

OFFICE OF
APPELLATE COURTS

ANNUAL REPORT OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

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ANNUAL REPORT OF THE
DIRECTOR OF LAWYERS PROFESSIONAL RESPONSIBILITY

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I. INTRODUCTION.

Rule 4(c), Rules on Lawyers Professional Responsibility, provides in part:

The Board shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system.

Rule 5(b), Rules on Lawyers Professional Responsibility, provides in part:

The Director shall prepare and submit to the Board an annual report covering the operation of the Office of Lawyers Professional Responsibility

The Board's Report and the Director's Report are hereby jointly made. This Report covers the period June 1, 1988, through May 31, 1989.

Among the highlights of the report this year, the emphasis on education is preeminent. With the excess backlog of cases almost entirely eliminated, more time has been available for educational efforts by the Board and Office. These efforts, include:

- . Referee Seminar. For the first time, a seminar was arranged for Supreme Court referees sitting in discipline cases. The topic of the seminar, "Psychological Evidence as Mitigation," was discussed in a seminar group including Supreme Court justices, judges sitting as referees, a psychiatrist, a psychologist, the director of Continuing Legal Education, a law school professor, an attorney who frequently represents respondent attorneys and the Director. A videotape of the discussion is available on request.
- . Professional Responsibility Seminar. This year over 150 people interested in professional responsibility attended the seminar. Justice Popovich's opening remarks and a

- lively panel discussion on possible rules against sexual harassment by lawyers were the high points of the seminar.
- . **Trust Account Brochure.** A comprehensive brochure detailing and illustrating the procedures by which trust account books and records should be kept has been mailed to all resident Minnesota attorneys.
 - . **Lawyers Board Opinions.** The Lawyers Board has authority under Rule 4(c), Rules on Lawyers Professional Responsibility, to "issue opinions on questions of professional conduct." A committee of the Board, chaired by Minneapolis attorney Rollin Whitcomb, is active in considering additional opinions to recommend for Board issuance. The first of these will be considered at the June 1989 Board meeting.
 - . **Office Advisory Opinions.** The Office of Lawyers Professional Responsibility in the last year gave over 800 informal telephone advisory opinions to Minnesota attorneys with questions about application of the Rules of Professional Conduct to ethics problems they face.
 - . **Lawyers Board Orientation and Discussion.** The first of two training sessions for new Board members was held in April 1989. Senior Board members, the Director and an attorney who represents respondents led the discussion.
 - . **National Presentations.** For many years attorneys in the Office of Lawyers Professional Responsibility have taken a national leadership role with the National Organization of Bar Counsel, including numerous presentations and former Director, Michael J. Hoover's presidency of the NOBC. This year, in addition, the American Bar Association invited the Director and Assistant Director Martin Cole to make

presentations at its national meetings on professional responsibility and client security.

- . **Continuing Legal Education.** The already substantial efforts of the Office in this regard were increased in the last year, as presentations were made to approximately 35 continuing legal education groups. A listing of presentations made is appended at A. 1.

In addition to special educational efforts, those active in lawyers professional responsibility have been active in many other ways.

- . **Harassment Cases and Proposed Rule.** The Minnesota Supreme Court issued three disciplinary opinions involving attorneys who had harassed people on the basis of sex or race. Because of certain changes in the disciplinary rules, a Minnesota State Bar Association committee was appointed, including members from the Lawyers Board and the Director's Office, to consider proposing to the Court a rule specifically prohibiting harassment. It is anticipated that a petition on this subject will be filed with the Court in July 1989.
- . **Lawyers Board Panel Manual.** After lengthy study and consideration, in January 1989 the Lawyers Board approved a Panel Manual for use in connection with its Panel proceedings. The Manual, which is available upon request, will make explicit and clear many of the informal guidelines and customs that have evolved in Panel proceedings. An article discussing the nature and use of the Panel Manual is attached at A. 2.
- . **Cases.** Prompt handling of almost all cases, and particularly of important cases continues to be a feature of

the Minnesota Professional Responsibility system. Particularly noteworthy is the increased speed with which the most important cases have been handled through conclusion with the Minnesota Supreme Court. See Table IV, among the tables detailing case statistics in Section III below.

- . **District Ethics Committees.** These committees, composed of volunteer lawyers and non-lawyers around the state, continue to investigate most complaints against lawyers, and to do so with independence, ability and promptness. The average age of district ethics committee files was 1.4 months as of April 30. While some states, particularly California, have moved away using volunteers in the discipline system, Minnesota has continued to benefit from energetic, experienced and well organized district ethics committee volunteer systems. Many district ethics committee members also participated in the fall professional responsibility seminar.
- . **Lawyers Professional Responsibility Board.** The Board's membership changed markedly in February 1989. John Levine of Minneapolis resigned as chair, after three years in that role, five additional years on the Board and several years of prior service on the Hennepin County District Ethics Committee. His successor is Charles Kennedy of Wadena, who brings comparable experience to the post. The Board welcomed nine new members, the largest single change in membership in the Board's history.

II. NEW RULE PROPOSALS.

There were a number of changes in the Minnesota professional responsibility system during 1988 and 1989. In addition, further changes for the system are on the horizon.

A. Minnesota Rules of Professional Conduct.

The Lawyers Board has approved the following amendments to the Minnesota Rules of Professional Conduct. The amendments will be included in a future rules changes petition to the Minnesota Supreme Court. At present, the following only represent amendments proposed by the Lawyers Board and will not become effective until adopted by the Court.

1. Rule 7.2(d). The Lawyers Board has proposed that this rule be amended to require that the name of a "licensed Minnesota" lawyer be included in all advertising communications disseminated in Minnesota. The rule currently requires only that the name of "a lawyer" responsible for the advertising's content be included in the ad and does not require that the lawyer be licensed in Minnesota.

2. Tax Rule. The Board has also proposed an amendment to Rule 8.4 stating that it is professional misconduct for a lawyer to fail to file income tax returns. The proposed amendment would represent a codification of the Court's decisions in Bunker and related cases disciplining lawyers for failure to file income tax returns. The purpose of the amendment is to provide notice that timely filing of income tax returns is a minimum standard of professional conduct for Minnesota lawyers.

3. Rule 1.6(b). This proposed amendment would permit a lawyer to disclose confidential information "necessary to rectify the consequences of client's criminal or fraudulent act in the furtherance of which the lawyer's services were used."

The Minnesota State Bar Association approved a similar rule proposal in 1984, but it was not adopted by the Court. A similar amendment was adopted by the Wisconsin Supreme Court and made effective January 1, 1988.

B. Sexual Harassment Rule.

A Minnesota State Bar Association committee has recommended the adoption of a rule which would provide that it is professional misconduct for a lawyer to "harass a person on the basis of sex, race, age, creed, color, national origin, disability, or marital status, while the lawyer is acting in a professional capacity." The Bar's Board of Governor's added the category "sexual preference" to the proposal. The proposed amendment follows the Court's recent discipline decisions in the Miera and Geoffrey Peters cases. Both Miera and Peters were disciplined for conduct involving sexual harassment on the basis that it violated former code provision DR 1-102(A)(6), which forbade a lawyer to "engage in any other conduct that adversely reflects on his fitness to practice law." The Rules of Professional Conduct, however, did not carry forward this provision thus necessitating the rule proposed by the MSBA committee.

C. Trust Account Overdraft Notification Rule.

A Minnesota State Bar Association committee has been studying, and will recommend adopting, the Model Rule for trust account overdraft notification which was adopted by the American Bar Association in February 1988. Under the ABA Model Trust Account Overdraft Notification Rule, banks which agree to participate in the program, would notify the Lawyer's Board whenever an instrument drawn on a lawyer's trust account was presented against insufficient funds. The rationale for the rule

is that trust account shortages can be detected and reported at an early stage when even the victims/clients are yet unaware of the problem.

III. CASES.

A. Minnesota Supreme Court Decisions.

The subjects of many of the Supreme Court orders for discipline in the last year were familiar: abandonment of clients, misappropriation of funds, criminal convictions, failure to file tax returns and the like. Among these, the cases that stand out as a largely new subject of discipline are three cases involving public reprimand for what could best be called harassment. The cases are In re Peters, 428 N.W.2d 375 (Minn. 1988), In re Miera, 426 N.W.2d 850 (Minn. 1988), and In re Plunkett, 432 N.W.2d 454 (Minn. 1989). Peters and Miera were disciplined for sexual harassment, Plunkett for racial harassment.

Peters was a law school dean who was found to have repeatedly touched female students and employees in an unwelcome way. The Court reprimanded him "to assure the public and warn the practicing lawyer that it cannot condone such [sexually harassing] conduct by an attorney" Miera was suspended as a judge, and disciplined as a lawyer, for unwelcome sexual advances toward his male court reporter. A number of previous Minnesota and other discipline cases dealt with criminal sexual misconduct or sexual misconduct by a lawyer toward a client. Peters and Miera were exceptionally significant cases both because of public attention for these matters locally and because the cases stake out new ground in professional responsibility law.

Plunkett, the other harassment case, is more like such predecessors as In re Williams, 414 N.W.2d 394 (Minn. 1987). Williams was suspended for extreme courtroom misconduct. His use of ethnic slurs at a deposition by itself warranted public reprimand. Similarly, Plunkett gratuitously posed racist questions to a black deponent, and also brought a frivolous suit against her. Plunkett and Williams are reminders that even in an adversary system, zeal for clients does not justify abusing adversaries in racist, ethnic or other ways.

In recent months, misappropriation of funds has led to the suspension of several attorneys and the disbarment of four: In re Danna, 403 N.W.2d 239 (Minn. 1988), In re Simonson, 420 N.W.2d 903 (Minn. 1988), In re Bradbury, 430 N.W.2d 833 (Minn. 1988), and In re Benson, 431 N.W.2d 120 (Minn. 1988). Benson is the most important of these, not only because he misappropriated about \$200,000 from an elderly family friend. To cover up his misconduct, he hired another attorney to falsify a trust and other documents. The other attorney then conspired with Benson, through coordinated perjuries, to frustrate investigation into their activities. Benson's confederate was suspended for a minimum of five years. In re Kaine, 424 N.W.2d 64 (Minn. 1988).

Another case of particular significance involved the indefinite suspension of former Minneapolis City Attorney Emanuel Serstock. Serstock received favors, including money, for people whose parking tickets he handled. In re Serstock, 432 N.W.2d 179 (Minn. 1988).

In about one out of five of recent cases, the main subject of discipline is failure to file tax returns. The number of such cases has increased in the last few years, as the Minnesota Department of Revenue has taken a more aggressively prosecution

and reporting posture. All but one of these cases now has been completed.

Table I
Supreme Court Dispositions 1976-1987
Number of Lawyers

	Disbar.	Susp.	Prob.	Censure & Rep.	Dismiss.	Other	Total
1976	4	5	0	0	0	1	10
1977	1	2	0	1	0	0	4
1978	6	10	3	4	0	0	23
1979	6	4	2	3	0	0	15
1980	1	3	1	1	0	0	6
1981	3	4	1	1	1	0	10
1982	6	8	0	5	2	2	23
1983	4	4	0	3	2	1	14
1984	3	7	3	9	0	1	23
1985	4	15	13	10	3	1	46
1986	8	17	4	2	0	0	31
1987	5	18	7	4	0	0	34
1988	4	22	8	4	1	0	39

B. U.S. Supreme Court Cases.

In the last dozen years, U.S. Supreme Court cases dealing with lawyer ethics have almost all dealt with questions of whether certain advertisements and solicitations may be subjects of discipline, or are instead subject to first amendment protections. In 1988, Shapero v. Kentucky Bar Association, 108 S.Ct. 1916 (1988) addressed the constitutionality of professional prohibition of "targeted mail" advertisements or solicitations.

The court held that an attorney may not be disciplined for mailing a truthful solicitation or advertisement to a group of people with an actual or potential legal problem. Shapero is not particularly important in Minnesota, because Minnesota Rules (unlike the Kentucky Rule and the ABA Model Rule) have for several years permitted such mailings.

C. Statistics.

Statistics regarding complaints against lawyers and the dispositions of complaints are probably best summarized graphically. Below are tables showing statistical information about complaints against Minnesota lawyers over the last several years.

Table II

	<u>12/85</u>	<u>12/86</u>	<u>12/87</u>	<u>12/88</u>	<u>5/31/89</u>
Total Open Files	417	406	389	358	441
Cases at Least One Year Old	66	52	54	39	40
Complaints Received Y.T.D.	1,244	1,233	1,091	1,149	553
Files Closed	1,513	1,244	1,122	1,180	470

Table III

	Percentage of Files Closed			
	1985	1986	1987	1988
1. <u>Total Dismissals</u>	82%	82%	79%	81%
a. Summary Dismissals	30%	34%	36%	41%
b. DNW/DEC	36%	39%	34%	32%
c. DNW/DIR	17%	9%	9%	8%
2. <u>Admonitions</u>	7%	8%	9%	9%
3. <u>Private Probation</u>	4%	1%	2%	2%
4. <u>Supreme Court Dispositions</u>	6%	8%	9%	7%
a. S. Court Dismissal	--	--	--	1%
b. S. Court Reprimand	1%	--	1%	--
c. S. Court Probation	1%	--	1%	1%
d. S. Court Suspension	3%	3%	3%	4%
e. S. Court Disbarment	1%	5%	4%	1%

Table IV

Number of Months File Was Open at Disposition

	1985	1986	1987	1988
Discipline Not Warranted/District Ethics Committee	6	4	4	4
Discipline Not Warranted/Director	13	6	6	6
Admonition	12	8	8	9
Private Probation	19	13	8	10
Sup. Ct. Reprimand	30	24	25	20
Sup. Ct. Probation	13	42	22	11
Sup. Ct. Suspension	30	27	25	16
Sup. Ct. Disbarment	11	13	12	9

A few statistics stand out. The percentages of complaints resulting in dismissals and in the several types of discipline are strikingly constant. The raw numbers of complaints and disciplines increased for a number of years, but in the last several years have remained fairly constant--even though the number of lawyers continues to increase. The promptness of resolving complaints has increased in the last few years. The "honest procrastinator" produces the most constant statistic of all. Year in and year out, at every level of complaint and discipline, lawyers who neglect files and do not communicate adequately with their clients are the most frequent subjects of complaint and discipline.

The 5/31/89 case statistics also stand out, because they may indicate a new upsurge in complaints. The first five months of this year are too short a period for drawing conclusions, but close monitoring will be necessary to determine whether the long term history of complaints rising with increasing numbers of lawyers will again apply. In this connection, it should be noted that the ratio of complaints to the overall number of lawyers in Minnesota has been much lower than the national average. The most recent ABA survey, using 1987 data shows that Minnesota attorneys are complained of only a little more than half as often as lawyers in other states.

IV. DIRECTOR'S OFFICE.

A. Budget.

An article summarizing budgeting procedures and dynamics, titled "Million Dollar Budget," is appended at A. 3. Several budget items are noteworthy.

In 1985, the Supreme Court Advisory Committee reported that the Minnesota discipline budget was about one-third higher than the average in five comparable states, using 1984 ABA survey data.

The most recent ABA survey, using 1987 data, shows Minnesota's budget to be equal to the average in the comparable states.

Budgets are reviewed annually by the Executive Committee, the Lawyers Board and the Court. Annual budget increases have averaged about 6% recently. The Minnesota discipline assessment per lawyer is about \$6 less than the national average. No dramatic changes are expected.

1. Income.

\$10.00 Fee Increase. On 7/1/88 each Minnesota attorney paying the full fee began paying an additional \$10, increasing the amount allocated for the Lawyers Board to \$80 per attorney. This was the first increase in the fee since 10/1/84. Unless there are large increases in numbers of complaints or unanticipated expenses, another three to four year interval can be expected without an additional increase.

2. FY'89.

Budget Savings. About \$57,000 of the FY'89 available budget will not be spent during FY'89. About \$25,000 of this savings is in lower personnel costs. Again this year we were able to put off hiring an additional half-time word processing operator.

Budget Variations. The only other major variation in budget implementation this year is in computer programming. Only \$6,000 of the \$15,000 budgeted, because Supreme Court programmers have not been available.

3. FY'90.

Balance Forward. The balance forward expected on 6/30/90 is \$392,533. This is slightly more than the recommendation of Supreme Court administration that there be a balance carried forward equal to approximately 25% of annual

budget. The excess is due to the July 1, 1988, fee increase and to lower-than-expected expenses. Low inflation, lack of increase in complaints and more efficient office equipment and procedures are the main cost-saving factors. Income should exceed expenditures by about \$74,000.

Personnel Projections. There are no personnel additions projected for FY'90. It should also be noted that FY'90 salary increases are increasingly limited by employees having reached the top of their salary ranges (Wernz, Slator, Anderson, Bigelow, Peerman, and Capecchi).

Projection Methods. Because some line items have been highly variable (professional services and in-state travel, for example), the method used for FY'90 for such items has been to take the three year average of actual expenditures and multiply that amount by 105%. Because personnel merit increases are now done (at Supreme Court direction) on an employment anniversary basis, the calculation of annual personnel costs is complicated. Use of a computer has facilitated these calculations.

B. Administration.

The Office has continued to benefit from up-to-date equipment purchased over the past several years.

1. Automation.

a. Computerization.

(i) TCIS - We continue to experience significant delays in our computer programming. After four years on the system, there are some very basic functions which we are unable to perform. In 1988, we were provided with only 13 hours of service. We have recently given some

consideration to abandoning TCIS and purchasing an independent computer system.

b. FAX Machine.

In April 1989, we joined the world of high tech and purchased a FAX machine. It has been most useful in many ways.

2. Judicial Center.

The move to the Judicial Center has been delayed to fall of 1993 at the earliest. Some of the excess balance forward funds are targeted for moving costs, especially furniture and equipment purchases.

3. Office Manual.

Revising and improving office policy and procedure manual and various standard forms is an ongoing project.

C. Personnel.

Attached at A. 5 is the current Office organizational chart. There are twenty full-time employees and a part-time word processor. There have been no new positions added since 1985.

In FY'89 we have had several personnel changes: (1) In August 1988, Assistant Director Mary Moriarty resigned and the position was filled in October 1988 by Patrick Burns; (2) In February 1989, legal assistant Tracy Hoppe resigned and the position was filled in March by Valerie Jones.

The stability of the staff remains remarkable. During FY'89 three employees celebrated their seven year anniversary with the Office, having started in 1981. One employee started in 1982, five employees began employment in 1984 and five employees started in 1985. The seven remaining employees were hired between 1986 and 1989.

D. Trusteeships.

Under Rule 27, R. Law. Prof. Resp., the Supreme Court may appoint the Director, or any lawyer as trustee when an attorney abandons practice or otherwise becomes unable to carry on practice, and no other arrangements are made. In the last several years, the Director has served as trustee in several cases each year. While substantial amounts of time and money are usually involved in trusteeships, with experience more efficient procedures are also reducing the burden. The full integration of personal computers into the client identification - file return process has been especially helpful. Renting additional storage space has made the administration of trusteeships less disruptive. In August Assistant Director Kenneth Jorgensen will make a presentation to the NOBC on the practical aspects of administering a trusteeship.

During fiscal year 1989 the Director served as trustee for client files of Mark A. Sampson, Wayne Wentworth and Diana Smith Logan as ordered by the Supreme Court. The Director was also appointed to serve as temporary interim trustee concerning the law firm trust account of Bruce C. Douglas. The Court discharged the Director as trustee in the Sampson matter. The Director continues to serve as trustee in Wentworth and Logan. The Director is also in possession of client files which remain from the John J. Flanagan, Robert T. Stratton, and Joel R. Thompson trusteeships.

1. Mark A. Sampson.

In October 1986, the Court appointed Virgil C. Herrick and David P. Newman co-trustees. The co-trustees returned 390 "open" and 167 "closed" files to clients, and destroyed 13 files at clients' request. The co-trustees expended \$209.69 for postage and envelopes, and a law clerk hired at the Director's

expense worked 256.5 hours at a cost of \$2,052.00. The co-trustees did not attempt to contact clients of approximately 1,300 "closed" files. The Court discharged Herrick and Newman on November 13, 1987, and ordered the remaining files transferred to the Director's Office. On May 4, 1988, the Court ordered the Director to attempt to notify the 1,300 clients with "closed" files. The Director's Office began contacting clients in May 1988. The Director returned 526 files to clients or their designated agents, destroyed 103 files at the client's request, and retains 819 unclaimed files for future delivery or destruction. The Director expended \$657.00 for postage, \$924.00 in office supply expenses, 11.5 legal assistant hours, 128 clerical hours and 35 attorney hours.

The Director was discharged as trustee on March 7, 1989.

2. Wayne Wentworth.

On August 31, 1988, the Court appointed the Director's Office as interim temporary trustee with the following duties:

- a. To begin to inventory client files;
- b. To return client files to clients who request them;
- c. To open Wentworth's mail;
- d. To notify the clients of the need to obtain substitute counsel if necessary; and
- e. To take other appropriate action pursuant to Rule 27, RLPR.

The Director's Office has collected 180 client files and has sent notices to the involved clients. As of April 24, 1989, 62 client files have been returned and 9 files have been destroyed at the client's request. No response has been received from 44 clients, 46 notices were returned as undeliverable, and 19 files contained no client address. The Director's Office is continuing its attempts to contact clients.

3. Diana Smith Logan.

On April 25, 1989, the Director's Office was appointed trustee for the client files of Diana Smith Logan. Files were collected from two locations on May 2, 1989. Due to the disarray of the files, it has not yet been determined exactly how many clients may be involved. Approximately 180 to 200 files were

collected. The Director's Office is currently in the process of organizing the files collected so that the client notification process may begin.

4. Bruce C. Douglas.

On May 5, 1989, the Director was appointed temporary interim trustee concerning the law firm trust account of Bruce C. Douglas. The Director was given the authority to take whatever action is deemed appropriate and necessary to protect the interests of clients in the trust account. The Director was specifically given the authority to seek an order freezing the account and such an order was obtained on May 8, 1989. The Director is currently in the process of ascertaining the identity of clients with claims against the trust account and the amount of those claims.

E. Probation.

The probation department monitors respondents' compliance with probation terms including: responding to inquiries from supervisors, auditing books and records, reviewing reports from supervisors and counselors, and performing a final review prior to closing the file to determine respondents' compliance. Occasionally, it becomes necessary to assist respondents in locating potential supervisors. The probation department is staffed by an Assistant Director and a legal assistant.

In 1988, the probation legal assistant devoted an average of 5.75 hours per week to probation matters; the Assistant Director devoted an average of 2.50 hours per week. (This figure does not include time devoted by the Assistant Director to familiarize herself with probation files and procedures when she took over the department in mid-1988.)

This year the probation department sponsored a meeting for supervisors in connection with the DEC seminar. The meeting allowed supervisors to share common experiences and concerns and

to make recommendations for improvements. The meeting was well received and may become a regular part of the fall seminar.

1. File Totals.

Total probation files as of 1/1/88	60
Probation files opened in 1988	31
Probations files closed in 1988	24
Total probation files as of 1/1/89	67

2. 91 attorneys were on probation during some portion of 1988.
 - a. 48 Court-ordered probations

27 supervised
21 unsupervised

 - b. 43 stipulated private probations

23 supervised
20 unsupervised

3. Files Involving:

Client-Related Violations	68
Non-Client-Related Violations	23

4. Areas of Misconduct*

Neglect/Non-comm.	46	Conflict of Interest	2
Taxes	18	Illegal fees	2
Criminal Conduct	4	Books and Records	16
Failure to Return Client Property/File	4	Misrepresentation	14
Non-cooperation	6	Misappropriation	7
		Other	7

13 files involved abuse of alcohol/drugs; 12 involved psychological disorder.

*A file may include more than one area of misconduct.

5. 24 Closings in 1988

Successfully completed probations	17
Revoked probations	6
Other	1*

*Should never have been opened as probation; pre-probation requirements were not satisfied.

F. Advisory Opinions.

Telephone advisory opinions concerning questions of professional responsibility are available from the Director's

Office to all licensed Minnesota attorneys and judges. Under certain circumstances, written opinions are also available. The advisory opinions issued by the Director's Office are the personal opinion of the attorney issuing the opinion and are not binding upon the Lawyers Board or the Supreme Court. The Director's Office does not provide advisory opinions concerning: (1) advertising issues; (2) questions of law; (3) the conduct of another lawyer; and (4) past conduct.

During 1988, 815 telephone opinions were issued. This is an increase from 1987, when 630 telephone opinions were issued. There were also 46 written opinions issued in 1988. The most frequent areas of inquiry in 1988 were:

Conflict of Interest	20%
Client Confidences	11%
Advertising and Solicitation	8%
Withdrawal from Representation	5%
Return of Client Files	5%
Communication with Represented Party	5%

Four senior assistant directors devoted 251.40 hours to advisory opinion matters. This figure is a slight increase from 1987, when 233.15 attorney hours were expended. The increase is attributable to the significant increase in total advisory opinions. Legal assistants contributed 304.65 hours. This figure is down significantly from 1987, when 550.90 hours were contributed. This decrease is primarily attributable to the computerization of statistical compilation.

Rule 4(c), Rules on Lawyers Professional Responsibility, also authorizes the Lawyers Professional Responsibility Board to issue opinions on questions of professional conduct. There are currently eleven Lawyers Professional Board opinions in effect.

Although the Board has not issued an opinion since 1983, it recently appointed a special committee to consider and recommend for adoption further Board opinions.

G. Judgments and Collections.

Although the judgments awarded in 1988 increased from 1987 for approximately the same number of attorneys, collection of costs decreased. Less than half of the costs awarded in 1988 have been collected to date. As of the date of the 1988 annual report, slightly over two-thirds of the 1987 costs awarded had been collected. There has been no change in collection methods which accounts for this decreased rate of collection.

All but approximately \$200 of costs awarded for 1987 have been collected. Costs collected in 1988 for 1987 judgments equal approximately one-third of the total judgments awarded for 1987. In addition, costs were collected for two judgments awarded in 1986. The Court awarded the Director bad faith attorney's fees in two 1988 cases and, to date, in one 1989 case.

1.	Costs Awarded in 1988 (36 attorneys)		\$40,447.64
2.	Costs Collected in 1988 for 1988 Dispositions. (17 attorneys)	\$13,530.64	
3.	Costs Collected in 1989 for 1988 Dispositions. (3 attorneys)	<u>1,050.00</u>	
4.	Total Costs Collected to Date for 1988 Dispositions.		\$14,580.64
5.	Costs Collected in 1988 for 1986 Disposition. (2 attorneys)		1,634.20
6.	Costs Collected in 1988 for 1987 Disposition. (12 attorneys)		10,536.69

- | | |
|--|-------------|
| 7. Unpaid Judgments as of
January 1, 1989.
(1980-1988) | \$65,123.60 |
| 8. National Discipline Data
Bank Reports | 60 |

H. Professional Corporations.

Under Minn. Stat. § 319A.18, the Lawyers Professional Responsibility Board is granted the authority to make such rules as are necessary to carry out the provisions of the Professional Corporations Act. The Professional Corporations Act contains limitations on the structure and operation of professional corporations. The Act also requires that annual reports, accompanied by a filing fee, be filed with the Board. The Board has not formally adopted any rules in this area. The Director's Office has, since 1973, monitored the reporting requirements of the statute. Annual report forms with certain minimal documentation requirements and filing fees are sought from all known legal professional corporations. Although the statutory authority exists to revoke the corporate charter of professional corporations which fail to comply with the reporting requirements, the cost of this has proven to be prohibitive.

The following are the statistics for the professional corporation department as of May 4, 1989:

690 @ \$ 25.00	\$17,250.00
24 @ 100.00	<u>2,400.00</u>
	<u>19,650.00</u>
4 for 475.00*	<u>475.00</u>
	<u>20,125.00</u>

*Funds collected in 1988 for past unpaid fees.

Total Attorney Hours: 8.5

Total Non-attorney Hours: 185

The professional corporation department is staffed by an Assistant Director, legal assistant, and file clerk. The professional corporation roster and statistical data have been transferred to computer.

I. Complainant Appeals.

During 1988, the Director's office received 218 complainant appeals, compared to 166 such appeals in 1987. This is approximately 19 percent of files closed, up 4 percent from 1987. Board members made 232 determinations, five of which recommended further investigation and one of which was directed to be heard before a panel. The remainder affirmed the Director's disposition. A total of 308 clerical hours were spent in 1988 processing the appeal files, as well as an unrecorded amount of attorney time.

J. Disclosure.

1. Source and Number of Requests for Disclosure.
Calendar Year 1988.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Matters Pending</u>
1. Nat'l Conf. of Bar Exam.	178	178	2	1
2. Individual Attorneys	29	29	0	1
3. Local Referral Services	40	222	1	0
4. Governor's Office	5	51	0	0
5. Other State Disc. Counsels of Bar Offices	72	73	11	0
6. F.B.I.	15	15	0	0
7. Miscellaneous	<u>21</u>	<u>182</u>	<u>6</u>	<u>2</u>
TOTAL	360	750	20	4

2. Department Function and Procedure.

The disclosure department consists of one attorney, one legal assistant, and the disciplinary clerk. The department responds to requests from various sources for information about an attorney's disciplinary record.

The department experienced a significant increase in the number of requests and in the number of attorneys who were the subject of those requests in calendar year 1988. The number of requests was 22 percent higher than 1987, and the number of attorneys was 47 percent higher. This caused a significant increase in the amount of time the disciplinary clerk spent

processing the requests. The Senior Assistant Director and legal assistant assigned to the department did not experience the same increase in time spent on disclosure matters.

The reason for the increase is the addition of several new sources of disclosure requests. The Minnesota State Bar Association trial specialist certification program was the largest single new request for 1988, requesting disciplinary information for over one hundred attorneys. The Sherburne County Attorney's office and Judge Lindberg of Hennepin County District Court were also new sources of disclosure requests. The statistics for all of these new sources is found in the "miscellaneous" category. It is anticipated that the MSBA, Sherburne County, and Judge Lindberg will continue to make disclosure requests in the future.

V. DISTRICT ETHICS COMMITTEES.

The volunteer District Ethics Committees (DEC) in Minnesota have long played a special, irreplaceable role. Lawyer and public members bring the working standards of the bar and the wider standards of the community to professional responsibility questions. States, such as California, which do not have comparable volunteer organizations, have far more expensive systems. In recent years especially, the willingness of volunteer DEC members to put their other duties aside to do professional responsibility investigations promptly, has been truly exemplary.

In 1988, the DEC's continued to investigate complaints in a timely manner, despite an increase in the volume of complaints sent out for investigation. The average age of a DEC file had decreased from 4.2 months in February 1983 to 1.3 months in April 1988. Although the average age increased to 1.7 months at the

end of 1988, largely due to a lag during the summer months, in April 1989 the average age was again below 1.4 months. These figures remain below the goal of two months set by the Board's Executive Committee in 1985. Attached at A. 6 is the computer-generated district committee aging analysis for April 1989, showing by district the number of months various files have been pending.

The greater volume of files sent out for investigation has been efficiently handled by the DECs. The number of files in the DECs increased from an average of 120 (through October 1988) to over 140 in November and December 1988, and the first four months of 1989. This increase is the result of an increase in complaints received by the Director's Office and sent to the DECs, since November 1988. The files continue to be investigated and returned promptly by the DECs.

The quality of the DEC investigative reports also has remained high. The Director's Office developed a format for the investigator to list, inter alia, the persons contacted during the investigation, the possible rule violations, the findings, and the recommendation. The DEC reports have used this format in recent years. Continued use of this format by the DECs allows the Director's Office to quickly determine whether additional investigation by the Director's Office is necessary or desirable.

The majority of reports from the DEC investigators in 1988 did not include draft memorandums. Rule 7(b), RLPR, (as amended July 1, 1986), provides for DEC investigators to include such draft memorandums when recommending discipline not warranted or an admonition. Drafting such memorandums increases the DEC role in shaping the complaint determination and decreases paid staff

time in the Director's Office. Although the DECs had consistently increased use of these memorandums in 1987, use of memorandums declined in 1988. The Director's Office will continue to request that DEC investigators provide draft memorandums with their reports.

An assistant director is assigned to each DEC as liaison, and can be contacted by the investigator with questions on any particular investigation, request for extension, or other assistance. Comments from the DEC chairs indicate they have found it helpful to have someone at the Director's Office to call when required.

The DECs are an invaluable part of the disciplinary process. The DECs volunteer many hours of quality investigative resources to the system, without which it could not operate. At the same time, the DECs provide direct peer evaluation of alleged attorney misconduct and in many cases contact with local complainants. The involvement of the DECs, as evidenced by investigations and reports, has been outstanding.

VI. NATIONAL DEVELOPMENTS.

National developments have affected lawyers professional responsibility in Minnesota in many ways over the years. The efforts of the American Bar Association to develop model codes, rules and standards have been particularly influential.

In 1989 the American Bar Association will begin a nationwide examination of the effectiveness of lawyer discipline systems. A prior evaluation, now 20 years old, was of enormous importance for the establishment of lawyer professional responsibility systems in almost every jurisdiction. The 1969 Clark Report (named after committee chair and U.S. Supreme Court Justice Tom Clark) began with a conclusion:

After three years of studying lawyer discipline throughout the country, this committee must report the existence of a scandalous situation that requires the immediate attention of the profession. With few exceptions, the prevailing attitude of lawyers toward disciplinary enforcement ranges from apathy to outright hostility. Disciplinary action is practically nonexistent in many jurisdictions; practices and procedures are antiquated; many disciplinary agencies have little power to take effective steps against malefactors.

Many of the Clark Report's recommendations were implemented, and there is little doubt that lawyer discipline systems have greatly improved in the last 20 years. Nonetheless, in many locales there continues to be press and public criticism. HALT, which bills itself as "An Organization of Americans for Legal Reform," recently publicized its opinion that most discipline systems were insufficiently tough, prompt and open. The new ABA committee will be conducting regional hearings, and its conclusions will no doubt be influential in shaping lawyer discipline systems into the next century.

The ABA also maintains comparative data on professional responsibility systems in the various states. For example, the most recent budget data indicates that the allocations per licensed lawyer for the discipline function range from \$298 (Alaska) to \$153 (California) to \$58 (Minnesota) to \$10 (South Carolina), with a national average of \$64. The 1986 nationwide average number of lawyers per state (15,046) in total discipline budget (\$1,038,577) are roughly comparable to Minnesota figures.

As much as Minnesota has benefited from considering model standards developed by the ABA, Minnesota has also contributed to the formulation of national standards and policies. Minnesota will continue to affect and be affected by national developments

in professional responsibility. The Clark II Report is the most significant of these developments now on the horizon.

VII. FY'90 GOALS AND OBJECTIVES.

A. Lawyers Professional Responsibility Board.

The Board will devote considerable effort to integrating its nine new members into its committees, Panels, and general activities. A new Board will no doubt evolve in many ways in the coming year.

The Opinion Committee of the Board expects to be active in the coming year. The uncertain status of the Comments to the Rules of Professional Conduct has previously been noted, and the Board's opinion-issuing function may become especially important. The Minnesota Supreme Court will soon be considering several proposed amendments to the Rules of Professional Conduct. The Minnesota State Bar Association has also appointed a new, standing committee to consider further proposals for change in the Rules. The Board will endeavor to work with this new committee, as well as to assert its own views when appropriate, regarding the Rules.

The Board will begin considering how best to respond to a recommendation of the Supreme Court Advisory Committee, in 1985, that,

The Court should consider creating, after a three to five year period, a similar oversight committee to review the discipline system and make recommendations for improvement.

In considering this recommendation, the Board is also mindful that in 1981 the American Bar Association conducted an evaluation of the Minnesota professional responsibility system. The Board will consider whether a regular, periodic system of review is desirable.

B. Office of Lawyers Professional Responsibility.

In the last several years considerable effort has been devoted to managing the Office's case load and monitoring various aspects of it closely. Great progress has been made in reducing the size of the case inventory and in increasing the speed with which complaints and cases are handled. The district ethics committees have joined in this effort and greatly reduced the average time for their investigations. There is little room left for continued numerical or statistical improvement. If the exceptionally large number of complaints received in the first five months of 1989 persists, great effort will be needed to maintain current statistical levels of cases on hand and speed of handling cases.

The Office's educational efforts will continue. Again, there is very little room for additional quantitative effort, with the staff on hand. In staffing the Board Opinion Committee, it will be necessary to hire a part time law clerk or lawyer, to assist in legal research. Two attorneys from the Office are scheduled to make presentations to the National Organization of Bar Counsel at its August meeting.

In administrative matters, the most pressing need is for further programming help with the TCIS computer system. This can be accomplished only if programming help is available through Supreme Court Administration. A continuing challenge for the Office administration is the trusteeship duties that increase each year. The physical management of hundreds of files to be collected and returned to clients, with appropriate receipts and records and storage, is no small matter. The general policy of the Office has been not to request appointment of the Director as trustee unless there is a critical situation, due to the death or

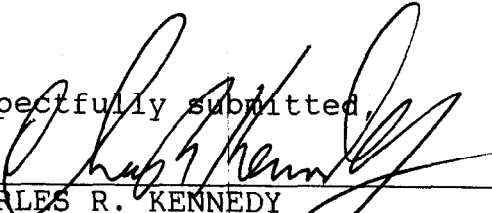
abandonment of practice by a lawyer, and the absence of any other satisfactory option for dealing with a lawyer's files.

The experience of the personnel in the Office is an exceptional asset for the professional responsibility system. Creating opportunities for growth is a challenge for long-term employees.

In conclusion, the Board, and the Director's Office report to the Court that the professional responsibility system in Minnesota is functioning well. Controversy has often been associated with professional responsibility systems, and often for good reason; however, there appears to be no subject of great controversy at this time. On the other hand, by statistical and other measures, it appears that complaints are being handled promptly and fairly. Perhaps the most publicized subject of professional responsibility in the last year has been that of harassment, and the several organizations interested in professional responsibility have acted promptly and publicly to bring the issue to the Court's attention. It is particularly gratifying to report that the volunteer dimension of the professional responsibility system in Minnesota remains alive and in exceptionally good health.

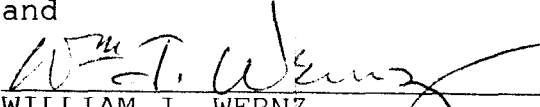
Dated: June 16, 1989.

Respectfully submitted,



CHARLES R. KENNEDY
CHAIRMAN, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

and



WILLIAM J. WERNZ
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

FY'89 SPEAKING ENGAGEMENTS

<u>DATE</u>	<u>COURSE TITLE</u>
6/6/88	Legal Assistant Orientation Program
6/7/88	Exchange Club luncheon
6/14/88	Hennepin County Attorneys Seminar
7/1/88	Continuing Legal Education - "Rules of Civil Procedure" Seminar
7/20/88	"Practical Ethics and the Procedures Conducted by the State Board of Professional Responsibility"
7/22/88	Continuing Legal Education - "Trial Practice" Seminar
7/27/88	Hennepin County Attorneys Office
8/24/88	Speak at Gordon Miller Law Firm
9/9/88	Speak at O'Connor & Hannan law firm
9/16/88	Continuing Legal Education - "Residential Real Estate Practice" Seminar
10/19/88	South St. Paul Rotary Club
11/4/88	District Ethics Committee Seminar
11/9/88	Olmsted County Bar Association
11/15/88	Lecture on Professional Responsibility to Legal Services
11/17/88	"Mitigating Circumstances in Disciplinary Proceedings" - LPRB Referees Seminar
11/30/88	Continuing Legal Education - Ramsey County Young Lawyers Section
12/6/88	Continuing Legal Education - "Bridge-the-Gap" Seminar
1/12/89	Continuing Legal Education - "Trial Specialist Certification" Seminar
1/24/89	Orientation class at the Minnesota Legal Assistant Institute
1/26/89	Anoka County Family Law Committee
2/1/89 - 2/4/89	National Organization of Bar Counsel Conference
2/16/89	Ramsey County Family Law Section
2/16/89	Attorney General Legal Assistants Seminar
3/3/89	Minnesota County Attorneys Association Seminar on Criminal Evidence
3/8/89	Olmsted County Bar Association
3/31/89	Minnesota Institute of Legal Education - "Crime 1989" Seminar
4/12/89	Midway Civic and Commerce Club
4/13/89	"Basic Criminal" Seminar
4/14/89	Minnesota Institute of Legal Education - "Civil Fraud & White Collar Crime" Seminar
4/19/89	Hennepin County Bar Association Young Lawyers
4/19/89	Attorney General Ethics Seminar
4/20/89	Minnesota Legal Assistant Section on Environment
5/13/89	Hennepin County Family Law Section meeting
5/18/89	"Client v. Lawyer" Seminar
5/18/89 - 5/19/89	ABA National Conference on Lawyers Professional Responsibility and National Clients' Security Forum

Lawyers Board Panel Manual . . .

The Lawyers Board has approved for use in connection with its panel hearing procedures a "Panel Manual." The manual will be a helpful working set of guidelines for all involved in the panel attorney discipline hearing process.

The Lawyers Board has six three-member panels that conduct hearings on several sorts of discipline matters. Charges of unprofessional conduct are screened by panels, in something like grand jury fashion, to determine whether there is "probable cause" to believe public discipline is warranted. Panels also conduct public evidentiary hearings on reinstatement petitions by suspended or disbarred attorneys. Panels also consider appeals by lawyers from admonitions issued by the director for "isolated and nonserious misconduct."

The procedures followed by the panels are set out in the Rules on Lawyers Professional Responsibility, adopted by the Minnesota Supreme Court. The new manual states how the rules have been applied by panels over the years, and how the rules generally are expected to be applied in the future.

The manual is one of the board's ways of implementing the recommendation of the Supreme Court Advisory Committee in 1985 for adoption of "procedures that will promote greater uniformity and consistency in the disposition of cases by the district committees and board panels."

The Panel Manual is one of several important steps the board has taken to promote consistency in professional responsibility matters. In 1986, the board adopted "summary dismissal guidelines," for use by the Director's Office. These guidelines have been applied by the Director's Office so that several regular kinds of complaints are generally not investigated by the Director's Office. The board has sought to increase consistency in disciplinary sanctions and reasoning by referring to the ABA *Standards for Imposing Lawyer Sanctions*. The board also sought to improve consistency, and efficiency, by proposing for the Court's adoption, Rule 10(d), Rules on Lawyers Professional Responsibility. This rule was adopted, and identifies certain classes of serious cases which may, upon

motion, be referred to the Court by a panel chair without a full panel hearing.

The Panel Manual is meant to promote consistency among the hearing panels, and to promote other important goals as well. The manual should make the procedures of board panels more open to the bar and the public. The manual will also enable *pro se* respondent lawyers, and lawyers who represent respondents only infrequently, to achieve more effective representation before a panel. Notice of the existence

"The contents of the Panel Manual are meant to be summaries and guidelines, not hard and fast rules."

and availability of the Panel Manual will be incorporated into the form Notice of Panel Hearing sent by the Director's Office.

The approval of the Panel Manual by the board comes at a particularly suitable time in the board's history. At the time of the manual's adoption, in January 1989, the board was a veteran group with all members having at least one year's experience. Three board members were first appointed in 1982, and six others were first appointed in 1983. Because of the board's great experience in panel matters, and because several board members were about to complete their service, it was fitting that the board summarize the way certain panel matters have been handled in recent years, and state the guidelines for how certain matters should be handled.

The contents of the Panel Manual are meant to be summaries and guidelines, not hard and fast rules. The board does

have authority under Rule 23, R. Law. Prof. Resp., to "adopt rules and regulations, not inconsistent with these rules, governing the conduct of business and performance of . . . duties." However, the Panel Manual is not meant to be a set of determinative rules. Statements in the Panel Manual are generally statements of how things have been done and how things ought to be done, for the most part.

The manual is divided into sections describing procedures before, during, and after panel hearings. Some of the topics are of substantive law, such as definitions of probable cause and application of the probable cause standard. Other topics include practical descriptions of unwritten practices, such as that for motions to the panel chair, "it has been customary to conduct telephone conference hearings." Supreme Court comment on panel proceedings is noted where appropriate, e.g., ". . . continuances of panel hearings are rarely given." *Matter of Peters*, 322 N.W.2d 10, 15-16 (Minn. 1983).

Copies of the Panel Manual will be available to all interested attorneys and others. Copies will be distributed to law libraries, and a copy will be available in the Director's Office. Individual copies may be purchased for \$15 through the office administrator. Any applicant for reinstatement and any attorney charged with unprofessional conduct will be notified of the availability of the manual.

The Panel Manual has been a major project of the Lawyers Board for over a year. It is part of an increased educational effort by the board and the Director's Office. A brochure describing in plain language the operation of the professional responsibility system has also been developed and distributed. Another brochure will soon be mailed to all attorneys, describing and illustrating the proper operation of trust accounts. The board will also soon be issuing formal, written opinions on general questions of professional conduct.

Professional responsibility matters are to be "disposed of with fairness and justice." The Panel Manual, by promoting openness and consistency, should also promote and enhance fairness and justice in the professional responsibility hearing process. ♪

Million Dollar Budget . . .

Not long ago an attorney tried to distinguish perjury committed in a deposition room at the Office of Lawyers Professional Responsibility from perjury committed in a district court by observing that the office's surroundings were not "august." The observation was not contested. There is no picket fence, baronial desk, or kitchen to be found on Lafayette Road east of downtown St. Paul, but in this era of public accountability, it is best to explain how the office's 1989 budget is about \$1,000,000.

In 1985 the Supreme Court Advisory Committee reported the concern of the bar with the cost of the professional responsibility system. In fiscal 1985 the authorized budget was \$764,000 and the attorney registration fee for Lawyers Professional Responsibility activities was \$70. In fiscal 1989, the budget will be \$1,013,613, and the registration fee will increase to \$80.¹

This article addresses several questions about the Lawyers Board (LPRB) budget: 1) How is the budget set and who approves it? 2) How is the money spent? 3) How does the budget compare to other states' budgets and budgets of prior years?

Budget-Setting and Review Process. In the last several years, the budget-making process of the Supreme Court boards has come under closer scrutiny by the Minnesota Supreme Court and committees it has appointed. Each spring, the directors of the Supreme Court boards² submit to the boards proposed budgets for the next fiscal year. The boards approve budgets and submit them both to the state court administrator's office for technical review and to the Court for consideration and approval. Any budget requiring an increase in the attorney registration fee requires a public hearing, upon notice and comment.

The Lawyers Board budget, in addition to passing through the regular review process, has been subject to review by special committees. It was scrutinized in 1985 by the Supreme Court Advisory Committee. The 1987 and 1988 budgets of all the Court boards were reviewed by the Court-appointed Attorney Registration Fee

Committee. The committee was composed of lawyers and met regularly for a period of a year and a half, to review budgets and funding procedures.

On March 6, 1987, the Attorney Registration Fee Committee filed with the Minnesota Supreme Court a statement supporting a fee increase for the Lawyers Board from \$70 to \$80, effective July 1, 1987. Because of the exceptional burden on Minnesota attorneys for financing the Client Security Fund beginning July 1, 1987, the Court (upon request of the Lawyers Board) deferred increased funding for the Lawyers Board until July 1, 1988. The committee reported its conclusions regarding the Lawyers Board budget as follows:

The Committee conducted an independent investigation by obtaining and reviewing numerous documents, reports, and other materials concerning the activities, needs, and expenses of the LPRB. In addition, members met with the Director and his staff at the offices of the LPRB, and spoke with others involved in the disciplinary system and its procedures. Based on this review, the Committee makes the following findings and recommendations.

Rec. 1: That the LPRB operates efficiently and effectively and is entitled to its current level of funding plus its requested \$10 increase in the attorney license fee.

What Causes Budget Increases?

Inflation and increased services are the main causes. In the last few years, inflation and the increase in complaints against lawyers have both slowed. New services and obligations are now a major factor in current budgets: Client Security Board administrative costs are included in the budget, as are portions of Supreme Court personnel salaries related to the attorney registration fee. Together, these total over \$50,000. Annual increases in overall budgets have been 5.8 percent (FY'87); 7.4 percent (FY'88); 6.4 percent (FY'89).

The services performed by the Office of Lawyers Professional Responsibility have expanded over the years. The director each year has been trustee for the law practices of several attorneys each year who have abandoned their

practices. For example, when Mark Sampson absconded with client funds, he left behind nearly 2,000 client files. The office expended over \$2,000 in providing help to private trustees who returned some of the files. The office is in the process of attempting to return over 1,300 closed files. Each year attorneys in the office spend hundreds of hours giving telephone advisory opinions to practitioners. The office also administers the professional corporations statute. At any time there are approximately 70 Minnesota attorneys on probation, many of them requiring supervision. The office furnishes speakers for continuing legal education programs on a regular basis and sponsors its own ethics seminar annually. All of these tasks are over and above the work involved in handling approximately 1,200 professional responsibility complaints each year.

Comparison With Other States. The Supreme Court Advisory Committee reported that until the 1984 fee increase, the cost of Minnesota's professional responsibility system was comparable to that of similar states. The 1987 ABA nationwide survey (using 1986 data) indicates Minnesota's cost was \$6 below the national average. The survey shows budget allocations per licensed lawyer ranging from \$298 (Alaska) to \$153 (California) to \$58 (Minnesota) to \$10 (South Carolina), with a national average of \$64.³ The 1986 nationwide average number of lawyers per state (15,046) and total discipline budget (\$1,038,577) are roughly comparable to Minnesota figures. *The California Lawyer* recently reported that the proposed 1988 California discipline budget is \$27,000,000. There are just over 100,000 licensed attorneys in California, about six times as many as in Minnesota.

How Is the Money Spent? About 80 percent of the budget is spent on payroll and employee benefits, a total of about \$800,000. There are 20 full-time employees (and one half-time), as there have been since 1985. Salary ranges are set by the Supreme Court personnel plan. Salaries are adjusted annually for cost-of-living increases (3 percent this year) and merit increases (which must average no more than 4 percent this

year). Generally, salaries have not kept pace with inflation over the years. For example, the director's FY'88 salary (\$60,176) is about 75 percent of the director's salary of ten years ago, adjusted for inflation.

The office has spent a considerable amount on modern equipment, particularly word processing and computers, in an effort to avoid additional personnel costs. Among the budget items added in the last few years is an amount for services of the Attorney General when the office is sued in connection with disciplinary matters. These services were formerly provided without charge. A budget reserve of approximately one-fourth of the annual budget is maintained to provide for certain liabilities which are self-insured and for other unforeseen contingencies.

A detailed budget is filed with the Court each year, and is available for inspection. Every three years, Lawyers

Board expenditures are audited by the Legislative Advisory Committee. That committee's only substantive criticism at last report was that the effort to collect costs and disbursements could have been more vigorous.⁴

Lawyers Board expenditures would be far higher without the generous dedication of the volunteer members of the professional responsibility system. The district ethics committee members and members of the Lawyers Board serve without compensation. The only substantial public financial contribution to the system is the payment of salaries for judges involved in the decisions. The several budget and expenditure review processes, the public availability of all pertinent financial information, and the higher average costs in other states should assure Minnesota attorneys and citizens that — even at a million dollars — the budget is in order. **■**

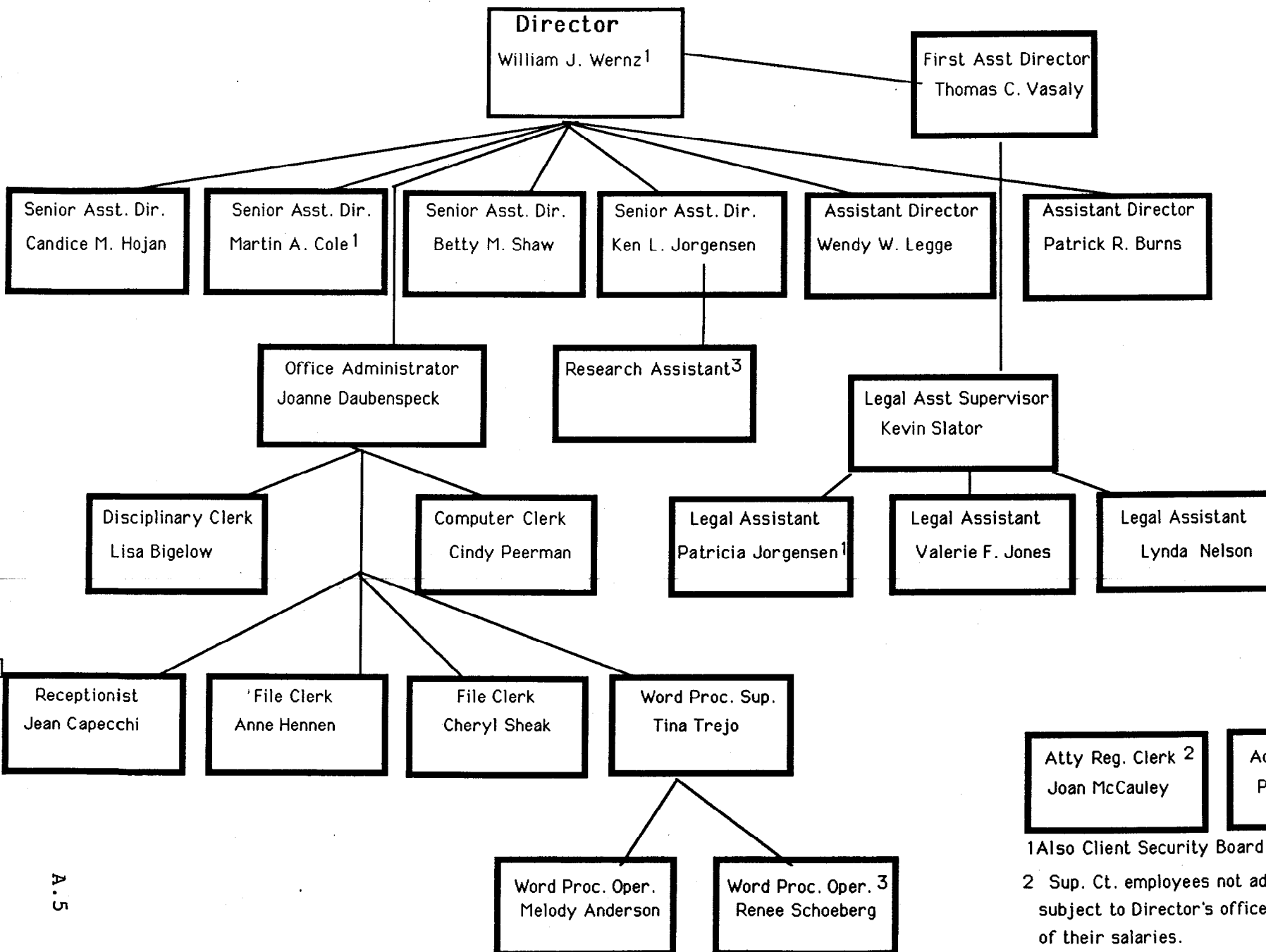
NOTES

1 Supreme Court boards are on a fiscal year ending June 30. The attorney registration fee supports the activities of several Supreme Court lawyer-related boards. Lower fees are charged for attorneys residing outside the state and not practicing in the state, for attorneys admitted less than three years, and attorneys in the armed forces. Rule 2, Rules for Registration of Attorneys.

2 Supreme Court lawyer-related boards are: State Board of Law Examiners, State Board of Continuing Legal Education, Lawyers Professional Responsibility Board, Client Security Board, and Board of Attorney Specialization. The last is funded by user fees. The Client Security Board is currently funded by a one-time assessment. In addition there is the Lawyer Trust Account Board, which is funded from interest collected on trust accounts. The Board on Judicial Standards is funded by the Legislature.

3 The method used by the survey involves dividing total fee receipts by total licensed lawyers. This yields a dollar figure lower than the fee paid by most individual lawyers.

4 This year about \$25,000 will be collected from publicly disciplined attorneys for costs and disbursements. This office's view is that further collection efforts, particularly against suspended and disbarred lawyers, are not cost-effective.



¹Also Client Security Board Staff

² Sup. Ct. employees not administratively subject to Director's office. Office pays part of their salaries.

³ Part-time positions

DEC SUMMARY AND REPORT - APRIL 1989

MONTHS OPEN	12	11	10	9	8	7	6	5	4	3	2	1	0	TOTAL	DEC STATUS CODES
DEC #/ATTY															
DEC 1 - KLJ								1	0	2	0	3	1	7	
DEC 2 - YWL									1	7	6	8	13	35	1 Assigned to DEC
DEC 3 - BMS												1	3	4	2 Reassigned to DEC
DEC 4 - MAC						1		4	6	6	11	28	25	81	3 DEC 1 to be issued
DEC 5 - KLJ												1	0	1	4 DEC 2 to be issued
DEC 6 - BMS													0	0	5 DEC 3 to be issued
DEC 7 - BMS												5	1	6	6 DEC 4A to be issued
DEC 8 - BMS												1	2	3	7 DEC 4B to be issued
DEC 9 - BMS													0	0	8 DEC 5 to be issued
DEC 10 - BMS											1	0	0	1	9 Extension granted
DEC 11 - YWL										3	1	1	5	10	10 Report at DEC
DEC 12 - KLJ													3	3	
DEC 13 - BMS										2	0	0	0	2	70 Status of file requested
DEC 14 - YWL													0	0	71 Min rec'd - wait file
DEC 15 - YWL											1	0	0	1	72 Min rec'd - refer panel
DEC 16 - KLJ												1	0	1	73 DEC 1B to be issued
DEC 17 - KLJ													0	0	74 Report rec'd; will be taken off next month's report
DEC 18 - KLJ								1	0	1	0	0	0	2	
DEC 19 - KLJ											1	0	0	1	
DEC 20 - YWL												1	0	1	
DEC 21 - KLJ										1	0	1	2	4	
TOTAL FILES	0	0	0	0	0	1	0	5	8	21	22	51	55	163	
NO. OF MOS.	0	0	0	0	0	7	0	25	32	63	44	51	0	222	
AVERAGE NO. OF MONTHS IN DEC						1.4									