

ATTORNEY COMPLIANCE:

Approximately 3,900 Category 3 attorneys were required to report in FY 88. Of those, 99 attorneys were placed on involuntary restricted status for noncompliance. This indicates that 97.5% of Minnesota attorneys complied with CLE requirements, an increase of .5% from the FY 87 compliance of 97%.

COURSE REVIEWS:

Every course submitted for Minnesota CLE accreditation was evaluated by CLE Board staff to assess the quality of the course content, to determine the qualifications of faculty members, and to assure that courses are in all other ways consistent with the Minnesota standards for course approval.

Below are statistics showing the past 12 months' course disposition as compared to the prior 12-month period:

	<u>FY 87</u>	<u>FY 88</u>
Courses Approved:	2,539	2,849
Courses Disapproved:	273	229
Total Courses Reviewed	2,812	3,078
Total Hours Approved	23,678.75	29,549.5

These numbers indicate an 11% increase in course approvals and a 20% increase in total hours approved over the prior period. These increases show the increasing diversity of opportunities for Minnesota attorneys to complete their CLE requirements.

FUNDING:

Effective July 1, 1988, the funding for the CLE office from the Attorney Registration fee was increased from an annual fee of \$5.00 per attorney to \$7.00 per attorney. This increase is expected to increase Board revenues by approximately \$25,000 in FY 89. These additional funds will be used to finance annual increases in salary, benefits and overhead. Increases in the numbers of reporting attorneys and in the numbers of course approvals has required the addition of temporary clerical assistance during peak reporting periods.

Computerization of all course approval records and attorney files is expected to prevent the necessity of increasing current staffing consisting of the quarter time Director, an administrator, a clerk, and occasional clerical assistance.

In addition to the revenues generated from the Attorney Registration fees, the Board received \$16,000 in late filing fees and reinstatement fees during FY 88 to date. Although this is a decrease from revenue amounts collected in FY 87 from the same sources, it indicates that far more attorneys are filing timely.

RULES CHANGES:

Two changes to the CLE rules were adopted during FY 88.

Rule 106(b) was modified to institute a late filing fee of \$75.00 for persons who fail to comply by the August 30 reporting date and for whom the Board must issue a certified mail Notice of Noncompliance. Generally these notices go out to several hundred attorneys. They involve a considerable amount of postage as well as time and effort on the part of staff in following up with these attorneys who are generally more than 90 days delinquent in filing.

Rule 109(a) was modified in order to exclude from the Notice of Noncompliance procedures, those attorneys who request and obtain an extension of time.

It is hoped that the change in Rule 106(b) will act as an encouragement to attorneys to file their affidavits before the Board issues its Notice of Noncompliance. To the extent that some attorneys will file their affidavits after receipt of the notice, those attorneys, not the general population of complying attorneys, will bear the costs of those notices.

ETHICS:

The Board continues to require inclusion of ethics in each program which is approved for CLE credit. Four national sponsors and one Minnesota sponsors have chosen to comply with the ethics requirement by providing an annual report describing the manner in which ethics was covered in all the courses offered during the previous year.

The Board has found this to be an effective means to monitor the compliance of the national providers. This method helps to focus attention on the necessity of inclusion of ethics by communicating with those who set policy for the entire organization, rather than dealing with individual faculty members.

IN-HOUSE RULE:

The CLE Board was challenged by the Internal Revenue Service and several other sponsors over its interpretation and application of Rule 101(k) setting out certain criteria for approval of in-house courses.

The Board has studied the issue and is in the process of formulating modifications to the rule. Efforts are being made to draft a rule which will facilitate approval of in-house courses without sacrificing the program.

LIAISON:

In order to facilitate good working relationships with CLE providers and with other mandatory CLE administrators, the Director has met with local CLE providers, has attended 2 national conventions of CLE administrators, and has participated in information sharing with other jurisdictions.

The Director is monitoring the progress of a national accreditation experiment in which several states are involved. The experiment is operating under the theory that courses approved in one member state will be given presumptive approval by all other member states. This is facilitated by use of a uniform course approval form. It is anticipated that information generated by the experiment will be available for Board review before the end of the calendar year.

COMPUTERIZATION:

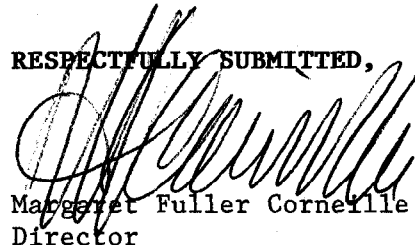
A proposal for a CLE computer system was put out to bid in December, 1987. With the assistance of Dale Good of the Supreme Court Information Systems office, the bids were evaluated, vendors were interviewed, and a preference was identified for a proposed system. A vendor has been chosen to develop a functional description of the proposed system including detailed specifications and program functions.

Although the project is not as far along as planned, it is anticipated that the automation of CLE records and notices will be completed in the coming fiscal year.

CONCLUSION:

The CLE Board has been successful in reaching its FY 87 goal of reducing the number of attorneys placed on involuntary restricted status. The computerization project, although moving slower than hoped, is expected to greatly streamline the office's functions as well as improve the communications between the Board office and members of the Minnesota bar.

RESPECTFULLY SUBMITTED,



Margaret Fuller Corneille
Director

Minnesota State Board of CLE

STATE OF MINNESOTA
BOARD OF LAW EXAMINERS
ANNUAL REPORT FY 88

TO: SUPREME COURT OF MINNESOTA

This report will cover the period June, 1987, through May, 1988. During this period, the Board of Law Examiners met ten times. In addition to full Board meetings, members of the Board held committee meetings on eleven other occasions.

BAR EXAMINATION

During the period covered by this report, the bar examination was administered to 911 applicants. This indicates an increase of 28 examinees over the FY 87 number.

The following charts include pass/fail statistics by law schools for these examinations:

JULY, 1987	<u>Sat</u>	<u>Passing</u>
University of Minnesota	178	173, or 97.19%
William Mitchell	204	165, or 80.88%
Hamline University	104	89, or 85.58%
TOTAL Minnesota Schools	486	427, or 87.86%
Out-of-State Schools	173	150, or 86.71%
TOTAL ALL SCHOOLS	659	577, or 87.56%

FEBRUARY, 1988

	<u>Sat</u>	<u>Passing</u>
University of Minnesota	31	23, or 74.19%
William Mitchell	117	83, or 70.94%
Hamline University	30	19, or 63.33%
TOTAL Minnesota Schools	178	125, or 70.22%
Out-of-State Schools	74	60, or 81.08%
TOTAL ALL SCHOOLS	252	185, or 73.41%

BAR EXAMINATION SPECIAL ACCOMMODATIONS

The Board provided special accommodations for eleven handicapped examinees. The February 88 examination was given for the first time in braille for a blind examinee. Another blind examinee and an examinee suffering from muscular dystrophy used dictation equipment to record their answers on the essay portion of the exam.

FOREIGN ATTORNEY APPLICANTS

Sixty-six applicants licensed in other jurisdictions applied under Rule IVA, having practiced for more than 5 years in another jurisdiction. Seventy-four applicants applied under Rule IVB, having achieved a score of 145 or greater on the Multistate Bar Exam within the past two years.

RULE CHANGES

The Board of Law Examiners has proposed a number of changes in its rules in FY 88. The proposed change to Rule IV and the proposed addition of Rule VI are most significant. The change to Rule IV would prohibit admission without examination for those applicants who have engaged in the unauthorized practice of law in Minnesota. This rule was proposed in order to address the Board concern with attorneys who relocate to Minnesota and undertake legal responsibilities, generally on behalf of corporate

employers, prior to applying for and obtaining a Minnesota license.

Proposed Rule VI will provide for special expedited admission of attorneys who are employed for and will represent a single employer. This license is proposed to be issued upon documentation of all eligibility elements but prior to the completion of the character investigation. This license will be converted to a full license after the character investigation is completed and found to be acceptable.

CHARACTER & FITNESS DETERMINATIONS

The Board devoted a considerable amount of time and resources to investigating and reviewing applicants whose background suggests character and fitness concerns. The Board held 18 informal hearings and six formal hearings on applicants with character and fitness concerns. As a result of these formal and informal hearings, the Board has denied admission to five applicants. Of those, one applicant did not appeal, two applicants have appealed and formal hearings are to be scheduled within 60 days, one formal hearing was held but findings and conclusions have not yet been issued, and one petition is pending before the Supreme Court.

CHARACTER & FITNESS GUIDELINES

In order to assist the Board in the review of applicants whose character and fitness comes into question, the Board has adopted character and fitness guidelines.

Within these guidelines is the Standard of Character and Fitness. As adopted by the Minnesota Board of Law Examiners, the character and fitness standard states that:

"[a]n attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant may constitute a basis for denial of admission."

The Character and Fitness Guidelines also define relevant conduct which may be grounds for further inquiry. This conduct includes, in part, misconduct in employment, acts involving dishonesty, abuse of legal process, and neglect of financial responsibilities.

The guidelines also address the factors which should be considered in assigning significance to prior misconduct. These factors include, in part, the recency of the conduct, the seriousness of the conduct, the evidence of rehabilitation, the applicant's candor in the admissions process and the materiality of omissions or misrepresentations.

A copy of the complete Character and Fitness Standards are attached and marked "A".

ALCOHOL AND DRUG ABUSE GUIDELINES

One of the areas identified within the Character and Fitness Guidelines involves those applicants with a history of alcohol or other substance abuse problems.

In order to guide the Board and staff in dealing with these difficult issues, the Board adopted Alcohol and Substance Abuse Guidelines. These guidelines set forth a program of evaluation which each affected applicant must complete prior to the Board reviewing his or her current fitness for admission. A complete copy of these guidelines are attached and marked "B".

PSYCHOLOGICAL GUIDELINES

Another area of great concern to the Board is the fair, equitable and expeditious processing of applicants who have a history of mental or emotional illness. The Board is currently in the process of developing, but has not yet adopted, guidelines in this area. The Board is working with a local psychologist and with the Minnesota Board of Psychology to assist in development of such guidelines.

PERSONNEL

The Board has increased its focus upon the character and fitness issues presented by applicants. While the Board continues to use the services of the National Conference of Bar Examiners in conducting investigations of applicants' civil and criminal records, it has supplemented these reports with follow up research and investigation, frequently relying on the applicant to produce the requested documents.

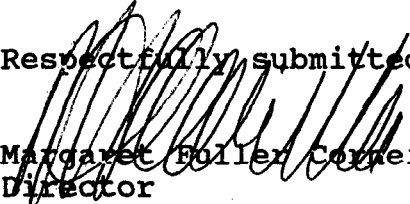
These more comprehensive investigations, and the increased documentation which the character and fitness guidelines, the alcohol and drug abuse guidelines and the proposed psychological guidelines will require, have significantly increased the volume of work in the Board office. In order to address this need for additional personnel to handle the workload, the Board has proposed a position of investigator. The primary responsibility of this individual would be to identify those files which have character and fitness issues requiring further investigation, to do that investigation, and to prepare reports for the Director, and ultimately for the Board, summarizing results of that investigation.

FUNDING

The Board of Law Examiners will begin collecting an additional \$8.00 fee from the attorney registration fee effective July 1, 1988. This cash, estimated to be approximately \$100,000 additional per year, will be used to offset regular increases in salary, benefit and overhead, and to fund the proposed investigator position and its attendant costs.

The Board is in the process of developing a formula by which future cost increases can be fairly and consistently distributed between the two sources of funding: applicant fees and attorney registration fees.

Respectfully submitted,


Margaret Fuller Corneille
Director
Board of Law Examiners

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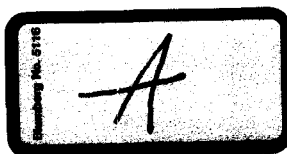
CHARACTER AND FITNESS STANDARDS

PURPOSE. The primary purpose of character and fitness screening before admission to the Bar of Minnesota is to assure the protection of the public and to safeguard the justice system. The attorney licensing process is incomplete if only testing for minimal competence is undertaken. The public is adequately protected only by a system that evaluates the character and fitness as those elements relate to the practice of law. The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys.

ORGANIZATION AND FUNDING. The Minnesota Board of Law Examiners, a body appointed by and responsible to the Minnesota Supreme Court, shall administer character and fitness screening. It shall perform its duties in a manner that assures the protection of the public by recommending for admission only those who qualify. Sufficient funding and staffing shall be maintained in order to permit appropriate investigation of all information pertaining to applicants' character and fitness.

THE INVESTIGATIVE PROCESS. The Minnesota Board of Law Examiners places on the applicant the burden of producing information. Each investigation shall be initiated by requiring the applicant to execute under oath a thorough application and to sign an authorization and release form that extends to the Minnesota Board of Law Examiners and to any persons or institutions supplying information thereto. The applicant shall be informed of the consequences of failing to produce information requested by the application and of making material omissions or misrepresentations.

STANDARD OF CHARACTER AND FITNESS. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant may constitute a basis for denial of admission.



CHARACTER AND FITNESS STANDARDS

Page 2

RELEVANT CONDUCT. The revelation or discovery of any of the following should be treated as cause for further inquiry before the Minnesota Board of Law Examiners decides whether the applicant possesses the character and fitness to practice law:

- misconduct in employment
- acts involving dishonesty, fraud, deceit or misrepresentation
- abuse of legal process, including the filing of vexatious lawsuits
- neglect of financial responsibilities
- neglect of professional obligations
- violation of an order of a court, including child support orders
- evidence of mental or emotional instability
- evidence of drug or alcohol dependence or abuse
- denial of admission to the bar in another jurisdiction on character and fitness grounds
- disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

USE OF INFORMATION. The Minnesota Board of Law Examiners shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

- the applicant's age at the time of the conduct
- the recency of the conduct
- the reliability of the information concerning the conduct
- the seriousness of the conduct
- the factors underlying the conduct
- the cumulative effect of conduct or information
- the evidence of rehabilitation
- the applicant's positive social contributions since the conduct
- the applicant's candor in the admissions process
- the materiality of any omissions or misrepresentations

The investigation conducted by the Minnesota Board of Law Examiners shall be thorough in every respect and shall be concluded expeditiously.

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SUBSTANCE ABUSE GUIDELINES

MINNESOTA BOARD OF LAW EXAMINERS

This substance abuse protocol has been developed in order to identify those applicants for admission to the Bar of Minnesota who, because of a chemical or alcohol dependency problem, may fail to meet the character and fitness standards for admission.

This protocol is designed to create a uniform approach to evaluating those who are profiled as possibly having drug or alcohol problems.

A substance abuse evaluation shall be required for applicants:

1. Who have a history of more than one substance intoxication episode that results in law enforcement contact in the past 10 years.
2. Whose file contains evidence of past behavior patterns or an employment history which suggests a drug or alcohol problem.

The substance abuse evaluation shall be performed only by medical and other professionals at facilities which specialize in the evaluation and treatment of drug and alcohol addiction. Applicants may choose one of the following Minnesota facilities to perform the evaluation:

St. Mary's Hospital and Rehabilitation Center
2414 South Seventh Street
Minneapolis, MN 55454

Hazelden
Post Office Box 11
Center City, MN 55012

With prior notice and approval of the Director of the Board of Law Examiners, applicants may choose an alternate facility.

The substance abuse evaluation shall be conducted efficiently and thoroughly and shall be done on either an inpatient or outpatient basis, as deemed appropriate by the evaluator. The evaluation shall include the following:



SUBSTANCE ABUSE GUIDELINES

Page 2

1. A thorough medical evaluation.
2. An assessment as to current and past chemical use, abuse and addiction.
3. Psychological assessment including psychological testing as deemed appropriate by the evaluator.
4. Written findings and recommendations including:
 - a) A diagnosis of chemical abuse or dependency or an opinion ruling out same; a detailed explanation as to the bases for this opinion;
 - b) A summary of the applicant's psychological examination including the tests administered and the results obtained;
 - c) An evaluation of the applicant's current coping mechanisms and support systems, the adequacy of same;
 - d) Identification of other problems and issues which either co-exist with or exacerbate the chemical use;
 - e) Recommendations for treatment if any; an opinion as to whether applicant's current condition precludes the practice of law, bearing in mind that the practice of law requires the ability to function efficiently under stressful conditions, to discharge fiduciary obligations on behalf of clients, to handle large sums of money belonging to others, and to be punctual with time deadlines.

All costs associated with the evaluation, preparation and submission of reports and findings shall be borne by the applicant.

STATE OF MINNESOTA
BOARD OF LEGAL CERTIFICATION
ANNUAL REPORT FY 88

TO: SUPREME COURT OF MINNESOTA

This is the second annual report of the Board of Legal Certification. The Plan for the Minnesota Board of Legal Certification was adopted by the Supreme Court on November 6, 1985. On October 26, 1986, the Rules recommended by the Board were adopted by the Court. The Board met on five occasions in FY 88. Two public hearings were held in conjunction with Board meetings.

NATIONAL BOARD OF TRIAL ADVOCACY (NBTA)

Effective November 13, 1987, the NBTA was approved as an agency certified to designate lawyers as specialists in the specialty fields of civil trial practice and criminal law. To date, 59 NBTA members' names have been submitted by the NBTA and accepted by the Minnesota Board of Legal Certification as qualified certified attorneys.

MSBA APPLICATION

The Civil Litigation Section of the Minnesota State Bar Association was approved as an agency certified to designate lawyers as specialists in the field of civil trial practice. This action was taken on December 21, 1987, and was effective February 4, 1988. The agency will be subject to recertification procedures in 1991. No attorneys have yet been certified by the Civil Litigation Section as the first test is to be given in June, 1988.

SPECIALTY DEFINITION

In response to a request submitted by the Real Property Section of the Minnesota State Bar Association, the Board adopted the following specialty definition on December 21, 1987:

Real Property: "The specialty field of real property law is the practice of law in Minnesota dealing with matters relating to real property transactions including, but not limited to, real estate conveyances, title searches, leases, condominiums, mortgages and other liens, property taxes, real estate development, real estate financing, and determination of property rights, all with consideration to securities and tax consequences."

As part of its responsibility to define specialty fields, the Board concluded that it would use the ABA Model Definitions as a guide in developing its own definitions. These model definitions are then either adopted or modified, as the Board deems appropriate.

The real property definition is the third definition adopted by the Board. The other two are civil trial practice and criminal law. It is the Board's intention to consider and adopt specialty definitions only in response to requests by agencies which have an interest in the field.

ADMINISTRATIVE PROCEDURES

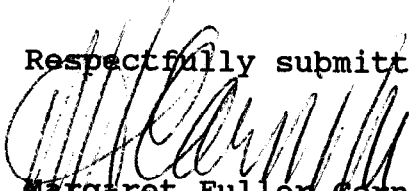
The staff of the Board of Legal Certification has developed written procedures which will provide guidance in receiving and reviewing applications for certification and recertification and in maintaining official records of the Board.

Master lists of certified attorneys, certifying agencies and specialty definitions are maintained and updated regularly. These master lists will be made available to the public upon request. The Plan of the Supreme Court and the Rules of the Board of Legal Certification were published in booklet form and are being distributed to interested parties.

FUNDING

In FY 88, the Board of Legal Certification revenues totaled only \$5,700. This is \$7,300 less than anticipated receipts of \$13,000. However, expenses have been kept at a minimum by funding only a small portion of staff salaries and by using the office facilities of the Board of Law Examiners and Board of Continuing Legal Education offices. This cooperative arrangement will continue to enable the Board to function until such time as additional funds are generated through fees. Current workload does not require the addition of staff at this time.

Respectfully submitted,



Margaret Fuller Corneille
Director
Board of Legal Certification

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