

SUPREME COURT
FILED
MAR 18 1982
JOHN McCARTHY
CLERK

STATE OF MINNESOTA
IN SUPREME COURT
File No. A-9

In re Petition of the Lawyers
Professional Responsibility Board
for Amendment of Rules Relating
to Registration of Attorneys.

O R D E R

WHEREAS, the Lawyers Professional Responsibility Board has petitioned the Supreme Court to adopt, effective with payments due on and after July 1, 1982, the following amendments to Rule 2, Rules for Registration of Attorneys:

RULE 2. REGISTRATION FEE

"In order to defray the expenses of examinations and investigations for admission to the bar and disciplinary proceedings, over and above the amount paid by applicants for such admission, with exceptions hereinafter enumerated, each attorney admitted to practice law in this State and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office shall hereafter annually pay to the clerk of the supreme court a registration fee in the sum of ~~Ferty-five~~ Seventy Dollars ~~(\$45.00)~~ (\$70.00) or in such lesser sum as the Court may annually hereafter determine.

"Such fee, or a portion thereof, shall be paid on or before the first day of January, April, July, or October of each year as

requested by the clerk of the supreme court. All sums so received shall be allocated as follows:

\$ 7.00 to the State Board of Law Examiners

\$ 5.00 to the State Board of Continuing Legal Education

~~\$33.00~~ \$58.00 to the Lawyers Professional Responsibility Board

"The following attorneys and judges shall pay an annual registration fee of ~~Twenty~~ Twenty-Three Dollars ~~(\$20.00)~~ (\$23,00):

- (a) Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within the State;
- (b) Any attorney who has not been admitted to practice for more than three years;
- (c) Any attorney while on duty in the armed forces of the United States;

The ~~Twenty~~ Twenty-Three Dollars ~~(\$20.00)~~ (\$23.00) so received shall be allocated as follows:

\$7.00 to the State Board of Law Examiners

\$5.00 to the State Board of Continuing Legal Education

~~\$8.00~~ \$11.00 to the Lawyers Professional Responsibility Board

"Any attorney who is retired from any gainful employment or permanently disabled, and who files annually with the clerk of

the supreme court an affidavit that he is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. An attorney claiming retired or permanently disabled status who subsequently resumes active practice of law shall promptly file notice of such change of status with the clerk of the supreme court and pay the annual registration fee.

"Any judge who is retired from any gainful employment or permanently disabled, who no longer serves on the bench or practices law, and who files annually with the clerk of the supreme court an affidavit that he is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. A judge claiming retired or permanently disabled status who subsequently resumes service on the bench or the active practice of law shall promptly file notice of such change of status with the clerk of the supreme court and pay the annual registration fee."

WHEREAS, the Supreme Court wishes to hold a public hearing on this petition,

NOW, THEREFORE, IT IS HEREBY ORDERED that a hearing on this petition be held in the Supreme Court Chambers in the State Capitol, Saint Paul, Minnesota, at 2 p.m. on Friday, May 7, 1982.

IT IS FURTHER ORDERED that advance notice of the hearing be given by the publication of this order once in the Supreme Court

edition of FINANCE AND COMMECE, ST. PAUL LEGAL LEDGER and BENCH AND BAR.

IT IS FURTHER ORDERED that interested persons show cause, if any they have, why the proposed petition should not be granted. All persons desiring to be heard shall file briefs or petitions setting forth their objections, and shall also notify the Clerk of the Supreme Court, in writing, on or before April 30, 1982, of their desire to be heard on the matter. Ten copies of each brief, petition, or letter should be supplied to the Clerk.

DATED: March 18 , 1982.

BY THE COURT


Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. A-9

In Re Petition of the Lawyers
Professional Responsibility Board
for Amendment of Rules Relating
to Registration of Attorneys.

BRIEF OF
MICHAEL J. HOOVER,
DIRECTOR OF LAWYERS
PROFESSIONAL RESPONSIBILITY

INTRODUCTION

In March, 1982, the Board filed its petition seeking an increase in the attorney registration fee to be effective July 1, 1982. The increases sought are \$25 for practicing lawyers admitted over three years and \$3 for new, retired, and non-resident attorneys. The total registration fee payable by each group would be \$70 and \$23 respectively, and the portions of said fees allocated to discipline would be \$58 and \$11 respectively.

The court has set May 7, 1982, as the hearing date for the petition and has ordered that briefs be filed by April 30, 1982. This will constitute the Director's brief in support of the Board's petition.

This is the First Increase Requested in the Attorney Registration
Fee Since 1977

The last time the attorney registration fee was increased was with the payment due on November 1, 1977.

The court may take judicial notice of the unprecedented inflation which has gripped the economy since 1977. The Board is not immune from the inflationary pressures and has been met with increased prices for everything including utilities, office supplies, personnel, transcripts, and every other necessary operating expense.

The \$25 increase sought for practicing lawyers amounts to a fifty-five (55%) percent increase in the total fee. Considering the double-digit inflation in some of these years, a fifty-five (55%) percent increase following five years without any increase is not out of line. By comparison, senior bar dues for the Minnesota State Bar Association were \$75 in 1977. In 1981, they were \$120, including a \$20 special assessment for institutional advertising. Thus, after four years, the State Bar Association dues were sixty (60%) percent higher than they were in 1977. A fifty-five (55%) percent increase in the attorney registration fee after five years compares favorably to bar dues increases after only four years.

The Director and the Board Have Been Deluged with Overwhelming Increases in Responsibilities During the Past Five Years

On May 11, 1981, I filed with this court a detailed report outlining the astronomical increases in the disciplinary workload. Highlights from that report, updated to reflect our current situation, include the following:

1. There have been huge increases in the raw numbers of disciplinary matters which must be processed. In 1981, 927 new cases were filed, a forty-five (45%) increase over the 632 files opened in 1977. So far in 1982, 359 files have been opened compared to 320 during the same period in 1981. At this rate, 1,075 files will be opened during 1982, an increase of sixty-eight (68%) percent over the 1977 figure.
2. Because of 1977 changes in the Rules on Lawyers Professional Responsibility, there is substantial Director time in all cases including those initially investigated by the district ethics committees and closed with findings of no unethical conduct.
3. There have been astronomical increases in the number of the most time-consuming cases--those involving public petitions, panel hearings and Director warnings. For example, during the first quarter of 1982, there were 24 panel hearings compared to 9 during the comparable 1981 period. Panels in 1982 have directed the filing of ten new petitions for disciplinary action (and in five of those cases, a petition for immediate suspension was also directed) compared to two petitions for disciplinary action during the first quarter of 1981. Further information about 1982 statistics is contained in Appendix A.
4. Both the Board and the court have increasingly used probation as a disposition. This has increased the administrative

- responsibilities of the Director's office since 1977 when probation was used sparingly both by the court and the Board.
5. Requests for participation by the Director and his staff in CLE programs have risen sharply.

The Proposed Increase is Necessary to Attack the Still Unacceptable Delays and Huge Backlog

In my 1981 report, I indicated that the most obvious consequence of the huge increase in volume was that we were falling further and further behind in our work. The second obvious consequence is that embarrassing, if not potentially scandalous, delays accompanied the disposition of cases.

These facts have not changed in the last year. Appendix A indicates that our current case load is 790 compared to 670 on March 31, 1981, an eighteen (18%) percent increase in one year. This amounts to an unacceptably high load of 158 cases per attorney.

The disposition times are unacceptable and unfair, both to complainants and respondents, and undermine the credibility of the disciplinary system. Appendix A indicates that the time for a dismissal after investigation is now approaching 8 months compared to 3.2 months during the first half of 1981. It is now taking over 2 years for a panel disposition, and cases in this court take nearly 3 years to be completed.

In sum, we are closing files at a record pace, yet our backlog increases. We are convening panels more frequently than was ever imagined in the past and yet disposition times are increasing.

But that is not all. In my 1981 report I stated:

In addition to the effects of this crushing workload on the work we are doing, it is important to recognize that it prohibits us from doing things which are either desirable or even necessary if we are to have an effective disciplinary system:

1. Reports such as this have not been made to the court, the Board, the bar and the public.
2. Processes and programs to evaluate the system periodically have not been initiated and coordinated on a regular and organized basis.
3. Efforts to educate and train the paid staff and the system's volunteers are minimal.
4. General education and preventative efforts have been sharply curtailed and may need to be eliminated.
5. Crisis management rather than long-range planning and administration has become prevalent.

Only Modest Personnel Increases were Made and These Must Be Retained to Insure Survival of the System

In the spring of 1981, I filed my report with the court outlining our problems. About the same time, the American Bar Association Evaluation Team filed its final report, hereinafter ABA Report.

In 1981, with the consent of the court, there were several personnel additions:

1. An office administrator was hired to free the Director and other attorneys of administrative duties which precluded them from attending to the disciplinary workload. See Recommendation No. 1, ABA Report at 9.
2. At the time of the ABA evaluation, there were 3-1/4 clerical personnel, compared to our current four clerical positions.
3. At the time of the ABA evaluation, there was one full-time legal assistant and a part-time law clerk. The part-time law clerk position has been eliminated and three legal assistant positions have been created, although one is vacant.
4. At the time of the ABA evaluation, there were four full-time attorneys, including the Director. There are now five full-time attorneys, including the Director.

These modest personnel increases have all occurred with the knowledge and consent of the Board, and after consultation with the court. Given the extraordinary increases in the workload, the creation of these few positions was the bare minimum necessary to enable us to avoid a total breakdown in the disciplinary system.

An Increase in the Attorney Registration Fee Was Not Sought Prior to Hiring the Additional Staff Because There Were Ample Funds to Make It Through This Fiscal Year Without Doing So

Some have questioned the wisdom of adding staff before increases in the registration fee necessary to sustain that staff on a continuing basis are approved. Our philosophy has always been to postpone asking for an increase as long as is possible.

We were fortunate that the attorney registration fee generated surpluses until 1981. We began the current fiscal year with approximately \$231,000 on hand. This beginning balance, together with our estimated receipts of approximately \$292,000 during this fiscal year were more than ample to fund the \$431,696 budget approved by the Board in June, 1981 and submitted to the court. Under such circumstances, we did not believe it appropriate to request an increase in the registration fee for the current fiscal year. In my 1981 report, however, I did state:

While there would be ample funds during the next fiscal year to allow for such spending, there will be an obvious need to increase the attorney registration fee sometime during FY 83. The proposed budget for the FY 82 will include positions to be created during that fiscal year. If those positions are retained during all of the FY 83 and no others are added, expenditures will again increase in FY 83. It may be necessary to consider an increase of \$20 to \$25. Although this figure is much higher than I would prefer, it is not substantially different than the rate of inflation we have and will probably experience from 1977 to 1982.

In sum then, positions were added during this fiscal year which were necessary for us to cope with the huge increases in volume. These positions were added with the approval of the Board and the knowledge of the court. An increase in the attorney registration fee was not necessary to fund these positions during this fiscal year. The positions were added, however, with the warning that increased funding would be necessary to sustain them during FY 83.

The Board Has Considered The Needs of the System and Its Consensus is That \$575,000 is Necessary for Operation During the 1983 Fiscal Year

At the January, 1982 Board meeting, I submitted a proposed budget to the Board requesting that it ask the court to raise \$622,591 for FY 83 operations. My proposed budget would have allowed us to maintain our current staff as well as add to it an additional attorney (or alternatively two additional legal assistants), an additional legal assistant, and one-and-one-half additional clerical personnel. In my opinion, these additional personnel are badly needed to cope with what I believe will be continuing increases in our workload. They are also necessary before we can even consider restoring the advisory ethics opinion service which has been suspended since September, 1981.

In order to raise \$622,591, it would have been necessary to raise the attorney registration fee for practicing lawyers by about \$33.

The Board carefully considered my request at its January, 1982 meeting. I am certain that the Board considered my request reasonable, but, in view of the cuts in other governmental sectors, felt that we should attempt to get along with less than I requested. It was determined that the Board's FY 83 budget should be \$575,000 and that the appropriate increases should be \$25 for practicing lawyers and \$3 for other lawyers.

The very minimum increase which is necessary to maintain current operations is \$20 per practicing attorney. If such an increase is not approved, then personnel may need to be discharged and other cuts may need to be made in order to arrive at the conclusion of the fiscal year without a deficit.

In sum then, I believe that a \$33 increase was reasonably necessary for FY 83. The collective judgment of the Board, the lawyers and public members most expert about the disciplinary process and involved in it on a continuing basis was that \$25 is necessary for the operation of a credible disciplinary system. Finally, \$20 is the absolute minimum which can be approved if we are to sustain our current staff. Forcing cutbacks in current staff levels at a time when our volume is still increasing and when our backlog and the delays in dispositions are already unreasonable could severely undermine the credibility of the disciplinary system.

Our Proposed Budget is Reasonable and Cannot Be Substantially Pared Without Discharging Personnel and Making Other Substantial Cutbacks

Appendix B contains a summary of actual expenses for FY 81, our budget and estimated expenditures for FY 82, and our proposed budget for FY 83. Most of the proposed spending for FY 83 cannot be cut substantially.

The largest item in the budget is personnel. Assuming our current vacant legal assistant position is filled promptly, and

assuming no other personnel are added to the staff, \$366,758 will be necessary to meet the payroll and employee benefits projected as a result of the court's salary and benefit plan approved in fall 1981. Appendix C shows the actual salaries of each employee and the projected salary of the vacant legal assistant position. Virtually all of our salaries are in line with specific employee positions created under the state employment grids. The attorney positions are, if anything, below the salaries paid to comparable personnel in the executive branch.

It is thus apparent that even if no employees are added during FY 83, the minimum necessary to fund the current positions is \$366,758. At a very minimum, a modest increase in our clerical support staff is desperately needed. Thus, the additional dollars budgeted for payroll and employee benefits are designed to add support staff rather than expensive attorney positions.

Other expenses are similarly reasonable and cannot be easily controlled. Examples include:

- A. We are in the midst of a three-year lease for office space. Our rent is \$8.04 per square foot annually, and our total annual rent is \$32,300. This expense cannot be reduced.
- B. Our communications expenses of \$16,000 are based upon actual expenditures for postage and telephone during the last fiscal years. There is no way to reduce these expenses substantially.

C. Professional and technical services include court reporters necessary for panel and referee hearings. The increasing number of referee and panel hearings has pushed this expense to its current level, and there is no foreseeable way of reducing it substantially.

Other expenses could also be discussed, but the fact remains that while minimal cuts could possibly be made, there is no way that the budget can be substantially reduced without impairing the operation of the system by discharging current staff.

Information Supplied to Us By Court Personnel Leads to the Recommendation for the \$25 and \$3 Increases

Based upon current income and expense projections, we expect to begin FY 83 with a balance of \$102,200.

Judy Rehak's office has advised us that there will be approximately 8,958 lawyers in the practicing category and approximately 3,745 lawyers in other categories during FY 83. If the Board's petition is granted, the revenue from the attorney registration fee will be approximately \$560,750. Additionally, there are about \$15,000 in professional corporation fees paid to the Board annually, which would bring total revenue during FY 83 to \$575,000.

The Board then has requested increases in the registration fee which are necessary to generate income equal to its projected operational budget.

The Board's beginning FY 83 balance must be disregarded in budgeting and in considering the attorney registration fee increase.

We are aware that the Minnesota State Bar Association has suggested that the potential beginning balance, together with revenues raised by increasing the practicing lawyer fee by less than we have requested would be sufficient to meet the Board's operational budget during FY 83. This is based upon a clear misunderstanding of the functions of the beginning balance.

First, cash flow during the fiscal year is uneven, as are expenses. Some cushion is absolutely necessary to ensure that the Board always has enough money on hand to pay its bills as they become due.

Second, registration fees are due in July, October, January, and April of each year. They are, however, actually billed one month prior to the due dates. Many attorneys pay promptly upon billing. Therefore, the funds on hand on June 30 of a fiscal year represent most of the attorney registration payments actually due in July. Revenue in July, August and early September is minimal. Therefore, the balance on hand at the end of one fiscal year must be relied upon to finance the first quarter of operations during the next fiscal year. A safe cushion is an amount equal to approximately one-quarter of the proposed budget. The surplus on hand as of July 1, 1983, is necessary to fund operations from July through September, 1983. The bar association's suggested fee

increase would result in a year-end zero balance, leaving us without funds to function from July through September, 1983.

In sum then, the Board has asked only for an increase which will generate revenue equal to its proposed spending. For purposes of determining the increase, the cushion must be disregarded as a similar cushion must exist at the end of FY 83 to ensure operations during the first quarter of FY 84.

In Comparison to Fees Charged in Other States, the Proposed Increase is Reasonable

If the petition is granted, most lawyers will pay \$58 per year for discipline. The ABA Report at footnote 3, page 6, noted that the 1980 disciplinary enforcement survey (now over two years old) reflected 1980 fees of \$34.80 per lawyer in Wisconsin; \$50 per lawyer in Washington; and \$44 per lawyer in Maryland. Some of these fees have undoubtedly risen since 1980. I do know that fees in Wisconsin had risen to \$42 per lawyer in 1981. In any event, however, Minnesota lawyers have paid less during the last two years than lawyers in these states.

On May 21, 1981, John B. McCarthy, Administrator of the Board of Attorney's Professional Responsibility for Wisconsin, supplied me with assessment information from selected jurisdictions. Colorado, with approximately 11,000 lawyers, assessed each practicing lawyer \$60 for discipline, and those admitted under three years were assessed \$40 annually. Pennsylvania, with a bar approximately twice the size of Minnesota assessed \$40 annually.

Florida, with a bar about twice the size of Minnesota assessed each lawyer \$125 annually for discipline.

Information I recently received from New Jersey indicated that Massachusetts, with a bar of approximately twice the size of Minnesota's, assessed each lawyer \$42 per year for discipline.

There are jurisdictions which assess less. New Jersey, for example, has proposed an assessment of \$25 per lawyer. Illinois had assessed \$30 per lawyer as of November, 1981, although an increase was pending in the supreme court.

Statistics from other states are of limited utility. The unique situation in each state is a factor in determining the amount necessary for discipline. This is a large geographic state with a growing lawyer population. While there is significant local participation in the disciplinary system, it has become increasingly centralized. There has been a monumental increase in disciplinary matters. Most important, the court and the bar traditionally have been committed to doing a credible job of disciplining the bar. These unique factors indicate that the proposed registration fee is reasonable, even when compared to jurisdictions without our unique problems. It also must be remembered, "that inadequate funding is a common problem in disciplinary enforcement." ABA Report at 6.

CONCLUSION

We regret that we cannot get by another year without an increase in the registration fee. We believe, however, that past

sound operational and fiscal policies have forestalled an increase as long as is possible. The issues here, however, are not only monetary. The credible operation of the disciplinary system, and the perceived integrity of the bar is at stake. Standard 3.18 and the commentary thereto, ABA Standards For Lawyer Discipline and Disability Proceedings, Joint Committee on Professional Discipline, (1978) is reproduced as Appendix D. Standard 3.18 states that the agency should be adequately funded and have adequate staff to perform its functions effectively and without delay.

Were we to have proposed a budget and fee increase necessary to fully meet the admonition of Standard 3.18, our requests would be much higher. We are asking for the bare minimum necessary to maintain an operating and credible system.

In Clark, Problems and Recommendations in Disciplinary Enforcement, Special Committee on Evaluation of Disciplinary Enforcement of the American Bar Association (1970), the problem of funding was discussed at 19-23. One of those interviewed was quoted as follows:

My answer would be that whatever the costs, we have to find the money, because we can't afford not to do it."

If we disregard the fact that an increase has not been sought for five years, a \$25 increase to the practicing lawyer may seem large. It is, however, a tax-deductible expense. Moreover, as pointed out by the above quotation, the cost to the practicing lawyer of our failure to do an adequate job of fulfilling our responsibilities, will be far more than the requested increase.

We respectfully request the court's order approving the increases sought in the Board's petition.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael J. Hoover". The signature is written in dark ink and is positioned above the printed name and title.

Michael J. Hoover
Director

TO: The Executive Committee
FROM: Michael J. Hoover, Director
DATE: April 12, 1982
RE: First Quarter Statistics

Statistics have now been compiled for the first quarter of 1982.

New Investigations

The number of new investigations commenced in 1982 is 263, compared to 238 in the first quarter of 1981. This is a 10.5% increase.

Files Closed

During the first quarter, 275 files were closed, compared to 201 in the first quarter last year. This is a 36.8% increase.

Panel Hearings

During 1982, there have been 24 panel hearings, compared to nine during the first quarter of 1981.

Only two of the cases presented this year have resulted in a finding of no unethical conduct. Ten new petitions for disciplinary action have been directed, and in half of those cases, a petition for immediate suspension was also directed. During the same period last year, only two petitions were directed, and there were no petitions for immediate suspension. During all of 1981, there were 16 petitions for disciplinary action, one petition for disbarment and five petitions for immediate suspension.

Total Caseload

The total number of pending cases is 790, compared to 670 on March 31, 1981. This is an 18% increase.

On March 31, 1981, our per attorney caseload was 167.5. On March 31, 1982, it was 158.

Since adding new staff on September 1, 1981, we have opened 582 new matters and have closed 566.

Despite increased staff and despite closing files at a record pace, we are barely keeping up with new matters. There has been no substantial reduction in the backlog of pending matters.

Disposition Times

In September, we were directed by the Board to review quarterly the average times for various dispositions. The purpose of this review is to ascertain when the advisory opinion service could be restored without jeopardizing our investigative and prosecutorial responsibilities.

Dismissals

Under Rule 7(c), Rules on Lawyers Professional Responsibility, cases are generally to be disposed of within 45 days. During the first half of 1981, it took approximately 3.2 months, or over twice as long as is contemplated by the Rules to make findings of no unethical conduct.

During the first quarter of 1982, the average time for making a disposition of no unethical conduct rose to 6.74 months. One reason for this increase is that many old files were closed during the first quarter. Unfortunately, however, this statistic also reflects the difficulties of the district ethics committees in keeping up with the increased number of complaints. The average time for district ethics committee recommendations of no unethical conduct rose to 6 months.

These statistics would be even worse were it not for 27 cases which were summarily dismissed by the Director with a finding of no unethical conduct. When these immediate dispositions are deleted, the 190 matters which were actually investigated took an average of 7.7 months to be closed.

Warnings

In the first half of 1981, it took an average of 11.4 months to close a file in which a warning was accepted by a lawyer. During the first quarter of 1982, the average time increased to 16 months.

Panel Dispositions

During the first half of 1981, cases which were terminated at the panel level were an average of 16.2 months old at the time of disposition. During the first quarter of 1982, this figure has risen to 25.13 months.

Public Disciplinary Matters

In September, 1981, we estimated that the average file culminating in a supreme court decision was 30 to 36 months old at the time of the decision. During the first quarter of 1982, decisions were rendered regarding 11 files which averaged 32 months old.

4/30/82

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
1981 THROUGH 1983 FISCAL YEARS
EXPENSES AND BUDGET

	Actual Expenses July 1, 1980- June 30, 1981	Budget/Est. Actual Expenses July 1, 1981- June 30, 1982		Proposed Budget July 1, 1982- June 30, 1983
1. Payroll & Employee Benefits	\$206,600	\$307,455/	\$300,000	\$419,850
Overtime Pay	-		700	500
2. Rents & Leases	16,356	27,641/	30,263	32,300
3. Advertising	1,278	500/	1,600	750
4. Repair	589	2,400/	2,600	2,800
5. Bonds	60	100/	30	100
6. Printing & Binding	5,343	7,000/	6,800	11,500
7. Prof. & Technical Services	15,456	15,000/	18,000	25,000
8. Purchased Services	2,687	3,600/	5,000	5,000
9. Communications	8,780	12,500/	12,000	16,000
10. In-State Travel	7,383	10,000/	10,000	13,000
11. Out-of-State Travel	1,547	2,000/	2,000	3,000
12. Fees & Fixed Charges	3,610	4,500/	5,500	10,000
13. Supplies	4,901	9,000/	9,000	12,000
14. Furniture & Equipment	<u>25,088</u>	<u>30,000/</u>	<u>14,000</u>	<u>17,200</u>
Share of Attorney Registration	7,228		4,021	6,000
Miscellaneous	628			
TOTAL	<u>\$307,534</u>	<u>\$431,696</u>	<u>\$421,514</u>	<u>\$575,000</u>

FISCAL YEAR 1983 PROJECTED PAYROLL AND EMPLOYEE BENEFITS

Appendix C

Current Employees

Employee	Current Salary	7/82 Perf. Inc.	7/82 COLA Inc.	9/82 Perf. Inc.	1/83 Perf. Inc.	1/83 COLA Inc.	Health Ins.*	FICA	Retirement
Hoover	\$47,320	\$ 52,000	\$ -	\$ -	\$ -	\$ -	\$ 1,529	\$ 2,171**	\$ 3,120
Dolan	34,519	-	36,590	-	38,785	-	1,529	2,171**	2,261
Steven	28,730	-	30,454	-	32,281	-	1,529	2,102	1,882
Wernz	28,730	-	30,454	-	32,281	-	1,529	2,102	1,882
Harden	23,082	-	24,467	-	25,935	-	1,529	1,689	1,512
Brown	20,595	-	21,831	-	23,141	-	1,529	1,507	1,349
Triebold	16,025	-	16,987	-	18,006	-	1,529	1,172	1,050
Legal Asst.		-	16,987	-	17,496	-	1,529	1,155	1,035
Wahl	15,618	-	16,555	-	17,217	-	1,529	1,131	1,013
Stern	15,163	-	15,618	-	16,087	16,570	1,529	1,078	965
Taueli	15,163	-	15,618	-	16,087	16,570	1,529	1,078	965
Daubenspeck	12,064	-	12,426	12,799	-	13,183	1,529	866	776
Peerman	11,794	-	12,148	12,512	-	12,887	1,529	847	758
TOTAL	\$268,803	\$273,483	\$302,135	\$302,872	\$314,627	\$316,352	\$19,877	\$19,069	\$18,568

Fiscal Year 1983 Payroll = \$309,244

Fiscal Year 1983 Benefits = \$57,514

Total Fiscal Year 1983 Payroll and Employee Benefits (with no staff increase) = \$366,758

*\$1,529 is used as an estimate

**6.7% of first \$32,400

***6.0% of FY '83 wages

license to practice), the agency may be part of the unified bar, which performs all of these functions including discipline and disability proceedings.

- 3.18 Funding. The agency should be adequately funded and have adequate staff to perform its functions effectively and without delay.

COMMENTARY

Inadequate funding is the major cause of inadequate enforcement. The availability of adequate funds for personnel and expenses will enable an agency to perform all essential duties and not just unavoidable tasks.

The profession now recognizes that the creation and maintenance of an effective structure for discipline and disability proceedings is one of its primary responsibilities.

The level of funding for the agency will determine whether it can hire experienced, full-time lawyers as counsel, or whether it must rely upon volunteers, part-time participants and clerks. Adequate funding will enable the agency to unravel a complex or obscure fact situation which it might not otherwise be able to cope with. The level of funding will determine how promptly allegations can be resolved, thereby affecting the length of time the lawyer remains uncertain about his future, the extent to which clients are exposed to further harm, and the amount of public confidence in the system.

Adequate funding is also necessary to ensure trained staff. Adequate personnel means not only sufficient numbers, but also sufficiently trained. There is a significant need for constant updating with respect to enforcement practices, procedure, and disciplinary law. Without adequate training, the lawyer retained as counsel to an agency will find himself confronted with countless problems with which he is unable to cope.

The court, pursuant to its power to regulate lawyers and the practice of law, may impose a fee to support the discipline and disability system. Assessments by the court to enable it to fulfill its obligation to the public are constitutional and appropriate. Lathrop v. Donohue, 367 U.S. 820 (1961); Petition of Florida Bar Association, 40 So.2d 902 (1949); Cantor v. Supreme Court of Pennsylvania, 353 F. Supp. 1307, (E.D. Pa. 1973), affd. without opinion 487 F.2d 1394 (3d. Cir. 1973).

The establishment of an adequate structure for lawyer discipline and disability proceedings is one of the principal obligations of the legal profession. It is likely therefore that the funding of the system will come primarily from lawyers admitted to practice in the state. It should be noted, however, that there is also a strong public interest in effective disciplinary enforcement. It is for that reason not inappropriate for public funds to be used toward financing the system. Public funds, if used, should always be channeled through the court as part of the budget allocation for the state's judicial system in order to insulate the discipline and disability structure from any attempted interference by either the legislative or executive branches of government.

It is also appropriate to provide funding for the discipline and disability system through a variety of other potential sources such as foundation grants for the study of new approaches, or, where it is permitted, the appropriation of interest paid on lawyer trust accounts containing funds of clients who agree to so contribute the interest or who cannot readily be identified as entitled to such interest.

JOHN REMINGTON GRAHAM

COUNSELOR AT LAW

224 North 5th Street
Brainerd, Minnesota 56401
May 12, 1982

Hon. Douglas K. Amdahl
Chief Justice of the Supreme Court
St. Paul, Minnesota 55155

Re: the Matter of the Petition of the Lawyers Professional Responsibility Board for Amendment of the Rules for the Registration of Attorneys, No. A-9

Dear Mr. Chief Justice:

I oppose the above-entitled petition for the same reasons as those expressed by me in connection with the Petition of the Minnesota State Bar Association, No. 81-1206. I believe that continued attempts to augment the registration fee will antagonize the Bar and eventually force a confrontation with the Legislature.

My opposition on this occasion extends also to the particular purpose of this petition. I believe that the Lawyers Professional Responsibility Board already wields an unwholesome degree of power, and that there have been certain abuses which merit investigation,

Thanking you for your attention, I remain

Respectfully yours,

John Remington Graham

STATE OF MINNESOTA
IN SUPREME COURT

File No. A-9

IN RE PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY BOARD
FOR AMENDMENT OF RULES RELATING
TO REGISTRATION OF ATTORNEYS.

BRIEF OF MINNESOTA
STATE BAR ASSOCIATION

Lawyers Professional Responsibility Board has filed a Petition with the Court requesting that there be a Thirty-five Dollar (\$35.00) increase in the registration fee charged senior practicing attorneys, and that the entire amount of this increase be allocated to defray the increased costs of administration of Lawyers Professional Responsibility Board.

This matter has been set for hearing before the Court at 2:00 p.m. on Friday, May 7, 1982.

Minnesota State Bar Association, acting through its Executive Committee and Board of Governors referred this matter to a special committee composed of Conrad M. Fredin, Chariman, Kelton F. Gage and Leonard J. Keys.

After study and conferences with Lawyers Professional Responsibility Board, this committee made its report to the Executive Committee and to the Board of Governors of Minnesota State Bar Association. Action was taken by these bodies at meetings duly and properly held on March 27, 1982, and this Brief is filed to express and explain the position of the organized Bar.

After study of the matter it was the recommendation of the committee that while a budget increase is required to sustain the work of the Board, a seventy-six percent (76%) increase, predicted to yield the sum of One Hundred Ninety-four Thousand Dollars (\$194,000.00) would be excessive in the light of all facts and circumstances.

Based on current figures and best estimates, an increase of Twelve Dollars (\$12.00) for senior lawyers, with a Three Dollar (\$3.00) increase for other categories, would produce additional revenues of

One Hundred Twelve Thousand Dollars (\$112,000.00). This sum together with a draw on the reserves now available should be sufficient to support the increases in staff, the cost of investigations, and other increases in expense which can reasonably be anticipated to occur during the coming year.

Increases, once imposed, tend to become permanent; and the Bar is much concerned that the expenses of maintaining licensure together with the expense of Bar membership will not only erode the percentage of members in a voluntary association, but also arouse antagonism toward the Court. We ask that there be taken into consideration, not only the dollar cost of registration, which the Bar Association recommended and supported, but also the contribution of money and time made by the lawyers of this state in supporting legal services for the indigent, the time and money expended on Continuing Legal Education, which the Bar Association also recommended and supported, and further the various dues increases of the State and District Associations required to sustain their operations.

Finally we ask that the Court be aware of the fact that this Association, acting through a select and hard-working committee, is expending much time and effort to lay the necessary ground work that interest on lawyer trust funds, relatively small in amount or although substantial, held for a short time, be devoted to public purposes, including the supervision and discipline of lawyers as officers of the Court. It is too early to say whether these efforts will be successful in all respects, but the officers of the Bar Association are quite confident that within a year substantial funds may be made available to an agency created by the Court for this and other public purposes.

If these efforts are unsuccessful, it may be necessary to consider a further increase a year from now; but Minnesota State Bar Association recommends that the prudent course would be a minimal increase at this time with a draw on reserves for any deficiency.

After all, the reserve was established for this purpose, and should be used accordingly.

With these and other factors in mind, the following motions were duly made and seconded and adopted without opposition at the March 27 meeting of the Board of Governors of the Minnesota State Bar Association:

First a statement of exigency declaring that response to the Order of the Court could not be delayed pending action by the Assembly, which would not convene until the convention in June, 1982.

Second this Resolution: RESOLVED, that Minnesota State Bar Association recommends to the Supreme Court of the State of Minnesota that the proposed increase in registration fees for senior lawyers be fixed at the sum of Twelve Dollars (\$12.00) and that other respects to proposals set forth in the Order of the Court dated March 18, 1982 be supported.

Accordingly it is respectfully requested that the increase in registration fees for senior lawyers be limited to Fifty-seven Dollars (\$57.00), of which Forty-five Dollars (\$45.00) would be allocated to Lawyers Professional Responsibility Board.

Dated at Duluth, Minnesota this 29th day of April, 1982.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

By Conrad M. Fredin
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April 30, 1982

Clerk
Supreme Court
State of Minnesota
State Capital
St. Paul, MN 55155

A-9

Re: Petitions of Lawyers' Board of Professional Responsibility

Dear Sir:

Please forgive the brevity and rough quality of this letter responding to the Court's Orders on these matters, but the Bench and Bar in which they were published came in the mail only yesterday, April 29.

As to the request for an increase in the fees, we attorneys are in the dark as to the necessity of a half-million dollar budget for the Board. Since the revision of the Rules on advertising and the Missouri decision by the U.S. Supreme Court, a high number of complaints occasioned by advertising can be dismissed summarily. Also, the cost per complaint received (\$500,000 for 1,000 complaints) seems rather high, considering that a fair number of complaints are fee disputes and meritless disgruntlements which can be economically disposed of.

As for the new rules of procedure, the deprivation of the right to confront and cross-examine a complainant is a basic affront to the U.S. and Minnesota Constitutions. I cannot believe that a lawyer's professional life can be threatened with so little opportunity for defense. The elimination of the rule requiring the Board to notify the attorney of

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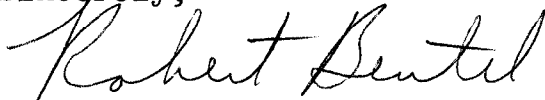
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a complaint (which the Board does not observe, now, incidentally) is also constitutionally defective. Perhaps my immediate recollection of "Star Chamber" and "Torquemada" will temper after I have had some time to reflect, but in any case I believe Bates and progeny stand for the principle that attorneys have not forfeited their citizenship rights by becoming officers of the Court.

I would request that the Court order an additional hearing at a later date to permit the bar more than a day's notice to study and respond to the changes. We are reluctant to appear obstructive of the proper discipline of the profession, yet the surface issues noted above threaten the administration of justice if attorneys are subjected to punishment for frivolous, anonymous complaints of which they have no notice.

Sincerely,

A handwritten signature in cursive script that reads "Robert Beutel". The signature is written in dark ink and is positioned below the word "Sincerely,".

Robert Beutel
Attorney at Law

RB/lv



Minnesota State Bar Association

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April 13, 1982

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(612) 343-2800

Chief Justice Amdahl
230 State Capitol Bldg.
St. Paul, MN 55155

A-9

Dear Justice Amdahl:

This will confirm our recent conversation regarding the hearing which is scheduled on Friday, May 7, regarding the petition of the Board of Professional Responsibility for increased registration fees. As we discussed at that time, Conrad M. Fredin, Past President of the MSBA, chaired a committee which studied the request of the Board of Professional Responsibility. On behalf of Mack Fredin, I would like to request that he be allowed to appear at the hearing and present the recommendations of the MSBA concerning this increased fee.

Should you require any additional notice or any written material prior to the date of the hearing, please advise and I will be happy to supply them to you.

Sincerely yours,

Celene Greene,
Executive Director

CG/dp

cc: Mack Fredin

Executive Director CELENE GREENE

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