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June 19, 1992

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OFFICE OF  
APPELLATE COURTS

JUN 22 1992

**FILED**

Re: Annual Report C1-84-2140

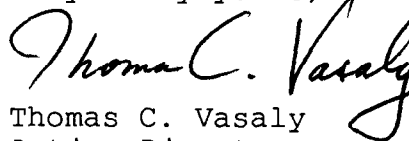
Dear Mr. Grittner:

Enclosed for filing are eight copies of the joint Annual Report of the Director of Lawyers Professional Responsibility and the Lawyers Professional Responsibility Board.

Also enclosed are eight copies of the revised FY'93 and FY'94 budgets. The budgets have been revised to include the fee increases effective July 1, 1992 and July 1, 1993, and the salary increase figures.

The Board approved the report and the revised budgets at its meeting on June 12, 1992.

Very truly yours,



Thomas C. Vasaly  
Acting Director

:jd

cc: Honorable John E. Simonett (no enclosures)  
Gregory M. Bistram (no enclosures)

ANNUAL REPORT OF THE  
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

ANNUAL REPORT OF THE  
OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY

CI-84-2140

OFFICE OF  
APPELLATE COURTS

JUN 22 1992

**FILED**

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June 1992

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I. INTRODUCTION AND HIGHLIGHTS.

Pursuant to Rules 4(c) and 5(b), Rules on Lawyers Professional Responsibility, the Lawyers Board and the Director are to report annually on the operation of the professional responsibility system. The Board's Report and the Director's Report are hereby jointly made for the period June 1, 1991, through May 29, 1992.

Leadership changes and proposals for systems changes highlight this year's report. Steady progress and stability are harder to highlight, yet they also describe the flow of this year's events.

. Leadership Changes.

This year was marked by changes in leadership. Charles Kennedy resigned as Board Chair, and was replaced by Gregory Bistram. Mr. Kennedy served nearly ten years on the Board, including three as Chair, and for some years previously had been Chair of the Seventh District Ethics Committee. Mr. Bistram was previously Vice-Chair.

William J. Wernz resigned as Director of the Office of Lawyers Professional Responsibility, effective June 1, 1992. He had served as Director since September 1985, and as an assistant for four years before that. He will be returning to private practice. A search committee will be recommending a successor to the Court.

Retired Minnesota Supreme Court Justice Glenn Kelley died in April 1992. Justice Kelley served as Supreme Court liaison to the Lawyers Board for seven years. The support and advice he gave the Board are deeply appreciated, and he will be missed.

. **ABA Recommends Changes.**

In February 1992 the American Bar Association approved most of the recommendations of its Commission on Evaluation of Disciplinary Enforcement. The Commission's report was the first broad and systematic study of discipline systems nationwide in 20 years. The Lawyers Board and the Minnesota State Bar Association both actively participated in debate about the Commission recommendations. Attached are two articles summarizing the debates and recommendations (A. 1-4). Many of the changes recommended were adopted in Minnesota before the Commission began its work. Of the remainder, the most important change recommended by the ABA is for a series of related programs providing alternatives to discipline for many minor complaints. The most important Commission recommendation rejected by the ABA was for a fully public discipline system.

. **Misappropriation Cases and Trusteeships.**

Last year's report highlighted an "alarming increase in the number of cases involving misappropriation of significant sums of client funds." Fortunately, this year the frequency of such cases decreased to more familiar levels. The attorneys referred to in last year's report have now been disbarred or are awaiting final disciplinary decisions. Similarly, last year's report of numerous new trusteeships required for law practices that had been abandoned has not repeated itself. In fact, while four new trusteeships were created in one three month period last year, only one trusteeship was created during this annual reporting period.

. **District Ethics Committee Accomplishments.**

At a time when the American Bar Association recommends that all investigations of ethics complaints be done by paid professionals, it is reassuring to report that in Minnesota the volunteer-based system is functioning better than ever. Attached at A. 5 is a chart showing the truly remarkable achievements of the district ethics committees throughout the state of Minnesota in promptly discharging their duties.

. **Rules Amendments.**

On April 14, 1992, the Minnesota Supreme Court adopted amendments proposed by the Minnesota State Bar Association to Rules 1.6, 8.3 and 8.4. The Lawyers Board supported these amendments, which concern two subjects: increasing lawyers' discretion to report other lawyers' serious misconduct; and making serious and illegal discrimination a discipline offense. A copy of the amendments (without accompanying Comments) is found at A. 6-7.

The MSBA will be considering at its 1992 annual meeting proposals for amendments to the Rules of Professional Conduct governing advertising. There has been a continuing, spirited and widespread debate about whether more restrictive advertising rules are desirable and whether they are constitutional. The Lawyers Board will also consider whether to comment on any such proposals.

. **Lawyers Board Opinion 15.**

On September 13, 1991, the Lawyers Board adopted Opinion 15, governing retainer fees. A copy of an article quoting and discussing it is attached at A. 8-9.

In recent years the Board has issued several opinions aimed at legal business and practical situations which have produced friction between lawyers and clients. The Board's aim has been to reduce friction and complaints by defining professional responsibilities in these areas.

- **Overdraft Notice Program.**

This program was first implemented in August 1990. In its first full year of operation, it has proved to be a more important program than was foreseen. The number of opportunities for educating attorneys about deficiencies in their trust account record-keeping and the unfortunately high number of serious deficiencies, resulting in discipline, have been beyond initial expectations. The amount of attorney and legal assistant time devoted to reviewing overdraft notices, attorney responses and related books and records is substantially higher than expected. Further information about this program is presented below.

- **Fee Increase.**

The Minnesota Supreme Court has approved a fee increase for the Lawyers Board, from \$80 to \$90 effective July 1, 1992, and from \$90 to \$100 effective July 1, 1993. This is the first fee increase since 1988, when a \$10 increase was approved; and only the second fee increase since 1985.

- **Professional Responsibility Seminar.**

In a year of remarkable events in the Twin Cities, the annual professional responsibility seminar was slightly overshadowed by the Stanley Cup, the Special Olympics, the U.S. Open, the World Series, the Super Bowl and the



NCAA championships. Nonetheless, the seminar again proved lively, popular and informative. The main discussion topics were the ABA Commission recommendations and proposals for increased advertising regulations. Once again, the district committee workshop was expanded in scope and was well received.

. **Increased Case Load.**

Just as last year's report noted apparently troubling trends (increases in misappropriation cases and trusteeships), which turned out to be short-term problems, this year so far has been marked by an increasing case load. The number of complaints has not increased, but the number of files on hand has increased by approximately 100 since the end of 1991. The slower pace of file closings appears to be due in part to an increase in the number of cases being fully litigated. Such cases require large investments of time. Other substantial time demands have resulted from increased advisory opinion requests and administration of the trust account overdraft notice program.

There is not yet cause for great concern, because the serious cases are still being handled promptly and the number of "old" files (over one year from opening) has not increased beyond a familiar level of approximately 50.

As Table II below shows, the case load statistics from 1986 through the present show small change within that period, and great improvement over prior years.

## II. CASE LOAD AND CASES.

### A. Statistics.

Tables I, II, III, IV below show complaint and case disposition statistics in recent years. Last year's report noted progress in most statistical categories. In this report year, those accomplishments have been maintained.

The number of complaints in 1991 was 1,380, four fewer than in 1990. The number of complaints year to date in 1992 is approximately equal to the number received by the same date in 1991. There have been fewer closings in 1992 year to date, probably due to increased resources devoted to more fully litigated cases, to the advisory opinion service and to the overdraft notice program.

Supreme Court disciplines decreased in 1991 from the record level of 1990. Other percentage discipline patterns were similar to prior years. The case aging statistics were also similar.

Probably little can be done to achieve still more prompt dispositions--although the district ethics committees have managed to lower their average file age to 1.2 months in April 1992, a truly remarkable achievement. Last year the average file age was 1.7 months, and that represented an improvement over the 2.2 month average reported in 1990. The quality of the investigative reports remains at a very high average level. This year the district ethics committees deserve not only the customary thanks and congratulations but some special recognition.

Table I  
 Supreme Court Dispositions 1976-1991  
 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
1989	5	19	8	4	2	0	38
1990	8	27	9	10	0	1	55
1991	8	14	10	6	2	4	44

Table II

	<u>12/84</u>	<u>12/86</u>	<u>12/88</u>	<u>12/90</u>	<u>12/91</u>	<u>5/31/92</u>
Total						
Open Files	686	406	358	462	405	512
Cases at Least One Year Old	242	52	39	56	42	54
Complaints Received Y.T.D.	1,069	1,233	1,149	1,384	1,380	603
Files Closed Y.T.D.	1,005	1,244	1,180	1,417	1,437	506

Table III

	Percentage of Files Closed					
	1986	1987	1988	1989	1990	1991
<b>1. Total Dismissals</b>	82%	79%	81%	79%	76%	78%
a. Summary Dismissals	34%	36%	41%	38%	38%	40%
b. DNW/DEC	39%	34%	32%	35%	32%	32%
c. DNW/DIR	9%	9%	8%	6%	6%	7%
<b>2. Admonitions</b>	8%	9%	9%	10%	9%	12%
<b>3. Private Probation</b>	1%	2%	2%	1%	2%	1%
<b>4. Supreme Court Dispositions</b>	8%	9%	7%	8%	11%	6%
a. S. Court Dismissal	--	--	1%	--	--	--
b. S. Court Reprimand	--	1%	--	--	1%	1%
c. S. Court Probation	--	1%	1%	1%	1%	1%
d. S. Court Suspension	3%	3%	4%	5%	6%	3%
e. S. Court Disbarment	5%	4%	1%	2%	2%	1%

Table IV

## Number of Months File Was Open at Disposition

	1986	1987	1988	1989	1990	1991
Discipline Not Warranted/District Ethics Committee	4	4	4	4	4	4
Discipline Not Warranted/Director	6	6	6	4	7	6
Admonition	8	8	9	8	8	8
Private Probation	13	8	10	13	10	8
Sup. Ct. Reprimand	24	25	20	16	11	14
Sup. Ct. Probation	42	22	11	13	14	11
Sup. Ct. Suspension	27	25	16	11	12	13
Sup. Ct. Disbarment	13	12	9	9	12	16

B. Minnesota Supreme Court Disciplinary Cases.

Fortunately, the number of Supreme Court disciplines of attorneys seems to be declining, at least temporarily. As Table I above indicates, 1990 disciplines reached a record high of 55, a number that declined to 44 in 1991. 1992 year to date statistics appear similar to 1991's.

The spate of misappropriation cases reported last year is now reaching its conclusion. Disbarred since June 1, 1991, for misappropriation or other serious offenses were:

Claude M. Loewenthal

James W. Hunter, Jr.

William A. Peters

James L. Nelson

Mark H. Stromwall

David V. Anderley

In addition, Supreme Court referees have recommended that the Court disbar the following attorneys for misappropriation: Stanley C. Olsen, Jr., Robert D. Stroble, Arthur W. LaChapelle and Wallace Gustafson. The Director has also recommended the disbarment of Lawrence E. Olsen for misappropriation, and Mr. Olsen has defaulted in discipline proceedings.

In 1991-92, there has been a significant increase in the number of reinstatement petitions and decisions. Five reinstatement petitions are pending; in 1991 three suspended or disbarred attorneys were reinstated.

The Annual Report has summarized particularly significant discipline holdings, as well as noting statistics and trends. This year's cases represent an all-too-familiar litany of offenses, none of them particularly remarkable.

### III. NEW RULES, PROGRAMS AND RULE AMENDMENTS UNDER CONSIDERATION.

#### A. Rules of Professional Conduct.

Effective June 1, 1992, the Minnesota Supreme Court adopted amendments proposed by the Minnesota State Bar Association to Rules 1.6, 8.3 and 8.4. These amendments concern two subjects-- reporting lawyer misconduct and unprofessional discrimination.

The discrimination rule establishes as a disciplinary offense serious, illegal discrimination. The Lawyers Board favored adoption of this rule, and filed with the Court a description of its expected enforcement policy (A. 10 - A. 13).

The lawyer misconduct reporting rule is meant to enable lawyers to report serious misconduct without a client having an absolute right to veto the report. The rule amendment is not radical, and essentially restores the reporting rule as it existed from 1970 to 1985. As amended, Rules 8.3 and 1.6 allow

an attorney to report another attorney's serious misconduct, over the reporting attorney's client's objection, when the reporting attorney learned of the misconduct through a non-privileged communication, i.e. as a "secret."

B. Possible Further Proposals for Amendments to the Minnesota Rules of Professional Conduct.

At its June 1992 convention the Minnesota State Bar Association will be considering a committee report recommending several further restrictions on lawyer advertising. While the proposals are not radical, the subject of regulation of lawyer advertising has been debated broadly in the last few years, both in Minnesota and other states. The Lawyers Board helped facilitate this debate at the annual fall seminar, but has not taken a leadership role at this time. The Board will determine whether to take a position on any Bar Association advertising proposals that emerge from the convention.

IV. DIRECTOR'S OFFICE.

A. Budget.

1. FY'92 Budget.

Projected actual expenditures for the fiscal year ending June 30, 1992, should be approximately \$1,247,500. This would be about \$10,000 less than the revised budgeted expenditures for the fiscal year. The budget was revised in November 1991 after the cost of living and merit increase provisions were issued by the Court. The computer project was removed from the budget at that time in order to cover the salary increases.

There are two significant variables in the FY'92 budget; a salary deficit due to the Director's departure and the "professional and technical services" line item will be underspent by approximately \$18,000. This line item which

includes court reporters, expert witnesses and other paid professionals, tends to fluctuate from year to year.

2. FY'93 Budget.

In January 1992, a petition was filed with the Supreme Court requesting an increase of \$20 in the attorney registration fee for the Lawyers Professional Responsibility Board effective July 1, 1992. On April 15, 1992, the Supreme Court issued an order increasing the registration fee by \$10.00 on July 1, 1992, and an additional \$10.00 on July 1, 1993. The delay of the second \$10.00 will have a limited impact on the budget for FY'93. The FY'93 budget includes expenditures in the amount of \$1,396,050.

B. Administration.

1. Computerization - TCIS.

The computer project was put on hold this year for budgetary reasons.

The funds allocated but not expended for the computer project in the FY92 budget have been transferred to the FY93 budget. The funds may or may not be spent in FY93 for budgetary reasons, on determination of the new Director.

2. Computerization - Macintosh.

Two additional Macintosh computers and a second Laserwriter printer were purchased this year. The new, faster computers were given to the legal assistants who perform lengthy trust account audits. The older computers are now available for use by the attorneys to become "computer literate." Two traveling computer work stations were purchased so the attorneys can become familiar with the computers in their offices. The new computers bring the office total to 8 with 2 laserwriter printers. Our long-term goal is to purchase a Macintosh system for the word processing department and to network all Office computers.



### 3. Judicial Center Move.

A considerable amount of time has been spent planning for our move to the Judicial Center. We were pleased to have our space relocated to the first and ground floors of the building, the floor plans have been finalized and we are currently working with the furniture designers. Because the 1992 legislature did not approve all the funding for the building, our move has been postponed until the summer or fall of 1994.

#### C. Personnel.

Attached at A. 14 is the current Office organization chart. In March 1992, Director William Wernz announced his resignation to return to private practice. His last day in the Office is May 29, 1992. A search committee has been formed by the Supreme Court. First Assistant Director Thomas C. Vasaly has been named Acting Director in the interim.

In FY'92 there have been several turnovers in the receptionist position. The position has now been filled by Laura Wolf.

Legal assistants Patricia Jorgensen and Lynda Nelson will be on family leave during the summer of 1992. In February 1992, a legal assistant intern, Annette Olejnicak began working for the Office. Annette has been hired to work as a full-time temporary employee during the summer. A temporary full-time law clerk will also be hired for the summer.

There are no staff additions for the FY'93 budget.

#### D. Trusteeships.

The Director's Office is from time to time called upon to become trustee of client files of attorneys who are unable to continue handling client matters. Upon appointment, the Director's Office takes possession of the attorney's client

files, notifies clients, and returns or destroys files at the direction of the client.

Client files of Mark Sampson are being destroyed. Trusteeship files remaining in the possession of the Director's Office (and projected destruction dates) include:

Wayne Wentworth	July 20, 1992
Diana Logan	September 15, 1992
James Skonnord	June 22, 1993
William Ladd	June 5, 1994
James Hunter	July 12, 1994
William Peters	June 26, 1994
Steven Heikens	July 11, 1994
Roger Nurnberger	February 6, 1995

Since the last report, the Director has been appointed to one additional trusteeship, Rodney French.

Rodney M. French.

On August 1, 1991, the Court appointed the Director as trustee of the client files of Rodney M. French. The Director took possession of 216 client files. 111 files were returned and 9 were destroyed at the client's request. The remaining 96 files will be destroyed on approximately February 6, 1995, three years after the Court's discharge order.

The following were expended:

Attorney hours	23
Legal Asst. hours	33
Clerical hours	71.25
Postage expense	\$359.95

E. Probation.

The Director's Office monitors compliance with the terms and conditions of Supreme Court ordered or private stipulated probations. Volunteer supervisors provide regular contact with attorneys on probation to verify that office practices and

procedures and client file management are in place. A supervisor's manual is available to assist in recruiting and training volunteer supervisors. The department also monitors unsupervised probations including compliance with such conditions as participation in psychological counseling, attendance at A.A. meetings, timely filing of tax returns and practice limitations.

A fourth annual meeting for supervisors was held in connection with the Professional Responsibility fall seminar to share experience and provide further training.

1. File Totals.

Total probation files as of 1/1/91	68
Probation files opened in 1991	16
Probations files closed in 1991	31
Total probation files as of 1/1/92	53

2. 84 attorneys were on probation during some portion of 1991.

- a. 46 Court-ordered probations (17 of which reinstatement after a suspension)
  - 24 supervised (10 after reinstatement)
  - 22 unsupervised (7 after reinstatement)
- b. 38 stipulated private probations
  - 23 supervised
  - 15 unsupervised

3. Files Involving:

Client-Related Violations	58
Non-Client-Related Violations	26

4. Areas of Misconduct\*

Neglect/Non-comm.	35	Conflict of Interest	5
Taxes	18	Criminal Conduct	4
Books and Records	17	Failure to Return Client	
Misrepresentation	8	Property/File	2
Non-cooperation	9	Unauthorized Practice	4
Misappropriation	6	Illegal fees	1
Other	2		

11 files involved chemical dependency (abuse of alcohol/drugs);  
13 involved psychological disorder.

5.	<u>Closed in 1991:</u>	31
	Successfully completed probations	28
	Revoked probations	3
6.	<u>Probations extended in 1991:</u>	6
7.	<u>Time by Probation Department Staff (per week):</u>	
	6.0 hrs. Attorney	
	15.0 hrs. Legal Assistant	

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

F. Lawyers Board Opinions.

In September 1991, Opinion 15 of the Lawyers Professional Responsibility Board entitled "Advance Fee Payments and Availability or Nonrefundable Retainers" was adopted. Opinion 15 restates and clarifies attorney obligations in handling client retainer fees and is based upon the Court's lawyer discipline decision in In re Lochow, 469 N.W.2d 91 (Minn. 1991). Opinion 15 codifies the Lochow holding concerning "advance fee payments" and "availability or nonrefundable retainers." The Opinion also includes definitions of these terms as well as the definition of what constitutes an accounting to a client. See A. 9.

G. Advisory Opinions.

Telephone advisory opinions concerning questions of professional responsibility are available from the Director's Office to all licensed Minnesota attorneys and judges. 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.

Advisory opinion statistics show a steady increase in numbers in recent years. However, the first quarter of 1992 shows a dramatic increase:

	<u>Advisory Opinions</u>
1989	948
1990	1,130
1991	1,083
1992 (YTD annualized)	1,453

There were also 23 written advisory opinions issued in 1991, compared to 26 in 1990.

The major areas of inquiry in 1991 were:

Conflict of Interest	13%
Trust Accounts	8%
Client Confidences	6%
Return of Client Files	6%

In 1991, the assistant directors devoted 275 hours issuing advisory opinions. This compares with 290 hours in 1990.

#### H. Judgments and Collections.

The Director's Office has been more aggressive in recent years in collecting costs and judgments. Cost judgments entered in 1991 decreased substantially (about \$25,500 or 43%) from judgments entered in 1990. However, costs collected in 1991 increased about \$7,000 or 21% over those collected in 1990. Approximately 53% of the judgments entered in 1991 have been collected to date.

The Director's Office continued to execute upon funds at financial institutions and upon earnings. In 1991 \$3,375.51 was collected through the summary execution process.

1. Cost Judgments Entered in 1991 (37 attorneys)	\$33,374.04
2. Total Costs Collected in 1991	34,521.68
3. Costs Collected in 1991 for Dispositions prior to 1991, including interest (15 attorneys)	15,298.27
4. Cost Judgments Entered in 1992 (3 attorneys)	2,296.12
5. Costs Collected in 1992	6,544.81
6. Unpaid Judgments as of January 1, 1991	104,209.47
7. 1991 National Discipline Data Bank Reports	54

I. Professional Corporations.

Under the Minnesota Professional Corporations Act, Minn. Stat. §§ 319A.01 to 319A.22, professional corporations engaged in the practice of law must file annual reports, accompanied by a filing fee, with the Board. The Professional Corporations Act contains limitations on the structure and operation of professional corporations. Under Minn. Stat. § 319A.18, the Board is granted the authority to make such rules as are necessary to carry out the provisions of the Professional Corporations Act. 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 March 31, 1992:

679	@	\$ 25.00	\$16,975.00
65	@	100.00	<u>6,500.00</u>
			<u>23,475.00</u>
7	for	850.00*	<u>850.00</u>
			<u>24,325.00</u>

\*Funds collected for fees owed for 1990 and prior years.

Total Attorney Hours: 27

Total Non-attorney Hours: 141

The professional corporation department is staffed by an Assistant Director, legal assistant, and file clerk. The professional corporation roster, statistical data, and regular notice letters are retained in a computer to facilitate efficient processing.

J. Overdraft Notification.

On August 1, 1990, approved financial institutions began reporting trust account overdrafts to the Director's Office. The trust account overdraft notification program is handled primarily by an assistant director and a legal assistant in the Director's Office.

A typical overdraft is processed as follows. The overdraft notice is mailed to the attorney or firm, with a letter requesting (1) a copy of the check creating the overdraft; (2) the identity of the client on whose behalf the check was issued; (3) a description of the reason why the overdraft resulted; (4) copies of the last three monthly bank statements and client ledgers; and (5) proof that funds have been deposited to cover the overdraft and any overdraft charges. The attorney

is asked to respond within ten days. No discipline investigation file is opened at this stage.

During 1991, the Director's Office received 139 overdraft notices (ODN) and terminated 131 overdraft inquiries without initiating a disciplinary investigation.

1. Terminated Inquiries.

If the attorney's response and the documents provided adequately explain the overdraft, the inquiry is terminated and, if necessary, improvements in trust account practices are recommended in an instruction letter. Statistics for 1991 terminated inquiries and instruction letters are set forth below.

Overdraft causes resulting in terminated inquiries:

Late deposit	36
Bank error	25
Service or check charges	11
Mathematical/clerical error	10
Improper/lacking endorsements	8
Deposit to wrong account	7
Check written in error on TA	2
Reporting error	2
Third party check bounced	2
Other	2
Total	105

Instruction letters in terminated inquiries:  
(May include more than one)

Improper reconciliation or ledgers	18
Excess attorney funds	5
Deposit before checks paid	6
Reimbursement check & other charges	1
Account signatory	2
Other	10

Total number of inquiries in which  
which instruction was given 30

2. Disciplinary File Openings.

If the response does not adequately explain the overdraft or significant problems are identified in reviewing the response and



supporting documents, a disciplinary investigation is commenced and the attorney is notified. Statistics for trust account inquiries which resulted in disciplinary file openings are set forth below:

<u>Reason</u>	
Disciplinary file already open in prior OD	11
Shortages	5
Commingling	4
Response fails to explain OD	4
Repeated overdrafts	2
Total	26

The 26 trust account inquiries referred to above resulted in the opening of only 16 disciplinary files because some of the attorneys received multiple overdrafts. In addition, there were 7 disciplinary files open from 1990 open at the beginning of 1991. Eleven of these disciplinary files were resolved during 1991: 1 resulted in suspension; 2 files resulted in public reprimand and probation; 1 resulted in private probation; 5 resulted in private admonitions; and 2 files were dismissed. All of the others are pending in various stages of investigation or prosecution.

3. Time Requirements.

Set forth below are the Director's Office staff time requirements for to administer the overdraft notification program.

	<u>1/91 - 1/92</u>	<u>8/90 - 1/91</u>
Attorney time	105.00	120.00
Legal assistant time	204.25	102.50
Total	309.25	222.50

#### 4. Recent Developments.

During the first quarter of 1992, the overdraft notification program experienced significant increases in the number of overdrafts received and the number of disciplinary investigations initiated. In the first quarter of 1992, 51 overdraft notices were received. This is nearly a 100 percent increase over the 27 overdrafts received during the first quarter of 1991. The number of disciplinary investigations initiated during the first quarter increased from 2 in 1991 to 14 in 1992. This increase significantly affects the Director's Office resources in that trust account investigations and audits are often complex and time consuming.

##### K. Complainant Appeals.

During 1991, the Director's Office received 254 complainant appeals, compared to 234 such appeals in 1990. This is approximately 19 percent of files closed. Board members made 254 determinations, eleven of which recommended further investigation and two of which were directed to be heard before a panel. The remainder affirmed the Director's disposition. A total of 38 clerical hours were spent in 1991 processing the appeal files, as well as an unrecorded amount of attorney time.

##### L. Disclosure.

###### 1. Department Function.

The disclosure department responds to requests for attorney disciplinary records.

2. Source and Number of Requests for Disclosure.  
Calendar Year 1991.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Matters Pending</u>
A. National Conf. of Bar Examiners	139	139	11	1
B. Individual Attorneys	4	4	1	0
C. Local Referral Services				
1. SMRLS*	12	17	0	0
2. RCBA	40	152	1	1
D. Governor's Office	12	47	1	0
E. Other State Disc. Counsels/ State Bars or Federal Juris.	123	123	6	1
F. F.B.I.	20	21	0	0
G. MSBA: Specialist Cert. Program	24	95	6	3
H. Miscellaneous Requests	<u>12</u>	<u>43</u>	<u>2</u>	<u>2</u>
TOTAL	386	641	28	8

\* As of approximately July 1, 1991, SMRLS discontinued sending disclosure requests to the Director's Office.

V. DISTRICT ETHICS COMMITTEES.

The District Ethics Committees (DECs) continue to perform admirably in discharging their role as initial investigator of most of the complaints which are investigated.

The volume of files referred to the DECs has decreased during 1989-1991, but has risen sharply in 1992. The overall monthly average number of files at the DECs for 1991 was 153.

For 1990 it was 172. For 1989 it was 178. There were 203 files pending at the DECs on April 30, 1992.

Despite this recent increase in volume, there has been a reduction in the average file age from 1989 to the present. The overall average file age has been reduced from 1.7 months to 1.2 months. The Hennepin DEC has reduced its average file age from 2 months to 1.5 months. The Ramsey DEC reduced its average file age from 1.3 months to 1.2 months. Credit must be given to the individual committees and volunteers who have worked hard to improve the efficiency of the system.

The DECs are an important part of the disciplinary process. They provide an initial peer review of complaints with the opportunity for input from public members. The quality of the DEC investigative reports remains high. The Director's Office continues to serve as a resource to the DEC investigators. An Assistant Director is assigned to each DEC as a liaison, available for assistance when any questions or problems might arise in the course of an investigation.

#### VI. FY'93 GOALS AND OBJECTIVES.

Choosing a new Director is first among the tasks ahead for FY'93. The Court has appointed a nine-member Search Committee for that purpose. The new Board Chair, Gregory Bistram and the new Director will no doubt help shape the objectives for FY'93 and beyond.

The Board, the Director, the Bar Association, the District Ethics Committees and the Court will have to decide on the appropriate response to the new ABA recommendations for changes in the discipline system. In 1986 the Supreme Court Advisory Committee recommended periodic, comprehensive review of the professional responsibility system. Whether 1993 is the year for

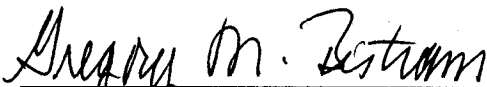
such review, in conjunction with the ABA proposals, will have to be decided by the Court. If such a review is undertaken, one issue that could be considered for study is the payment and program structure connected with the annual attorney registration fee. Adoption of any significant portion of the programs recommended by the ABA would be expensive, and sufficient funding even for existing programs is already the subject of some controversy.

Although the requested increase in funding for the Lawyers Board was in part delayed, consideration will have to be given this year to whether the implementation of a computerization program can be resumed. Further planning will also have to be undertaken for the move of the Office of Lawyers Professional Responsibility to the Minnesota Judicial Center, now contemplated in late 1994.

The themes of last year's report were a few remarkable cases and a troubling surge in the number of misappropriation cases and trusteeships. It appears that those problems have been met, at least for now. The themes for the coming year will be set in part by new leadership of the Board and the Director's Office. Among the challenges they will have to face is balancing programs needed for the profession's future with available resources.

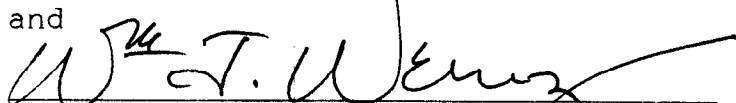
Dated: June 12, 1992.

Respectfully submitted,



GREGORY M. BISTRAM  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD

and



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

# ABA Commission Recommends Changes...

Should all discipline records be public?

Should fee arbitration be mandatory?

Should all ethics complaints be investigated by professional staff (rather than volunteer district committees)?

Should "minor" misconduct be dealt with "administratively," through programs such as arbitration, mediation, and education?

Should the Director have sole discretion to make public charges of misconduct against attorneys? Should the Director be subject to removal only "for cause"?

"Yes" is the answer from the ABA Commission on Evaluation of Disciplinary Enforcement to each of these policy questions. Only a few states have any of these policies and none exist in Minnesota. The commission's recommendations will be considered by the ABA next February.

The 1970 report of the last ABA commission to study discipline systems nationwide was enormously influential. Establishment of the Lawyers Board, and similar offices in other states, resulted from the first ABA report.

Before 1970 attorney discipline systems ranged generally from the nonexistent to the rudimentary. Problems noted in the 1970 report included:

No statewide registration of attorneys.

No requirement for trust account record keeping and dismissing complaints because the attorney made restitution.

Absence of subpoena power in the discipline system.

Local and fragmented nature of disciplinary structure.

The Commission reports that many of the problems resulting in a "scandalous situation" in professional responsibility matters in 1970 have been resolved. Indeed the report characterizes the changes of the last 20 years as "revolutionary." Nonetheless, further, sweeping changes are recommended.

The endeavors of the ABA Commission in formulating its report were prodigious. The commission held five public hearings: in Los Angeles, New York, New Orleans, Chicago, and Portland. More than 200 persons, from a wide variety of backgrounds, supportive and critical, submitted comment. The commission surveyed the opinion of the state supreme court justices; chief discipline counsel; and nonlawyer, minority, and women volunteers in discipline systems.

The commission was responsive to the demands of consumer groups. Groups such as HALT (originally an acronym for "Help Abolish Legal

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*"Before 1970 attorney discipline systems ranged generally from the nonexistent to the rudimentary."*

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Tyranny") and CAL-Justice have been active, even militant, in some states in trying to change attorney discipline systems. Their agenda includes: making discipline systems fully public; placing control of the systems in the hands of nonlawyers; and recasting the systems to enhance remedies available to aggrieved clients. Such groups can be influential, particularly if a state discipline system is less than vigorous.

A fundamental point of debate with the consumer groups has been: "Shall the profession remain self-policing?" In California some control has been taken by the Legislature and by an outside "monitor." In Minnesota the question is not perfectly framed, for three reasons. First, "policing" of attorneys is already done by several groups: nonlawyers comprise 40 percent of the Lawyers Board and a significant portion of district ethics committees; the Supreme Court is ultimately responsible for attorney discipline,

and trial judges are involved by acting as the Court's referees; and the full-time professional staff of the Director's Office is a step removed from the practicing bar. Second, lawyers will always be involved in "policing" every profession because the proceedings involve legal rights and rules. Finally, the most important "self-policing" will always go on outside the formal discipline system, in lawyers' dealings with each other, in court, and in their sense of what it is to be a professional.

Many of the policies recommended by the commission have long been employed in Minnesota but would involve great change in some other states:

Responsibility for the discipline system ultimately lodged in the state supreme court and its appointees.

Complainants' rights to immunity from suit, to timely reports on the status of their complaints, and to appeal dismissal of complaints.

Increasing nonlawyer membership on discipline boards to one-third or more.

Expediting the disciplinary process and providing for interim suspension without a showing of irreparable harm.

Some of the other commission recommendations have been studied in Minnesota and rejected. For example, the commission recommends a trust account random audit program, while two MSBA committees in recent years have found that the considerable expenses of such a program would not demonstrably produce corresponding benefits. (New Jersey spent \$320,000 on random audits in 1990, primarily for their educational benefits.) Minnesota has made its discipline system increasingly more open to the public, but has not adopted a fully public system.

In 1985, a Minnesota Supreme Court advisory committee (chaired by Nancy Dreher) studied the Minnesota system and made many recommendations for change. Generally, the Dreher recommendations were more detailed than the

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ABA Commission's. Also, the Dreher recommendations were not made against a background of public demonstrations and pressures from consumer groups. One series of sharp contrasts between the ABA and Dreher recommendations centers on the relative roles of a professional responsibility board and a director. The ABA Report recommends a very independent director whose prosecutorial discretion is unfettered and who may be removed only for cause. The Dreher model for the director emphasized instead a strong board which controlled the director at certain key points. Another sharp

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*"A fundamental point of debate with the consumer groups has been: 'shall the profession remain self-policing?' "*

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contrast is in the role of the volunteer discipline groups (district ethics committees), which the ABA report would remove from the discipline system. They would be reincarnated in the roles of educator, arbitrator, and mediator.

The Dreher Committee recommended that after several years the Minnesota discipline system again be studied with a view to possible further improvements. Consideration of the ABA Commission report may provide the occasion for that review.

The ABA report will be considered formally by the ABA in 1992. The Lawyers Board will be responding to the commission's invitation to submit comments in October 1991. Everyone interested in lawyers professional responsibility and disciplinary enforcement should take the time to study the ABA report and join the debate over whether the commission's sweeping recommendations should be adopted. 23

# ABA Proposals for Change . . .

On February 4 the ABA House of Delegates voted to adopt most of the recommendations made by an ABA commission for change in a model professional responsibility system. However, several recommendations, including one for a fully public discipline records system, were rejected.

Minnesota lawyers played important roles in shaping the ABA's final product. The Lawyers Board filed its comments with the ABA commission, which in turn modified its recommendations. The MSBA, after reports by its own committee (chaired by Janet Dolan) and a committee of the Hennepin County Bar Association (chaired by Judge Marianne Short and Bob Henson) sent well-informed delegates to the convention. Delegates Ted Collins, Ron Seeger, and Fred Finch all spoke on particular proposals.

Before summarizing the debate and results, it should be noted that many of the ABA's new recommendations are already law or policy in Minnesota. Structural recommendations, such as involvement of non-lawyers, ultimate responsibility in the Supreme Court, independence of disciplinary officials and counsel, and adequate funding and staffing have long prevailed in Minnesota. Procedural recommendations, such as advising a complainant of the progress of proceedings, providing for interim suspension in extreme cases and having appropriately simplified or complex procedures, depending on what is at issue, existed in Minnesota before the ABA recommended them. Unfortunately, many states still lack the basic structures, procedures, and funding for a modern and vigorous professional responsibility system.

The issue of whether discipline files should be fully available to the public generated the most controversy in Minnesota and at the ABA. Minnesota has evolved a nuanced system which is much more open than most, particularly in giving information to the complainant. Concern over unwarranted and irreparable harm to lawyers' reputa-

tions, from complaints that ultimately proved meritless or exaggerated, has been the basis for keeping records confidential — at least until there is good reason to believe that public discipline is warranted.

The Minnesota delegates helped defeat a recommendation that discipline counsel be removable only on a "for cause" basis. Independence of discipline counsel can be protected in

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*"Many of the  
ABA's new  
[professional discipline]  
recommendations  
are already law  
or policy in Minnesota."*

---

other ways, without also protecting mediocrity in job performance.

What then remains of importance for Minnesota from the ABA proposals? Two small puzzles and one major, far-reaching and somewhat nebulous proposal.

The first puzzle is in the following italicized language:

That the American Bar Association adopts the following recommendations *with the understanding that each jurisdiction should determine for itself whether to accept or modify the individual recommendations.*

Apparently a state may count itself orthodox, while picking and choosing among ABA doctrines — since one of the doctrines is eclecticism.

The second puzzle is in the recommendation that:

The Court should adopt a rule providing that lawyer trust accounts selected at random *may* be audited without having grounds to believe misconduct has

occurred and also providing procedural safeguards. (emphasis added)

Truly *random* audits (as opposed to *for cause* audits or audits *on suspicion*) cannot be done effectively on a discretionary basis. Random auditing of trust accounts at any level worth undertaking requires a major funding commitment. The only intelligible proposals would seem to be that (1) random audits *should* be done (and funded); or (2) random audits should not be done because the great expense entailed does not produce proportionate benefits. Minnesota has opted for the second alternative. The legislative history of the ABA proposal apparently suggests that the first alternative might have been intended, but "may" was used instead of "should."

The major remaining ABA proposal, or series of related proposals, is for what is called a "multi-door" approach to complaints, including a series of "diversion" programs. The ABA commission concluded, correctly, that many complainants are dissatisfied with dismissal of their complaints, and that some are dissatisfied with discipline as a response, because it provides no remedy or direct benefit to them. The ABA proposes to remedy this situation through adoption of a series of programs, some of which exist in Minnesota, others of which would be new. An ABA flow chart reprinted below perhaps best introduces these programs.

The general idea of doing something helpful and constructive, where possible, rather than discipline (which is sometimes seen as punitive) has a general appeal. Some of the recommended programs (fee arbitration, client security) already exist in some form in Minnesota or are being considered. However, some clarifications and reservations about the ABA proposals are in order.

First, there is the question of resources. The files which produce most dissatisfaction are the 80 percent of all complaints which are currently dismissed. The alternative here is not between something con-



structive and discipline, but between something constructive and doing nothing. However, the burden of doing something in a large number of these cases would involve enormous new resources.


Consider, for example, the fairly common complaint — now dismissed unless it is made repeatedly against the same lawyer — that in effect the attorney did a C- job in a marriage dissolution trial. Reviewing files, obtaining transcripts, interviewing relevant parties and trying to fashion a mediated response (if shortcomings are revealed) consumes enormous resources when projected on a statewide scale for all such complaints. Consider also the staffing of "Lawyer Practice Assistance" committees, which would teach subpar lawyers how to improve their lawyering skills. Where would the

volunteers be found? How would the expenses be paid? Would resources not be diverted from other worthy projects? The ABA approach seems blithe: we "can't afford not to" undertake programs of unknown, indeed unestimated, cost.

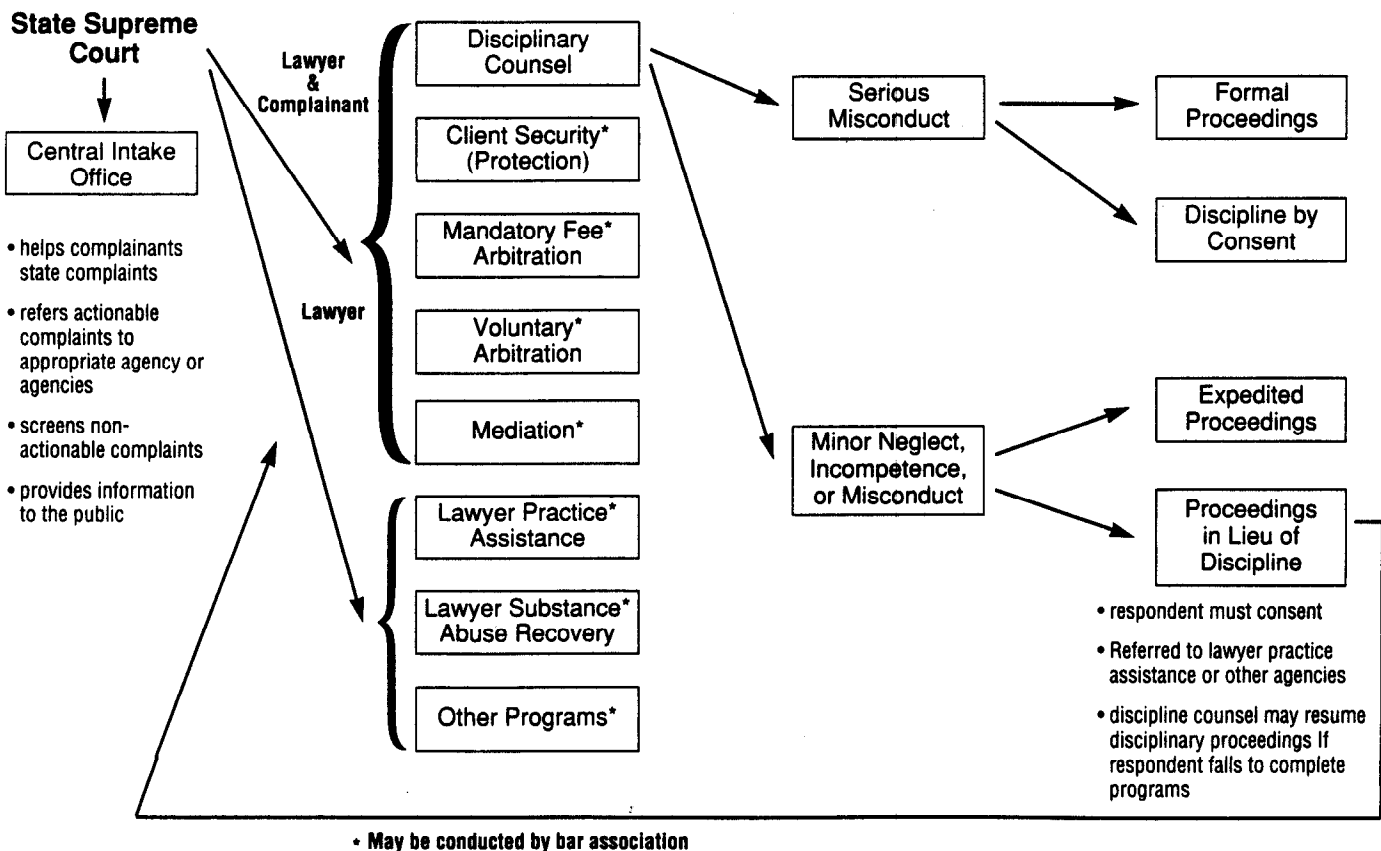
A reservation regarding diversion programs stems from the fact that in Minnesota half of all files are opened without complaint by the client. Most of the complaints of adverse parties, other attorneys, judges, creditors, files opened on notice of a trust account overdraft, etc. do not fit well with the recommended programs.

Third, unlike other ABA proposals, several of these programs have never been tried even on a pilot basis in any sizable jurisdiction. It may be that a county or a district could test one program or another, before all such programs were adopted in a state or nationwide.

This is not to say that no new programs should be tried. On March 20 the Minnesota Supreme Court will hear a petition for a lawyer assistance program. In recent years the Court has adopted an overdraft notice program and created a Client Security Board. Minnesota has been, and should remain, in the vanguard of states willing to consider change. However, the diversion programs as a whole are not digestible.

In the coming months those interested in professional responsibility in Minnesota will, under the ultimate authority of the Minnesota Supreme Court, have to decide how to go about responding to the new proposals of the ABA. This will be a challenging endeavor, but Minnesota has been far enough beyond the national norm, and participated so vigorously in the debate before the ABA, that the challenge can be well met. 

## ABA's Proposed Multi-Door Approach to Complaints



DEC SUMMARY AND REPORT - MAY 1992

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	2	8	4	15	1 Assigned to DEC
DEC 2 - WWL								1	4	6	6	14	8	39	2 Reassigned to DEC
DEC 3 - BMS							1	0	0	2	1	1	3	8	3 DEC 1 to be issued
DEC 4 - PRB							4	4	5	7	27	28	29	104	4 DEC 2 to be issued
DEC 5 - KLJ												1	3	4	5 DEC 3 to be issued
DEC 6 - BMS													0	0	6 DEC 4A to be issued
DEC 7 - BMS											1	2	4	7	7 DEC 4B to be issued
DEC 8 - BMS									1	0	2	0	0	3	8 DEC 5 to be issued
DEC 9 - BMS													0	0	9 Extension granted
DEC 10 - BMS													0	0	10 Report at DEC
DEC 11 - WWL									1	1	1	0	1	4	70 Status of file requested
DEC 12 - KLJ											1	2	0	3	71 Min rec'd - wait file
DEC 13 - BMS											1	0	0	1	72 Min rec'd - refer panel
DEC 14 - WWL											1	0	1	2	73 DEC 1B to be issued
DEC 15 - WWL											2	3	2	7	74 Report rec'd; will be taken off next month's report
DEC 16 - KLJ													0	0	
DEC 17 - KLJ													0	0	
DEC 18 - KLJ												2	1	3	
DEC 19 - KLJ												2	2	4	
DEC 20 - WWL											1	2	0	3	
DEC 21 - KLJ												2	3	5	
TOTAL FILES	0	0	0	0	0	0	5	5	11	17	46	67	61	212	
														0	
NO. OF MOS.	0	0	0	0	0	0	30	25	44	51	92	67	0	309	
AVERAGE NO. OF MONTHS IN DEC							1.5								
*2ND DEC AVERAGE							1.7								
**4TH DEC AVERAGE							1.6								
ALL OTHER DECS AVERAGE							1.1								

A.5

## AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

### Rule 1.6 Confidentiality of Information

- (a) Except when permitted under paragraph (b), a lawyer shall not knowingly:
- (1) reveal a confidence or secret of a client;
  - (2) use a confidence or secret of a client to the disadvantage of the client;
  - (3) use a confidence or secret of a client for the advantage of the lawyer or a third person, unless the client consents after consultation.
- (b) A lawyer may reveal:
- (1) confidences or secrets with the consent of the client or clients affected, but only after consultation with them;
  - (2) confidences or secrets when permitted under the Rules of Professional Conduct or required by law or court order;
  - (3) the intention of a client to commit a crime and the information necessary to prevent a crime;
  - (4) confidences and secrets necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used;
  - (5) confidences or secrets necessary to establish or collect a fee or to defend the lawyers or employees or associates against an accusation of wrongful conduct;
  - (6) secrets necessary to inform the Office of Lawyers Professional Responsibility of knowledge of another lawyer's violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. See Rule 8.3.
- (c) A lawyer shall exercise reasonable care to prevent employees, associates and others whose services the lawyer utilizes from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by paragraph (b) through an employee.
- (d) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

### **Rule 8.3 Reporting Professional Misconduct**

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the ~~appropriate professional authority~~ Office of Lawyers Professional Responsibility.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the ~~appropriate professional authority~~ Board on Judicial Standards.

(c) This Rule does not require disclosure of information ~~otherwise protected by that~~ Rule 1.6 requires or allows a lawyer to keep confidential.

### **Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the act of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities; or

(h) commit a discriminatory act prohibited by federal, state or local statute or ordinance,

that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after

consideration of all the circumstances, including (1) the seriousness of the act, (2)

whether the lawyer knew that it was prohibited by statute or ordinance, (3) whether it was

part of a pattern of prohibited conduct and (4) whether it was committed in connection with the lawyer's professional activities.

## Opinion 15: Retainer Fees . . .

Lawyers Board opinions in recent years have aimed at clarifying lawyering issues which regularly produce friction with clients. Opinions 13 and 14 have helped resolve problems stemming from file copying costs and attorney liens on homesteads.\* Opinion 15, issued in September 1991, follows the Minnesota Supreme Court's lead in restating and clarifying attorney obligations in handling retainer fees.

In a recent lawyer discipline decision, the Minnesota Supreme Court cautioned lawyers that "retainer fees not immediately placed in a trust account will be looked upon with suspicion." *In re Lochow*, 469 N.W.2d 91 (Minn. 1991). The decision also addressed the issues of advance fee payment retainers and nonrefundable or availability retainers. The Court noted that it has long been the view in Minnesota that advance payments for future services are client funds until earned. Withdrawals from advanced fee "retainers" should be made only as services are performed and costs incurred on behalf of the client. *Id.* at 98.

The Court also recognized that retainers paid to ensure the lawyer's availability may be nonrefundable and earned upon receipt if they are reasonable. In such instances, however, the purpose of the retainer fee and the client's consent must be in writing. *Id.*

On September 13, 1991, the Lawyers Professional Responsibility Board issued Opinion No. 15, "Advance Fee Payments and

Availability or Nonrefundable Retainers." Opinion 15 (reprinted below) codifies the *Lochow* holding concerning "advance fee payments" and "availability or nonrefundable retainers."

The key elements of Opinion 15 are its definitions and a presumption.

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*"Lawyers should understand that the reasonable fee requirements of Rule 15 may obligate them to refund some portion of an availability or nonrefundable fee..."*

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The opinion defines the terms "advance fee payments" and "availability or nonrefundable retainers" as well as "accounting." All retainer fees are presumed to be advance fee payments unless a written agreement signed by the client states otherwise. Hence, all retainers paid pursuant to an oral retainer agreement are presumed to be advance fee payments.

All advance fee payments as defined by Opinion 15 must be deposited into the trust account and cannot be withdrawn unless the client is given written notice of the

time, amount, and purpose of the withdrawal and an "accounting." The notice is not required to be in advance of the withdrawal. An "accounting" requires the lawyer to provide the client with a statement of the balance of the client's funds remaining in the trust account after the withdrawal has been made.

"Availability or nonrefundable retainers" as defined by Opinion 15 must be written and signed by the client. The retainer agreement must inform clients that they may not receive a refund of such retainer fees if they later choose not to hire or to terminate the lawyer's services. Lawyers should understand that the reasonable fee requirements of Rule 1.5 may obligate them to refund some portion of an availability or nonrefundable fee under certain circumstances. For example, the client could change his or her mind shortly after paying the lawyer a nonrefundable or an availability retainer. If the lawyer has not already performed services on the client's behalf and has not already declined other representation(s), a refund would likely be required in order for the fee to be reasonable. This is the position recently taken by the New York City Bar Association Ethics Committee in Formal Opinion 1991-3 (determination of ethically appropriate fee cannot be made definitively at outset of representation even in nonrefundable retainer cases). Fees paid pursuant to an availability or nonrefundable retainer are not required to be deposited into a trust

account nor do they need to be held in trust. The amount of a nonrefundable or availability retainer must be reasonable and is subject to Rule 1.5(a), the Minnesota Rules of Professional Conduct, which sets forth the factors to be considered in determining reasonableness.

*"Fees paid pursuant to an availability or nonrefundable retainer are not required to be deposited into a trust account..."*

*Lochow* and Opinion 15 are not essentially new law. They restate and clarify Minnesota law. They also are consistent with the law in a majority of other states.

Opinion 15 is intended to provide lawyers with further notice of the Court's requirements with respect to their handling of client retainers. The board hopes that Opinion 15 will also reduce attorney-client problems, particularly that of a client seeking return of an unearned portion of a retainer which, unfortunately, the attorney has already spent and cannot refund. ■

\* Opinions 1-13 were printed in the November 1989 *Bench & Bar*. Opinion 14 is printed and discussed in the August 1990 *Bench & Bar*.

#### OPINION NO. 15

Advance Fee Payments and Availability or Nonrefundable Retainers

#### DEFINITIONS

1) **Advance Fee Payments:** Funds paid by a client or a prospective client to a lawyer for specific services to be undertaken. All fees paid at the beginning of the representation shall be pre-

sumed to be advance fee payments unless a written fee agreement signed by the client states otherwise.

2) **Availability or Nonrefundable Retainers:** Funds paid by a client or a prospective client to secure a lawyer's general availability to, or representation of, that client over a specified period of time or for a specific legal matter.

3) **An Accounting:** An itemized statement issued to a client which lists all trust fund withdrawals (e.g., fees, costs, or expenses) for that client since the last statement and which states the balance of that client's funds remaining in the trust account after the withdrawals have been made.

#### OPINION

All advance fee payments must be deposited into an interest-bearing trust account in accordance with Rules 1.15(a)(2) and (e), Minnesota Rules of Professional Conduct. A lawyer may withdraw fees from the trust account when earned provided the client is given: 1) written notice of the time, amount, and the purpose of the withdrawal; and 2) an accounting of the client's funds in the trust account. See *In re Lochow*, 469 N.W.2d 91 (Minn. 1991).

Funds paid to a lawyer pursuant to an availability or nonrefundable retainer agreement are not required to be deposited into a trust account or held in trust. All availability or nonrefundable retainer agreements must be in writing and signed by the client. *Lochow*, 469 N.W.2d at 98. All availability or nonrefundable retainer agreements must include a final paragraph immediately above the client signature line which informs the client that: 1) the funds will not be held in a trust account; and 2) the client may not receive a refund of the fees if the client later chooses not to hire the lawyer or chooses to terminate the lawyer's services. All fees paid pursuant to an availability or nonrefundable retainer agreement shall be reasonable in amount. The factors to be considered in determining the reasonableness of a lawyer's fee include those set forth in Rule 1.5(a), Minnesota Rules of Professional Conduct.

Adopted: September 13, 1991.

FILE NO. C8-84-1650

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition to Amend Rules  
1.6, 8.3 and 8.4 of the Minnesota  
Rules of Professional Conduct.  
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COMMENT OF THE  
LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD

At its January 10, 1992, meeting the Lawyers Professional Responsibility Board approved resolutions to support the petition of the Minnesota State Bar Association to amend Rules 1.6, 8.3 and 8.4 of the Minnesota Rules of Professional Conduct. The Lawyers Board also authorized its Executive Committee to draft and submit this Comment, stating in general terms what it expected the Board's enforcement policy would be with respect to proposed Rule 8.4(h). The Board believes a comment on enforcement policy is appropriate because of concerns it has, and the Court may have, about the resources involved in enforcing the rule.

ENFORCEMENT EXPERIENCE WITH RULE 8.4(g)

The Court expressed similar concerns regarding resources before adopting Rule 8.4(g), Rules of Professional Conduct, effective January 1, 1990. Rule 8.4(g) forbids certain forms of harassment "in connection with a lawyer's professional activities." Rule 8.4(g) and proposed Rule 8.4(h) in part overlap, but the scope of Rule 8.4(h) is considerably broader, particularly because it is not restricted to the lawyer's professional activities.

Enforcement experience of the Office of Lawyers Professional Responsibility in the last two years with Rule 8.4(g) may provide

a partial guide to the enforcement burden that may be expected under Rule 8.4(h). The Rule 8.4(g) burden has been minimal.

In the last two years the only Rule 8.4(g) disciplines which have been issued have been three admonitions, two by the Director and one by a Lawyers Board Panel which determined that there was not probable cause to believe public discipline was warranted. Only the last was litigated. In addition, although dismissals are not specifically tracked by rule, it is believed that there have been only two Rule 8.4(g) complaints which have been dismissed.

BOARD ENFORCEMENT POLICY FOR RULE 8.4(h)

If Rule 8.4(h) is adopted, the Board now expects it would approve the following guidelines in rule enforcement, pursuant to its "general supervisory authority over the administration of the Office of Lawyers Professional Responsibility," under Rule 4(c), Rules on Lawyers Professional Responsibility.

1. **Deference to Other Forums.** Among the elements of a Rule 8.4(h) violation would be that the act is "prohibited by federal, state or local statute or ordinance." The Board would expect routinely to defer to the relevant governmental agencies, and to courts, which have expertise in these matters. The Board would reserve the discretion in a particular case--for example, one involving an attorney who had already been found to have harassed or illegally discriminated against someone--to proceed in advance of another agency. However, it would be expected that most such matters would first be heard elsewhere. It should be noted, however, that if the other forum does not have a standard of clear and convincing evidence, that discipline proceedings could probably not be made summary through a collateral estoppel



claim. Rule 10(d), RLPR, would allow bypass of Panel hearing in appropriate cases.

2. **Expectation Regarding Volume.** Although the Board has made no effort over the years to learn of discrimination claims involving lawyers, it seems reasonable to believe that there likely would have been publicity regarding any large scale or very serious such claims. The Board is not aware that any lawyers or law firms have been involved in such proceedings, except those who were already subject to discipline under another rule, e.g., Peters and Miera. The Board would not expect to be involved in any large volume of claims of serious illegal discrimination.

3. **Complex Cases.** The Board is aware of litigation in other jurisdictions involving allegations of illegal discrimination by lawyers or law firms; and is aware that some such litigation has been protracted and complex. If such claims were brought in Minnesota and were found first in other forums to have merit, it might be necessary for the Office of Lawyers Professional Responsibility, after investigation, to be involved in complex related disciplinary litigation. It might then be necessary, depending on the resources and disposition of the parties involved, and such factors as the then-current budget, staffing and expertise levels within the Office of Lawyers Professional Responsibility, to seek outside counsel and special funding. Other than such extraordinary situations, the Board would expect complaints to be handled within the normal procedures of the Office of Lawyers Professional Responsibility.

In re Peters, 428 N.W.2d 375 (Minn. 1988) provides a basis for believing that the professional responsibility system as now constituted is able to deal with at least moderately complicated allegations of harassment, illegal discrimination and the like.

4. Discretion. The Board would regard the four enumerated factors under Rule 8.4(h) as providing a considerable basis for exercise of discretion by the Office of Lawyers Professional Responsibility in determining whether to pursue a particular matter. Thus, not every claim of discrimination, or finding in another forum of discrimination would trigger a disciplinary investigation or proceeding.

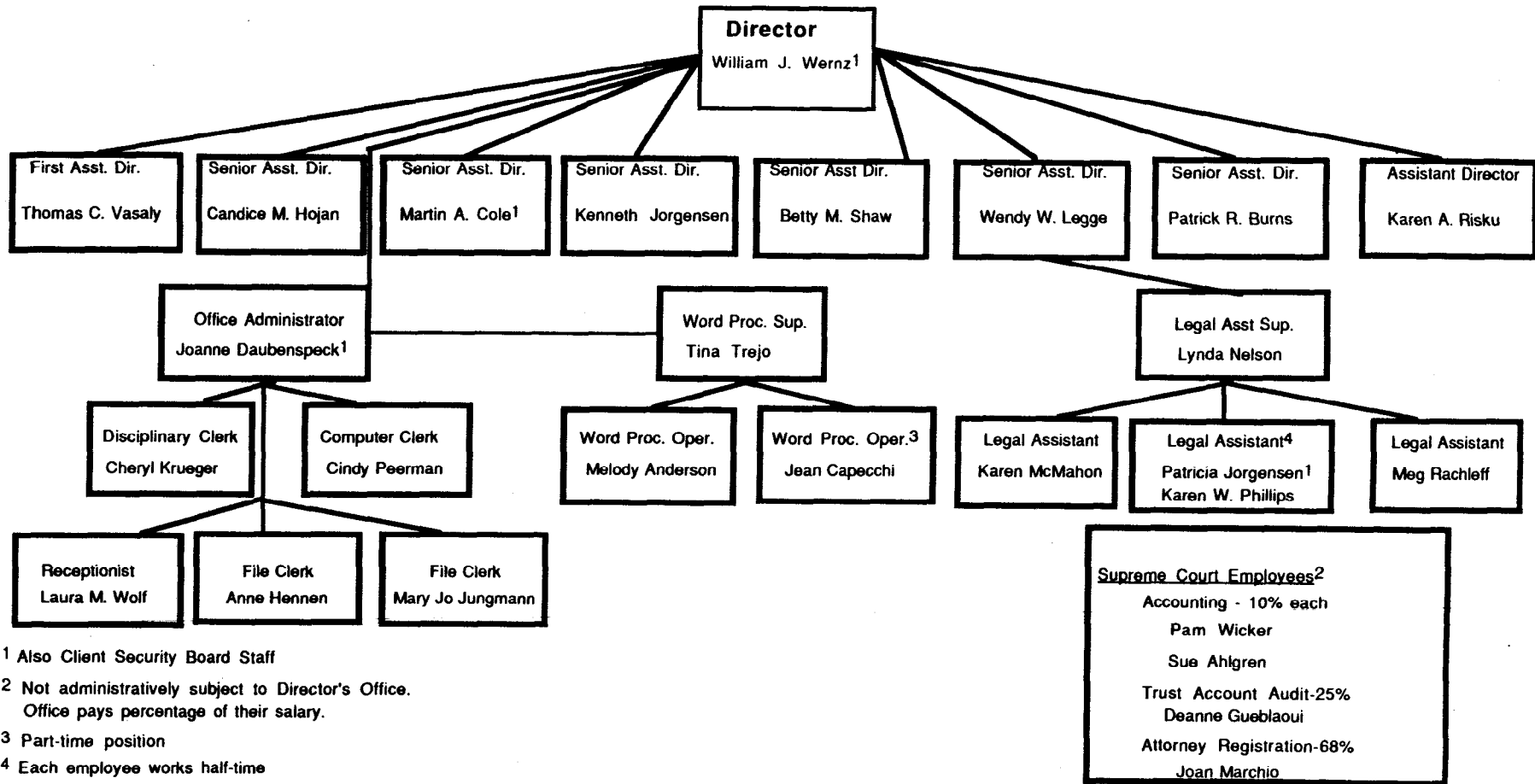
The Board and the Director stand ready to be of service in enforcing whatever rules of professional conduct may be adopted by the Minnesota Supreme Court. The Board supports the efforts of the Minnesota State Bar Association in its petition to amend Rules 1.6, 8.3 and 8.4, Rules of Professional Conduct.

Dated: February 26, 1992.

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GREGORY M. BISTRAM, CHAIR  
LAWYERS PROFESSIONAL RESPONSIBILITY  
BOARD  
520 Lafayette Road, Suite 100  
St. Paul, MN 55155  
(612) 296-3952

Office of the Director of Lawyers Professional Responsibility



A.14

<sup>1</sup> Also Client Security Board Staff

<sup>2</sup> Not administratively subject to Director's Office.  
Office pays percentage of their salary.

<sup>3</sup> Part-time position

<sup>4</sup> Each employee works half-time

FY'92 and FY'93  
Income Summaries

		FY'92	
<b>Balance Forward In 7/1/91</b>			<b>\$274,721</b>
 <b><u>Income</u></b>			
Atty Reg Fees:	12,631 @ \$80 =	\$1,010,480	
	4,258 @ \$17 =	\$72,386	
	800 New Admittees @ \$13 =	\$10,400	
	Late fees and fines	\$32,432	
	Miscellaneous atty. reg. income*	<u>\$32,000</u>	
	Total Atty Reg. Receipts		\$1,157,698
Other Income:	Client Security Fund	\$20,000	
	Judgments	\$26,000	
	Professional Corporations	\$25,000	
	Misc. (seminar, etc)	<u>\$2,600</u>	
	Total Other		<u>\$73,600</u>
Total Income			<u>\$1,231,298</u>
<b>TOTAL AVAILABLE FUNDS</b>			<b>\$1,506,019</b>
<b>FY'92 ESTIMATED EXPENDITURES</b>			<u><b>\$1,248,426</b></u>
<b>ESTIMATED BALANCE 6/30/92</b>			<u><b>\$257,593</b></u>

FY'93

Summary

<b>Estimated Balance Forward In 7/1/92</b>			<b>\$257,593</b>
 <b><u>Income</u></b>			
Atty Reg Fees:	13,131 @ \$90 =	\$1,181,790	
	4,258 @ \$20 =	\$85,160	
	800 New Admittees @ \$15 =	\$12,000	
	Late fees and fines	<u>\$30,000</u>	
	Total Atty Reg. Receipts		\$1,308,950
Other Income:	Client Security Fund	\$20,000	
	Judgments	\$20,000	
	Professional Corporations	\$23,000	
	Miscellaneous	<u>\$2,500</u>	
	Total Other		<u>\$65,500</u>
Total Income			<u>\$1,374,450</u>
<b>TOTAL AVAILABLE FUNDS</b>			<b>\$1,632,043</b>
<b>FY'93 ESTIMATED EXPENDITURES</b>			<u><b>\$1,396,050</b></u>
<b>ESTIMATED BALANCE 6/30/93</b>			<u><b>\$235,993</b></u>

**FY'94  
Summary**

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**Estimated Balance Forward In 7/1/93** **\$235,993**

**Income**

Atty Reg Fees:	13,631 @ \$100 =	\$1,363,100	
	4,258 @ \$20 =	\$85,160	
	800 New Admittees @ \$15 =	\$12,000	
	Late fees and fines	<u>\$30,000</u>	
	Total Atty Reg. Receipts		\$1,490,260
Other Income:	Client Security Fund	\$20,000	
	Judgments	\$20,000	
	Professional Corporations	\$23,000	
	Miscellaneous	<u>\$2,500</u>	
	Total Other		<u>\$65,500</u>
<b>Total Income</b>			<b><u>\$1,555,760</u></b>

**TOTAL AVAILABLE FUNDS** **\$1,791,753**

**FY'94 ESTIMATED EXPENDITURES** **\$1,452,798**

**ESTIMATED BALANCE 6/30/94** **\$338,955**

\* FY'92 attorney registration income received to 5/27/92 is higher than anticipated. This increase is no doubt the produce of a larger number of attorney fee payers than anticipated. However, because this number has been extremely volatile and hard to predict in recent years, the extra fee income is being labelled as "miscellaneous," without an attempt to correlate it precisely at this time with the numbers of attorneys paying in each category.

5/27/92

FY'90, FY'91, FY'92 and FY'93  
Expenditure Summaries

	<u>FY'90 Budget</u>	<u>FY'90 Expend.</u>	<u>FY'91 Budget</u>	<u>FY'91 Expend</u>	<u>FY'92 Rev. Budget</u>	<u>FY'92 Expend.</u>	<u>FY'93 Antic. Budget</u>
1. Payroll & Benefits	\$867,321	\$882,794	\$1,004,460	\$949,331	\$1,024,227	\$1,043,710	\$1,074,640
2. Rents and Leases	\$73,552	\$74,498	\$87,803	\$87,433	\$88,221	\$88,221	\$92,565
3. Advertising	\$800	\$1,511	\$900	\$1,633	\$1,433	\$3,060	\$2,171
4. Repair Services	\$9,800	\$10,763	\$10,500	\$10,000	\$12,000	\$12,000	\$12,013
5. Bonds & Insurance	\$3,700	\$2,980	\$3,000	\$2,908	\$3,348	\$1,800	\$2,691
6. Printing & Binding	\$4,400	\$8,092	\$6,000	\$8,235	\$9,421	\$6,800	\$8,480
7. Professional & Technical Services	\$23,500	\$40,605	\$29,000	\$23,220	\$33,659	\$15,799	\$29,195
8. Data Processing	\$15,000	\$8,019	\$50,000	\$4,122	\$5,000	\$4,122	\$55,000
9. Purchased Services	\$5,300	\$9,400	\$5,700	\$11,770	\$11,000	\$10,127	\$10,954
10. Communications	\$16,300	\$20,796	\$19,000	\$22,581	\$20,905	\$23,339	\$24,463
11. Travel In State	\$8,600	\$10,240	\$9,200	\$3,133	\$5,000	\$2,808	\$5,663
12. Travel Out-of-State	\$8,100	\$8,401	\$8,100	\$5,886	\$8,100	\$3,645	\$6,276
13. Fees & Fixed Charges	\$4,100	\$5,095	\$4,600	\$3,073	\$4,134	\$3,348	\$4,031
14. Supplies	\$21,500	\$23,533	\$24,500	\$30,183	\$26,600	\$22,397	\$27,908
15. Furn & Equipment	\$5,000	\$2,002	\$32,000	\$12,301	\$5,000	\$7,250	\$40,000
<b>TOTAL</b>	<b>\$1,066,973</b>	<b>\$1,108,729</b>	<b>\$1,294,763</b>	<b>\$1,175,809</b>	<b>\$1,258,048</b>	<b>\$1,248,426</b>	<b>\$1,396,050</b>

FY'93 Footnotes

1. Payroll - FY'92 includes \$19,000 in severance and vacation payout for Director's resignation  
FY'93 - see Attachment A.
2. Rent - FY'93 pursuant to lease
3. Advertising - 105% of 3 year average
4. Repairs: Misc. Equip Repairs & Service Contracts for Computers, Dictaphones, GBC, Wahl & Wahl, Xerox, Pitney  
Bowes, typewriters & fax. FY'93 is 110% of 3 year average
5. Bonds & Insurance - Decrease in FY'90 due to change in company, 105% of 3 year average
6. Printing & Binding - Includes monthly billable copies for Xerox, special paper and brochure printing. FY'89 high  
because of trust account brochure. FY'93 is 110% of 3 year average
7. Prof. & Tech. Services - Includes court reporting, expert witnesses in major litigation and accountants.  
FY'93 is 110% of 3 year average
8. Data Processing - Expenses anticipated for analysis and conversion to new computer system. Does not include  
hardware. Computer expenditures can be incurred only w/specific S.Ct. approval. \$40,000 carried forward from  
original FY'92 budget. Includes \$4,000 operational cost for TCIS
9. Purchased Services - Includes Board Member expenses (previously in In State Travel) , Board meeting expenses,  
DEC seminar expenses and bank searches. FY'93 is 105% of 3 year average
10. Communications - Includes postage, WATS, telephone, toll-free line, mail meter. FY'93 is 110% of 3 year average
11. Travel In-State - Reimbursement of employee travel expenses. FY'90 high because they include Board  
member expenses - now in purchased services (line 9). FY'93 is 105% of 3 year average
12. Travel Out-Of-State- FY'93 is 105% of 3 year average
13. Fees & Fixed Charges - Includes memberships, training expenses and service fees. FY'93 is 105% of 3 year average
14. Supplies - General office supplies and furniture under \$500. FY'93 is 110% of 3 year average

15. Furniture & Equipment -

FY'91 includes \$7,000 for Macintosh computers, \$1,700 furniture and equipment and \$3,600 small copier

FY'92 includes \$5,250 for Macintosh computers and \$2,000 for ergonomic chairs

FY'93 includes \$20,000 for new computer hardware and \$20,000 for new phone and/or furniture for move to Jud. Ctr.



5/29/92

FY'90, FY'91, FY'92, FY'93 and FY'94  
Budget Summaries

	FY'90 Orig. Budget	FY'91 Orig. Budget	FY'92 Revised Budget	FY'93 Prelim. Budget	FY'94 Prelim. Budget	FY'94 Footnotes
1. Payroll & Benefits	\$867,321	\$1,004,460	\$1,024,227	\$1,074,640	\$1,149,865	107% of FY'93
2. Rents and Leases	\$73,552	\$87,803	\$88,221	\$92,565	\$99,970	108% of FY'93
3. Advertising	\$800	\$900	\$1,433	\$2,171	\$2,345	108% of FY'93
4. Repair Services	\$9,800	\$10,500	\$12,000	\$12,013	\$12,974	108% of FY'93
5. Bonds and Insurance	\$3,700	\$3,000	\$3,348	\$2,691	\$2,906	108% of FY'93
6. Printing and Binding	\$4,400	\$6,000	\$9,421	\$8,480	\$9,158	108% of FY'93
7. Professional & Technical Services	\$23,500	\$29,000	\$33,659	\$29,195	\$31,531	108% of FY'93
8. Data Processing	\$15,000	\$50,000	\$5,000	\$55,000	\$30,000	Estimate
9. Purchased Services	\$5,300	\$5,700	\$11,000	\$10,954	\$11,830	108% of FY'93
10. Communications	\$16,300	\$19,000	\$20,905	\$24,463	\$26,420	108% of FY'93
11. Travel In State	\$8,600	\$9,200	\$5,000	\$5,663	\$6,116	108% of FY'93
12. Travel Out-of-State	\$8,100	\$8,100	\$8,100	\$6,276	\$6,778	108% of FY'93
13. Fees & Fixed Charges	\$4,100	\$4,600	\$4,134	\$4,031	\$4,353	108% of FY'93
14. Supplies and Materials	\$21,500	\$24,500	\$26,600	\$27,908	\$30,141	108% of FY'93
15. Equipment	\$5,000	\$32,000	\$5,000	\$40,000	\$28,410	Estimate
<b>TOTAL</b>	<b>\$1,066,973</b>	<b>\$1,294,763</b>	<b>\$1,258,048</b>	<b>\$1,396,050</b>	<b>\$1,452,798</b>	

Inc Date	Employee	6/30/92 SALARY	7/1/92 2% COLA	FY'93 Salary	FICA=7.65% MSRS=4.12%	Ins.	New FY'93 Total
	Director-1	\$63,030	\$64,291	\$64,446	\$8,242	\$4,680	\$77,368
5/1	Vasaly -2	\$62,202	\$63,446	\$64,125	\$8,218	\$4,680	\$77,024
4/27	Hojan-3	\$54,204	\$55,288	\$55,678	\$6,553	\$4,150	\$66,381
1/6	K. Jorgensen-4	\$56,773	\$57,908	\$58,856	\$6,719	\$4,150	\$69,725
1/6	Cole-5	\$56,919	\$58,057	\$59,013	\$6,728	\$4,150	\$69,891
2/12	Shaw-6	\$56,376	\$57,504	\$58,254	\$6,686	\$4,150	\$69,090
2/15	Legge-7	\$49,336	\$50,323	\$50,978	\$6,000	\$1,900	\$58,878
5/8	Burns-8	\$48,003	\$48,963	\$49,265	\$5,799	\$4,150	\$59,214
9/12	Risku-9	\$40,445	\$41,254	\$42,292	\$4,978	\$1,900	\$49,169
9/12	Rachleff-10	\$27,457	\$28,006	\$28,717	\$3,380	\$1,900	\$33,997
4/7	P. Jorgensen-11	\$15,462	\$15,771	\$9,880	\$1,163	\$0	\$11,043
4/24	Phillips-12	\$14,345	\$14,632	\$15,629	\$1,839	\$0	\$17,468
9/27	McMahon-13	\$27,520	\$28,070	\$28,747	\$3,384	\$1,900	\$34,031
1/1	Nelson-14	\$32,656	\$33,309	\$30,009	\$3,532	\$3,650	\$37,191
2/21	Daubenspeck-15	\$37,939	\$38,698	\$39,595	\$4,660	\$4,150	\$48,406
10/19	Trejo-16	\$30,088	\$30,690	\$31,442	\$3,701	\$4,150	\$39,293
1/1	Anderson-17	\$27,457	\$28,006	\$28,673	\$3,375	\$4,150	\$36,198
7/19	Krueger-18	\$27,457	\$28,006	\$28,598	\$3,366	\$1,900	\$33,864
2/26	Capecchi-19	\$7,719	\$7,873	\$7,967	\$938	\$0	\$8,904
2/13	Peerman-20	\$26,601	\$27,133	\$28,007	\$3,296	\$4,150	\$35,453
8/16	Jungmann-21	\$21,506	\$21,936	\$22,563	\$2,656	\$1,900	\$27,119
3/10	Wolf-22	\$20,462	\$20,871	\$21,127	\$2,487	\$4,150	\$27,763
8/1	Hennen-23	\$25,808	\$26,324	\$26,893	\$3,165	\$4,150	\$34,208
	Olejnicak-24			\$9,228	\$706	\$0	\$9,934
	Law clerk-25			\$3,240	\$248	\$0	\$3,488
<b>Supreme Court Employees</b>							
1/1	*Wicker-26	\$2,745	\$2,800	\$2,860	\$337	\$415	\$3,611
11/9	*Ahlgren-27	\$2,460	\$2,509	\$2,562	\$302	\$190	\$3,054
4/16	*Gueblaoui-28	\$6,689	\$6,823	\$7,017	\$826	\$1038	\$8,881
3/1	*Marchio-29	\$18,657	\$19,030	\$19,416	\$2,285	\$1,292	\$22,993
	Overtime						\$1,000
*OLPR portions of S.Ct. employee salaries							\$1,074,640

Attachment A

Footnotes - Salaries are based on 2088 hours this fiscal year unless otherwise noted. "FY'93" salary includes 3% merit increase or stability payment and .5% COLA on 12/30/92

Director	1-Starting salary at midpoint- 6% retirement, FICA (6.2%)to \$55,500, Medi (1.45%) to \$64,446. .5% COLA 12/30/92 Ins. includes \$530 for income protection plan
Vasaly	2-At top of salary range-6% retirement, FICA (6.2%) to \$55,500, Medi (1.45%) to \$64,125. \$525 stability pymt .5% COLA 12/30/92. Ins. includes \$530 for income protection plan
Hojan	3-4.12% retirement, 7.65% social security and medicare. 3% increase 5/5/93
Jorgensen	4-FICA (6.2%) to \$55,500, Medicare (1.45%) of entire salary. 3% increase 1/13/93
Cole	5-FICA (6.2%) to \$55,500, Medicare (1.45%) of entire salary. 3% increase 1/13/93
Shaw	6-FICA (6.2%) to \$55,500, Medicare (1.45%) of entire salary. 3% increase 2/24/93
Legge	7-3% increase 2/24/93
Burns	8-3% increase 5/19/93
Risku	9-3% increase 9/23/92
Rachleff	10-3% increase 9/23/92
P. Jorgensen	11-On leave 7/1 - 11/17/92. 20 hours per week 11/18-6/30. 3% increase 4/7/93.
Phillips	12-24 hours per week 7/1-11/13/92. 20 hours per week 11/16 - 6/30/93. 3% increase 5/5/93
McMahon	13-3% increase 10/7/92
Nelson	14-At top of range-\$450 stability pymt Jan 93. On leave 7/1-9/15. Off payroll 6 weeks
Daubenspeck	15-At top of range-\$800 stability pymt
Trejo	16-At top of range-\$675 stability pymt
Anderson	17-At top of range-\$600 stability pymt
Krueger	18-At top of range-\$525 stability pymt
Capecchi	19-624 hrs./yr. 3% increase 3/10/93
Peerman	20-At top of range-\$800 stability pymt
Jungmann	21-3% increase 8/26/92
Wolf	22-3% increase 3/10/93
Hennen	23-At top of range-\$600 stability pymt
Olejnicak	24-temp legal asst. 784 hrs. @ \$11.77 hr. On payroll thru mid Nov. - No MSRS
Law clerk	25-temp law clerk. 360 hrs @ \$9.00 - No MSRS
Wicker	26-LPRB pays 10% of salary - At top of salary range. 10% of \$450 stability pymt
Ahlgren	27-LPRB pays 10% of salary. 3% increase 11/18/92
Gueblaoui	28-Position for trust acct. overdraft rule. LPRB pays 25% of salary. 3% increase 4/21/93
Marchio	29-LPRB pays 68% of salary. At top of salary range. 68% of \$500 stability pymt