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Clerk of Appellate Courts
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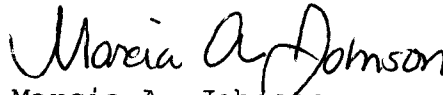
Re: Annual Report

Dear Clerk:

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

The Board approved the report at its meeting on June 18, 1993.

Very truly yours,



Marcia A. Johnson
Director

:jd

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

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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, 1992, through May 31, 1993.

Leadership changes at the Director's Office and the Executive Committee of the Lawyers Board and the creation of the Supreme Court Advisory Committee to study lawyer discipline issues are at the forefront of this year's report. Stability in the face of change, assistance to the Advisory Committee, computerization of the word processing department and educational efforts have been the primary goals this year.

Leadership Changes.

William Wernz resigned as Director of the Office of Lawyers Professional Responsibility, effective May 29, 1992. A nine person search committee was formed by the Court to solicit applications, screen candidates and interview applicants for the Director position. Interviews of eleven final candidates occurred in July 1992. Marcia A. Johnson is the new Director. She commenced the duties of Director on September 8, 1992.

The Executive committee of the Lawyers Board was re-formulated after Alice Mortenson and Dennis Korman retired from the Board. The new Executive Committee consists of Greg Bistram, Nancy McLean (unanimously elected to serve as the Board's Vice Chair), Genevieve Ubel, William Maupins and Kathleen Sheran. Attached at A. 1 is a list of current Lawyers Board members.

Minnesota Supreme Court Justice M. Jeanne Coyne will succeed Justice John E. Simonett as liaison to the Lawyers Board commencing July 1993. Justice Simonett has served as liaison since March 1991. His wisdom, advice and assistance to the Board were much appreciated. We look forward to working in the future with Justice Coyne.

Supreme Court Advisory Committee.

By order of September 9, 1992, the Supreme Court created a fifteen person Advisory Committee with a two-fold mission: to update the 1985 Dreher Committee report regarding the Minnesota disciplinary system and to study the recommendations for changes of the nation's disciplinary systems proposed by the ABA. Committee members have met twice a month since November and have completed their fact-finding. The Committee's goal is to have their report and recommendations completed by the June 1993 Minnesota State Bar Association meeting.

Computerization.

The Office is taking steps to enter the computer age. After much study and consultation with Lawyers Board member and computer expert Bill Maupins, the Office decided to replace its nearly extinct word processing equipment with new Macintosh computers and laser printers. The legal assistants' computers are also being replaced with new Macintosh units, in an effort to assist and expedite their work on the very time consuming and complicated trust account audits. We hope to have the Office completely computerized by the time of the move to the Judicial Center.

Lawyers Board Opinions.

On March 29, 1993, the Lawyers Board adopted Opinion 16, governing interest on lawyers' fees. A copy of the May/June 1993 Bench & Bar article publicizing it is attached at A. 2-3. To increase the accessibility to the bar of the Lawyers Board Opinions, the Office has had the opinions printed in a brochure format, which will be disseminated to all newly admitted lawyers, commencing in October 1993, and which is available to any lawyer on request. The Director's Office has also arranged, with the cooperation of the Revisor of Statutes and West Publishing Company, for the publication of the opinions next year in the court rules volume of the statutes and West's rules of court desk book.

District Ethics Committee Accomplishments.

The district ethics committees ("DECs") continue to work with admirable dispatch. Overall, the DECs' average file age was 1.4 months in May. Attached at A. 4 is a chart showing the month-by-month accomplishments of the DECs throughout the state. Recognizing these efforts, the Advisory Committee intends to recommend, in contrast to the ABA recommendation for an entirely professional investigative staff, that the volunteer based DECs continue to play their assigned role in the investigation of ethics complaints in Minnesota.

Professional Responsibility Seminar.

The highlight of the annual seminar was the presentation by Dominic Gentile. Mr. Gentile is the Las Vegas attorney whose pre-trial statements to the press spurred the United States Supreme Court's decision in 1991 to invalidate a portion of Nevada's rule of professional conduct with respect to pre-trial publicity. Gentile is now in charge of Nevada's attempt to re-draft a rule that will pass constitutional muster. Alternate points of view with respect to pre-trial publicity were ably expressed by Lawyers Board members Nancy McLean, a prosecutor, and Gwenyth Jones Spitz, a journalist. Other topics included discussion with Burnele V. Powell, Chair of the ABA Standing Committee on Professional Responsibility, regarding the ABA recommendations for discipline and a discussion of the ethical constraints on attorney sexual relations with clients. The district committee workshop was well-attended, and provided the opportunity for common investigator questions to be raised and discussed.

Case Statistics.

While the number of complaints received has remained approximately the same for the last three years, the overall number of files open in the Office remains at the increased level reflected in last year's report. This year the statistics also reflect an increased number of "old" files still open. While these statistics are troubling, and deserve continuing attention, there is not cause for any immediate

concern. Several factors which this year have affected the Office's ability to adequately address the increased number of cases over a year old are not constant. There was an extended period of transition and adjustment due to the change in Directors this year. Due to the resignations of the previous Director in June and a Senior Assistant Director in October, the Office was short one attorney for seven months. Finally, assisting the Advisory Committee since November has diverted a substantial amount of Office personnel resources.

While a priority goal of 1994 will be to bring the number of "old" cases down to more familiar levels, it is unlikely that this can be completely accomplished by year end 1994. With the increased number of open files in the Office since the end of 1991, there is an obvious conflict between moving the large number of discipline not warranted and private discipline cases through the system quickly, and bringing to completion the growing number of older cases which are being fully litigated. The number of older cases probably cannot be reduced to the more familiar level of approximately 50 without additional professional staff in the Director's Office. The budget for FY' 94 reflects the addition of one additional attorney to be hired in January 1994, in an attempt to prevent the creation of a more troubling backload of cases.

II. CASE LOAD AND CASES.

A. Statistics.

Tables I, II, III, and IV below show complaint and case disposition statistics in recent years. While the exemplary statistics evidenced in the past several reports have not been exceeded, many have been maintained, and only a few have fallen short of the mark.

The number of complaints has remained virtually the same since 1990, totalling 1399 in 1992. The total number of cases in the Office has remained constant since the filing of the last annual report, which had reported an increase of about 100 cases since December 1991. The number of complaints received in 1993 is approximately 20 less

than 1992 year to date, but there have been more closings for that time period (approximately 75 additional cases closed in 1993 thus far).

Supreme Court disciplines as well as private discipline patterns remained similar to prior years. Case aging statistics are up as to several categories of discipline, but are down slightly with respect to admonitions and disbarments.

Table I
Supreme Court Dispositions and Reinstatements 1983-1992
Number of Lawyers

	Disbarment	Suspension	Probation	Censure &		Reinst.		Total
				Reprimand	Dismissal	Matters		
1983	4	4	0	3	2	2	15	
1984	3	7	3	9	0	3	25	
1985	4	15	13	10	3	3	48	
1986	8	17	4	2	0	3	34	
1987	5	18	7	4	0	5	39	
1988	4	22	8	4	1	5	44	
1989	5	19	8	4	2	2	40	
1990	8	27	9	10	0	5	59	
1991	8	14	10	6	2	6	46	
1992	7	16	8	5	0	6	42	

Table II

	<u>12/86</u>	<u>12/88</u>	<u>12/90</u>	<u>12/91</u>	<u>12/92</u>	<u>4/30/93</u>
Total Open Files	406	358	462	405	507	508
Cases at Least One Year Old	52	39	56	42	60	103
Complaints Received YTD	1,233	1,149	1,384	1,380	1,399	480
Files Closed YTD	1,244	1,180	1,417	1,437	1,297	479

TABLE III

	Percentage of Files Closed					
	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
1. <u>Total Dismissals</u>	79%	81%	79%	76%	78%	80%
a. Summary Dismissals	36%	41%	38%	38%	40%	39%
b. DNW/DEC	34%	32%	35%	32%	32%	37%
c. DNW/DIR	9%	8%	6%	6%	7%	4%
2. <u>Admonitions</u>	9%	9%	10%	9%	12%	10%
3. <u>Private Probation</u>	2%	2%	1%	2%	1%	2%
4. <u>Supreme Court Dispositions</u>	9%	7%	8%	11%	6%	6%
a. Supreme Court Dismissal	--	1%	--	--	--	--
b. Supreme Court Reprimand	1%	--	--	1%	1%	1%
c. Supreme Court Probation	1%	1%	1%	1%	1%	1%
d. Supreme Court Suspension	3%	4%	5%	6%	3%	3%
e. Supreme Court Disbarment	4%	1%	2%	2%	1%	1%

Table IV

Number of Months File Was Open at Disposition

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
Discipline Not Warranted/ District Ethics Committee	4	4	4	4	4	4
Discipline Not Warranted Director	6	6	4	7	6	8
Admonition	8	9	8	8	8	7
Private Probation	8	10	13	10	8	12
Supreme Court Reprimand	25	20	16	11	14	22
Supreme Court Probation	22	11	13	14	11	18
Supreme Court Suspension	25	16	11	12	13	14
Supreme Court Disbarment	12	9	9	12	16	14

B. Minnesota Supreme Court Disciplinary Cases.

While there have been many changes at the Director's Office this year, the number and type of discipline cases seem all too familiar. No particular trends or significant patterns are noted that contrast this year from others. The number of Supreme Court disciplines is up only slightly from 1992. Seven Minnesota attorneys were disbarred for misappropriation or other serious offenses in 1992:

Mark H. Stromwall
David V. Anderley
Lawrence E. Olsen
Robert D. Stroble
Stanley C. Olsen, Jr.
Arthur W. LaChapelle
Stephen J. Poindexter

In two other cases, the referee recommended disbarment. In the case of Wallace F. Gustafson, the Court ordered a one year suspension. In the case of Walter G. Perry, the Court ordered indefinite suspension, with a minimum of five years.

The number of reinstatement petitions and decisions before the Court continues to rise. Three attorneys were reinstated to practice in 1992; three others withdrew petitions they had filed for reinstatement. At present, there are eight petitions for reinstatement pending.

III. RULE AMENDMENTS UNDER CONSIDERATION, POLICY CHANGES AND REVIEW OF THE LAWYER DISCIPLINE SYSTEM.

A. Rule Amendments Under Consideration.

The Minnesota State Bar Association has petitioned the Court for amendments to the Rules of Professional Conduct governing restrictions on lawyer advertising. The Lawyers Board decided not to take a position with respect to the MSBA petition. The petition has been argued and is now awaiting decision by the Court.

B. Lawyers Board Amends News Release Policy.

At the September 18, 1992, meeting of the Lawyers Board, the Board approved a revised policy regarding issuance of news releases in connection with cases involving

Supreme Court discipline. In an effort to make the public more aware of the actions of the Lawyers Board and the Court in regard to lawyer discipline, the Board determined that news releases should issue in connection with all Supreme Court disciplines, including reprimands and probations, as well as suspensions and disbarments. Consistent with the prior policy, news releases regarding suspension and disbarment petitions were continued. Attached at A. 5 is a copy of the revised news release policy.

C. Supreme Court Advisory Committee Reviews Disciplinary System.

In 1992, the Minnesota Supreme Court appointed an Advisory Committee to conduct a comprehensive review of the lawyer discipline system in Minnesota. The Committee is chaired by Janet Dolan, counsel to the Tennant Company in Golden Valley, and Robert Henson of the Minneapolis law firm of Henson & Efron. Attached at A. 6-9 are the Supreme Court orders creating the committee and appointing its members.

The full name of the Committee is the Advisory Committee to Review Lawyer Discipline in Minnesota and Evaluate the Recommendations of the American Bar Association. As the name suggests, the Committee has two assignments. Its first assignment is to respond to an ABA study of lawyer discipline in the United States known as the McKay Report. The McKay Report makes numerous recommendations to improve responsiveness to complaints by members of the public about lawyer conduct. The Advisory Committee has shown particular interest in the recommendation that some complaints alleging minor misconduct be referred to mediation.

The Advisory Committee's second assignment is to review the recommendations of the Dreher Committee, a Court-appointed committee which evaluated the Director's Office and the Minnesota discipline system in 1985. That committee was chaired by the Honorable Nancy Dreher, who is a member of the present Advisory Committee.

The Director's Office has provided complete cooperation to the Advisory Committee. Two of its attorneys -- Thomas Vasaly and Kenneth Jorgensen -- have been assigned as liaisons to the Committee and have spent considerable time responding to the Committee's requests for information, arranging for witnesses to appear before the Committee, and providing other assistance.

In response to a Committee request, the Director's Office kept statistics for a six month period showing how many ethics complaints were appropriate for referral to mediation or other non-disciplinary handling. In addition, the Director's Office sent survey forms to the complainant and the respondent on every file closed during the period December 1, 1992, to February 28, 1993.

The Advisory Committee plans to report its findings and recommendations to the Minnesota State Bar Association at its June 24, 1993, convention. Thereafter, the Lawyers Board will have the opportunity to review and comment on the report. The Director acknowledges the considerable time and energy that the members of the Advisory Committee have contributed to this important project.

IV. DIRECTOR'S OFFICE.

A. Budget.

1. FY'93 Budget.

Projected actual expenditures for the fiscal year ending June 30, 1993, are estimated to be \$1,300,000. This will be approximately \$96,479 less than the original budgeted expenditures for the fiscal year.

The FY'93 budget includes salary savings due to the fact that the Director's salary was budgeted for the entire fiscal year but she did not begin employment until September 1992. Salary savings were also realized due to a change in attorney staff. The "professional and technical services" line item will be underspent by approximately \$15,000. This line item, which includes court reporters, expert witnesses and other paid professionals, tends to fluctuate from year to year. The data processing line item will be

underspent by \$50,000, as the TCIS computer project remained on hold because of the changes in leadership in the Office and other computer networking.

2. FY'94 Budget.

On July 1, 1993, the attorney registration fee will be increased by \$10.00. This is a result of the petition for fee increase filed in January 1992. The Supreme Court approved a \$10.00 increase effective July 1, 1992, and a \$10.00 increase effective July 1, 1993. The Lawyers Professional Responsibility Board will receive \$100.00 of the \$142.00 attorney registration fee. The FY'94 budget includes expenditures in the amount of \$1,435,045. The FY'94 budget does not allow for cost of living adjustments or performance increases due to the State freeze on wages. The Board has also allocated funds for the anticipated move to the Judicial Center in early 1995. One, as yet unknown, factor that could affect the FY'94/FY'95 budgets is any recommendations for changes to the discipline system which may be made by the Supreme Court Advisory Committee. Implementation of certain of the ABA recommendations being considered, such as a pilot project for mediation of complaints, could have an impact on future budgeting.

B. **Administration.**

1. Computerization - Macintosh.

Our computer needs for FY'93 were focused on the word processing and legal assistant departments. The word processing system currently in use is slow and outdated. We have purchased, and are in the process of installing, a Macintosh network throughout the Office. There will be 17 Macintosh computers and 4 laser printers when the conversion is complete. The entire computer project will cost approximately \$50,000.

2. Computerization - TCIS.

The TCIS computer project remained on hold this year due to our focus on the more immediate need with respect to the word processing function.

The funds allocated but not spent for the computer project in the FY'93 budget have been transferred to the FY'94 budget. It is anticipated that this project will be undertaken in FY'94, barring unforeseen demands on Office resources.

3. Judicial Center Move.

A considerable amount of time was spent again this year planning for the move to the Judicial Center. At the time of this writing, the move-in date is projected for December 1994 or early 1995.

C. **Personnel.**

Attached at A. 10 is the current Office organizational chart. In May 1992, former Director William Wernz left the Office to return to private practice. In September 1992, Marcia A. Johnson was appointed by the Supreme Court as the new Director of the Office of Lawyers Professional Responsibility.

In June 1992, Laurie Cuccia was hired as a part-time law clerk. Laurie will be taking the bar exam this summer.

In October 1992, Senior Assistant Director Wendy Legge tendered her resignation. Ms. Legge was with the Office since 1987. In January 1993, Timothy M. Burke was hired as an Assistant Director.

The stability of the staff remains remarkable. Half the staff members have been with the Office 7 years or more. The FY'94 budget anticipates hiring an Assistant Director in January 1994.

D. **Trusteeships.**

The Director's Office has previously been appointed trustee of client files of attorneys who are unable to continue handling client matters. Upon appointment, the

Director's Office takes possession of the client files, notifies clients and returns or destroys files at the direction of the client.

There were no new trusteeships last year. This year client files of Wayne Wentworth and Diana Logan were destroyed. Trusteeship files remaining in the possession of the Director's Office (and projected destruction dates) include:

<u>Attorney Name</u>	<u>Destruction Date</u>	<u># of Files</u>
James Skonnord	June 22, 1993	693
William Ladd	June 5, 1994	80
James Hunter	July 12, 1994	42
William Peters	June 26, 1994	27
Steven Heikens	July 11, 1994	115
Roger Nurnberger	February 6, 1995	464
Rodney French	February 6, 1995	96

The Director's Office leases storage space for these trusteeship files.

E. Probation.

The probation department continues to expand its monitoring of probationers' compliance with terms and conditions of Supreme Court ordered or private stipulated probations. One area of expansion is monitoring drug and alcohol abuse. Monthly verification of weekly AA attendance is required of probationers with alcohol abuse problems. In two Court-ordered probations, probationers with cocaine or other drug abuse were required to participate in a random urinalysis drug testing program with a facility approved by the Director's Office. The probation department schedules the testing and the probationer is responsible for calling in to find out whether he/she must report for testing that day. The facility sends the probation department toxicology reports for every test. If a positive result occurs, the facility contacts the Office immediately.

A second area of expansion is the monitoring of books and records. Probationers must submit monthly reconciliations and trial balances at least every six months for review. Unsupervised private probations require the probationer to submit his/her

books and records to this Office for a full review at least once each year. If necessary, this Office performs an audit in order to ensure compliance. Sometimes a report from a Certified Public Accountant is required before termination of probation. The trust account overdraft notification rule has been largely responsible for the increased identification of misconduct in this area. Review of books and records serves both to educate the probationer and to ensure compliance with trust account record keeping requirements.

The probation department continues to improve its efforts in appointing supervisors. The network of attorneys willing to supervise has increased in the last two years. Although it is still difficult to find sufficient attorneys willing to serve as a supervisor, the expanding number of experienced supervisors has eased that problem and made supervised probations more effective.

The probation department held its fifth annual meeting for supervisors in connection with the professional responsibility fall seminar. This annual meeting has been welcomed by volunteer supervisors as an opportunity to share experiences and develop ways to improve.

1. File Totals:

Total Probation files as of 1/1/92	53
Probation files opened in 1992	34
Probation files closed in 1992	24
Total probation files as of 1/1/93	63

2. 87 Attorneys were on probation during some portion of 1992:

- a. 39 Court-ordered probations (23 of whom were attorneys reinstated after suspended from practice)
25 supervised (16 after suspension)
14 unsupervised (7 after suspension)
- b. 48 stipulated private probations
20 supervised
28 unsupervised

3. Files involving:

Client-Related Violations	40
Non-Client-Related Violations	47

4. Areas of Misconduct:*

Neglect/Non-commun.	37	Conflict of Interest	3
Taxes	10	Criminal Conduct	5
Books and Records	15	Failure to Return	
Misrepresentation	6	Property/File	2
Non-cooperation	8	Unauthorized Practice	4
Misappropriation	8	Illegal fees	1
Other	11		

12 files involved chemical dependency (abuse of alcohol/drugs);
8 files involved psychological disorder

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

5. Closed in 1992: 24

Successfully completed probations	19
Revoked probations	5

6. Probations extended in 1992: 2

7. Time by Probation Department Staff (hours per week):

5.0	Attorney
15.0	Legal Assistant

F. Lawyers Board Opinions.

In March 1993, Opinion 16 of the Lawyers Professional Responsibility Board entitled "Interest and Late Charges on Attorney's Fees" was adopted. Opinion 16 codified an earlier position taken by the Director's Office concerning the assessment of interest and late charges on attorney's fees. Opinion 16 provides guidelines for lawyers to determine what rate of interest can be charged, and whether advance written agreement is necessary, to avoid being subject to discipline.

The Lawyers Board also considered whether Rule 3.6, which governs trial publicity, should be clarified through a rule amendment or opinion. After much consideration, the Lawyers Board determined not to pursue further clarification of the trial publicity rule.

Finally, action has been taken by the Director's Office to increase the accessibility of Lawyers Board Opinions to the bar. The Revisor of Statutes and West Publishing Company have agreed to publish the Board Opinions next year in the court rules volume of the statutes and in West's rules of court desk book. In addition, the Director's Office has published a brochure entitled "Opinions of the Lawyers Professional Responsibility Board" which contains all sixteen Board opinions and is available to members of the bar.

G. Advisory Opinions.

Telephone advisory opinions concerning questions of professional responsibility continue to be available from the Director's Office to all licensed Minnesota attorneys and judges. Advisory opinions issued by the Director's Office are the personal opinion of the attorneys issuing the opinions and are not binding upon the Lawyers Board or the Supreme Court. In 1992, the assistant directors devoted 312 hours issuing advisory opinions. This compares with 275 hours in 1991.

Advisory opinion statistics show a steady increase in telephone opinions in recent years, including 1992:

1989	948
1990	1130
1991	1083
1992	1201

During the same time the number of written advisory opinions has declined:

1989	37
1990	26
1991	23
1992	15

The most frequent areas of inquiry in 1992 were:

Conflict of interest	19%
Client confidences	8%
Trust accounts	7%
Advertising and solicitation	7%

The decrease in written opinions appears to be attributable primarily to increased reliance by the bar on telephone opinions. Telephone responses are usually made the same day as the request and require less resources for the caller as well as the Director's Office.

H. Judgments and Collections.

Costs judgments entered in 1992 decreased moderately (by \$4,500 or 13%) from judgments entered in 1991. Costs collected in 1992 decreased about \$14,300 (42%) from those collected in 1991. Approximately 50% of the judgments entered in 1992 have been collected to date.

The Director's Office continued to execute upon funds at financial institutions and upon earnings. In 1992, \$827.33 was collected through the summary execution process.

1.	Cost Judgments Entered in 1992 (30 attorneys)	\$ 28,859.01
2.	Total Costs Collected in 1992	20,236.61
3.	Costs Collected in 1992 for Dispositions prior to 1992, including interest (16 attorneys)	5,667.84
4.	Cost Judgments Entered in 1993 (11 attorneys)	10,097.14
5.	Costs Collected in 1993	7,596.91
6.	Unpaid Judgments as of January 1, 1992	107,164.03
7.	1992 National Discipline Data Bank Reports	51

I. Professional Corporations.

Under the Minnesota Professional Corporations Act, Minn. Stat. § 319A.01 to 319A.22, a professional corporation engaged in the practice of law must file an annual report, accompanied by a filing fee, with the Board. The Professional Corporations Act contains limitations on the structure and operation of professional corporations.

The Director's Office has monitored the reporting requirements of the statute since 1973. Annual reports 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 income statistics for the professional corporation department as of April 28, 1993:

752	@	\$25.00	\$18,800.00
42	@	100.00	<u>4,200.00</u>
			<u>23,000.00</u>
10	for	1,250.00*	<u>1,250.00</u>
			<u>24,250.00</u>

*Funds collected for fees owed for 1991 and prior years.

Total Attorney Hours: 20

Total Non-attorney Hours: 174

The professional corporation department is staffed by a Senior 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.

Since 1990, banks have reported overdrafts on lawyer trust accounts to the Director's Office. The trust account overdraft notification program is staffed by a Senior Assistant Director and a legal assistant.

A typical overdraft is processed by requesting that the attorney or firm provide an explanation for the overdraft, copies of the check and other relevant documents, and proof that funds have been deposited to cover the overdraft and any resultant charges. No discipline file is opened at the time of the inquiry and the attorney is so advised.

1. Terminated Inquiries.

During 1992, the Director's Office received 185 overdraft notices (ODN's) and terminated 151 overdraft inquiries without initiating a disciplinary investigation.

If the attorney's response and documentation adequately explain the overdraft, the inquiry is terminated and, if necessary, improvements in trust account practices are recommended. Statistics for 1992 terminated inquiries and instruction letters are set forth below:

Overdraft causes resulting in terminated inquiries:

Late deposit	57
Bank error	30
Service or check charges	24
Deposit to wrong account	12
Mathematical/clerical error	11
Improper/lacking endorsements	7
Check written in error on TA	2
Third party check bounced	2
Bank hold on funds drawn	1
Other	5

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

Improper reconciliation or ledgers	58
Deposit before checks paid	18
Excess attorney funds	8
Account signatory	2
Reimburse check and other charges	1
Other	15
 Total number of inquiries in which instruction was given	 70

2. Disciplinary File Openings.

If the attorney's response does not adequately explain the overdraft or significant problems are identified in reviewing the response and documents, a disciplinary investigation is commenced and the attorney is notified. Statistics for trust account inquiries which resulted in 1992 disciplinary file openings are set forth below:

<u>Reason</u>	
Shortages	9
Commingling	6
Repeated ODN's	6
Response fails to explain ODN	4
Disciplinary file already open on prior ODN	3
No response	3
Inadequate books and records	3
Other	4
Total	38

The 38 trust account inquiries referred to above resulted in the opening of only 31 disciplinary files because some of the attorneys received multiple overdrafts. Additionally, there were 13 disciplinary files opened in 1991 that were still open at the beginning of 1992. Sixteen disciplinary files were resolved during 1992: 2 resulted in suspension; 2 resulted in public reprimand and probation; 7 resulted in private probation; and 5 resulted in private admonitions. All of the others are pending in various stages of investigation or prosecution.

3. Time Requirements.

Set forth below are the 1992 staff time requirements to administer the overdraft notification program:

	<u>1/91-1/92</u>	<u>1/92-1/93</u>
Attorney	105.00 hrs	215.00 hrs
Legal assistant and other staff	204.25 hrs	402.75 hrs
Total	309.25 hrs	617.75 hrs

4. Recent Developments.

Thirty percent more ODN's were received in 1992 than in 1991. First quarter 1993 statistics (50 ODN's were received) project at least as many or more ODN's in 1993. The number of disciplinary files opened in 1992 on the basis of ODN's increased by nearly 100% from 1991. The time records reflect the increased time spent by the Director's staff on ODN matters (excluding audits and other work in the disciplinary files) over 1991. This increase may also be due, in part, to several banks' failure to report ODN's and the time spent by the Director's Office in dealing with compliance issues. The non-compliance issues were minor, however, in relation to the overwhelming compliance demonstrated by financial institutions since 1990.

K. Complainant Appeals.

During 1992, the Director's Office received 212 complainant appeals, compared to 254 such appeals in 1991. This is approximately 18 percent of files closed. Board members made the following determinations:

Approve Director's disposition	211
Direct further investigation	13
Instruct Director to issue an admonition	1
Instruct Director to issue charges	1

A total of 31 clerical hours were spent in 1992 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 1992.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Matters Pending</u>
A. National Conference of Bar Examiners	130	130	1	0
B. Individual Attorneys	13	13	2	0
C. Local Referral Services				
1. MSBA	29	297	1	0
2. RCBA	50	143	0	0
D. Governor's Office	10	37	3	0
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	120	124	3	0
F. F.B.I.	19	29	0	0
G. MSBA: Specialist Certification Program	13	62	10	11
H. Miscellaneous Requests	15	44	1	4
TOTAL	399	879	21	15

V. DISTRICT ETHICS COMMITTEES.

The District Ethics Committees (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.

The 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 increased in 1992 but appears to be leveling. The overall monthly average number of files at the DECs for 1990 was 172. For 1991 it was 153. For 1992 it was 190. The year-to-date average volume for 1993 is 153 through April 30, 1993.

The DEC's continue to do well in their prompt handling of investigations. The overall average file age for May 1993 was 1.4 months, with the Hennepin DEC at 1.3 months and the Ramsey DEC at 1.2 months. Credit must be given to the individual committees and volunteers who have worked hard to maintain and improve the efficiency of the system.

VI. FY'93/FY'94 GOALS AND OBJECTIVES.

The primary goal of FY'93 has been to maintain and preserve the stability of the Office and the Lawyers Board throughout a year of transition. With the experience and hard work of the Office and the Board, this has been accomplished. During this same time, the Supreme Court Advisory Committee has undertaken the enormous responsibility of reviewing the current disciplinary system to make recommendations to the Court and the bar regarding the viability of its current structure, and to consider the ABA recommendations for changes to take lawyer discipline into the next century. The Director's Office has cooperated completely with the Committee, to assist it in carrying out its goals. We have accomplished our goals with respect to computerization of the word processing department. Finally, the Office continues to further its education function. This year educational efforts to benefit the bench and bar have been made by preparing and disseminating the Lawyers Board opinion brochure, conducting the DEC seminar, continuing the advisory opinion service, and by the many CLE, and other educational programs at which the Director and Assistant Directors have participated.

The most important task of the coming year will be to work with the Advisory Committee, the bar and the Court to implement needed and recommended changes to the disciplinary system in Minnesota.

Other goals include:

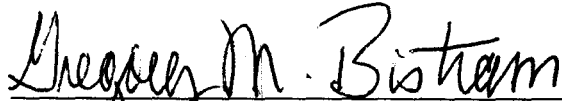
- Working to decrease the number of "old" files in the system, as well as to focus closely on management of the workload in general. It is hoped that the

addition of an Assistant Director in January 1994 will ease the ever increasing workload in the Office.

- Continuing educational efforts to the bench and bar. While secondary to our function of investigation and prosecution of discipline offenses, the Office continues to view as important the providing of advisory opinions to lawyers and presentations at educational seminars.
- Continuing preparation for the move to the Judicial Center.
- Developing and implementing a local area network for tracking complaint files and statistics to replace the TCIS system.
- The Board will be considering at its June meeting a possible amendment to the Rules of Professional Conduct with respect to the issue of sex with clients.

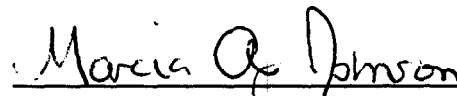
Dated: June 18, 1993.

Respectfully submitted,



GREGORY M. BISTRAM
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

and



MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD MEMBERS

Gregory M. Bistram, Chair
Nancy W. McLean, Vice-Chair
Richard W. Abram
Lyle Bourdon
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Gerald R. Freeman
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Kenneth L. Hamrum
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Nicholas Ostapenko
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Genevieve L. Ubel
Michael R. Vadnie
Joan L. Volz

Interest on Attorneys Fees . . .

On March 26, 1993, the Lawyers Professional Responsibility Board (LPRB) issued Opinion No. 16, "Interest on Attorney's Fees." Opinion 16 (reprinted below) codifies the board's interpretation and prosecutorial position concerning interest or late charges on attorneys fees.

Opinion 16 does not prohibit an attorney from charging interest on fees. It simply puts attorneys on notice that their billing practices must comply with Minnesota laws relating to usury and federal truth-in-lending requirements. (For a detailed analysis of Minnesota usury and truth-in-lending as it relates to attorneys fees, see Yilek, "Interest and Late Charges: How to Charge Clients," *Bench & Bar* (March 1991). A word to the unwary is warranted: unless your retainer agreement looks remarkably similar to a Dayton's charge card agreement, you in all likelihood are not complying with truth-in-lending requirements.

Opinion 16 also sets out three key enforcement positions of the Director's Office: 1) an attorney can charge 6 percent or less per annum in interest on fees, even without an advance written agreement, and not be subject to discipline for failure to comply with truth-in-lending; 2) an attorney, pursuant to an advance written fee agreement, can charge 8 percent or less per annum in interest and not be subject to discipline for failure to comply with truth-in-lending; and 3) an attorney who charges at an annual rate more than 8 percent will be subject to discipline for failure to comply with truth-in-lending requirements.

The Director's Office position regarding interest fees was previously set out in an October 1989 article in *Bench & Bar* titled "Interest on Attorneys Fees." The board still adheres to the analysis and conclusions advanced in that article which, in turn, were simply a reflection of existing law. By a letter to the direc-

tor dated December 8, 1992, Frederick Finch of the Fourth District Ethics Committee expressed the view of certain members of that committee that an article appearing in *Bench & Bar* is insufficient to properly put the bar on notice as to the board's views on interest charges. "[M]any ethical lawyers are not members of the Minnesota State Bar Association and do not receive *Bench & Bar*. Many more will not remember an October 1989 article when faced with a decision to charge interest on an account in 1992."

While it does not seem unreasonable to expect lawyers to know the laws applicable to their billing practices, it is apparent that some lawyers have a blind spot as it relates to interest. A not infrequent defense raised by attorneys whose practices regarding charging interest have been questioned is, "I don't collect the interest. I only put it on the billing statement as a way to motivate clients to make timely payment." That "defense" has not carried the day with the Director's Office, nor with the courts. See *e.g. Katz & Lange Ltd. v. Beugen*, 356 N.W.2d 733 (Minn. App. 1984). In *Katz*, even though a client did not pay the 12 percent per annum service charge included on the billing statement, the Minnesota Court of Appeals found that the law firm had violated Minnesota usury laws.

Lawyers Board opinions attempt to clarify issues that routinely create problems between lawyers and clients. Several Minnesota attorneys have received private letters of admonition in the last year due to their practice with respect to interest on fees, as in years past. Due to the recurring incidence of complaints received and discipline issued, as well as the specific request for a formal opinion regarding fees, the Director's Office requested that the board consider issuing an opinion. Nevertheless, the Director's Office does not believe that a formal opinion is required to alert lawyers to laws of general application to the public or other businesses.

The letter from the ethics committee members raised another issue

Opinion No. 16

Interest and Late Charges on Attorneys Fees

A lawyer's fee shall be reasonable. See Rule 1.5(a), Minnesota Rules of Professional Conduct. An illegal fee is unreasonable. In Minnesota, the assessment of interest or late charges on attorneys fees is unreasonable, and a violation of Rule 1.5(a), if: 1) the rate of interest is usurious; or 2) Minnesota law requires that the client agree in writing to the imposition of the interest charges, and there is no such written agreement; or 3) federal truth-in-lending disclosures for consumer credit sales are required and have not been made.

The Lawyers Professional Responsibility Board hereby issues this opinion which incorporates its interpretation and prosecutorial position concerning interest or late charges on attorneys fees. This opinion is not intended to bind or influence any trial court or other adjudicatory body in determining civil liability under truth-in-lending or usury law.

1. An attorney who charges a client interest at an annual rate of 6 percent or less on outstanding attorneys fees, without obtaining advance written agreement from the client, will not be subject to lawyer discipline for failure to comply with the truth-in-lending requirements or disclosures.

2. An attorney who charges a client interest at an annual rate of 8 percent or less pursuant to a written agreement with the client, will not be subject to lawyer discipline for failure to comply with truth-in-lending requirements or disclosures.

3. An attorney who charges a client interest at an annual rate of more than 8 percent will be subject to lawyer discipline for failure to comply with any truth-in-lending requirements or disclosures.

also of concern to the Director's Office — the accessibility to the bar of the formal Lawyers Board opinions. To date, the opinions have been printed in *Bench & Bar* and are available from the Director's Office, but have not been available in a separate bound volume, as are the Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility.

"[Y]our retainer agreement [should look] remarkably similar to a Dayton's charge card agreement."

The Director's Office has made a number of efforts to address this situation. First the formal board opinions are being printed in the form of a brochure, for easy distribution to the bar. To request the opinions, call the Director's Office at 296-3952 (out-state at 1-800-657-3601). Second, West Publishing Co. has recently agreed to publish the board opinions in future editions of its *Minnesota Rules of Court* and in the supplementary pamphlet to Volume 52 of *Minnesota Statutes Annotated*. Following publication of the 1994 edition of *Minnesota Rules of Court*, the opinions will be included in the MN-RULES database on WESTLAW. Third, the certification language on the annual attorney registration statements now states that the opinions are available from the Director's Office. Finally, the Director's Office provides a copy of the opinions to all newly admitted attorneys.

Attorneys with ideas that they believe will assist the members of the bar in complying with professional responsibility obligations are encouraged to make suggestions to the Director's Office or the board.

DEC SUMMARY AND REPORT - MAY 1993

MONTHS OPEN	12	11	10	9	8	7	6	5	4	3	2	1	0	TOTAL	DEC STATUS CODES
DEC #ATTY															
DEC 1 - KLJ									2	0	0	2	0	4	1 Assigned to DEC
DEC 2 - TCV										4	7	13	8	32	2 Reassigned to DEC
DEC 3 - BMS										2	0	2	1	5	3 DEC 1 to be issued
DEC 4 - PRB						1	1	1	2	8	14	21	27	75	4 DEC 2 to be issued
DEC 5 - KLJ								1	0	0	0	1	0	2	5 DEC 3 to be issued
DEC 6 - BMS													2	2	6 DEC 4A to be issued
DEC 7 - BMS											1	2	2	5	7 DEC 4B to be issued
DEC 8 - BMS									1	0	0	1	0	2	8 DEC 5 to be issued
DEC 9 - BMS													0	0	9 Extension granted
DEC 10 - BMS													1	1	10 Report at DEC
DEC 11 - KAR										1	2	2	1	6	70 Status of file requested
DEC 12 - KLJ												2	0	2	71 Min rec'd - wait file
DEC 13 - BMS							1	0	0	1	1	2	0	5	72 Min rec'd - refer panel
DEC 14 - KAR										1	0	2	0	3	73 DEC 1B to be issued
DEC 15 - KAR											2	0	0	2	74 Report rec'd; will be taken off next month's report
DEC 16 - KLJ													0	0	
DEC 17 - KLJ											1	0	0	1	
DEC 18 - KLJ												1	0	1	
DEC 19 - KLJ													1	1	
DEC 20 - KAR												2	0	2	
DEC 21 - KLJ										1	0	1	1	3	
TOTAL FILES	0	0	0	0	0	1	2	2	5	18	28	54	44	154	
														0	
NO. OF MOS.	0	0	0	0	0	7	12	10	20	54	56	54	0	213	
AVERAGE NO. OF MONTHS IN DEC						1.4									
*2ND DEC AVERAGE						1.2									
**4TH DEC AVERAGE						1.3									
ALL OTHER DECS AVERAGE						1.6									

EXPANDED NEWS RELEASE POLICY
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

At the September 18, 1992, meeting of the Lawyers Professional Responsibility Board, the Board adopted the following policy:

1. News releases issued in connection with petitions for suspension or disbarment shall state that the filing of the petition follows a finding of probable cause by a panel of the Board or a waiver of the probable cause hearing by the respondent, as the case may be. News releases shall continue to be issued when the Director files a petition seeking suspension or disbarment and not when the Director seeks public reprimand or probation.

2. News releases shall be issued whenever the Minnesota Supreme Court disciplines a lawyer. This policy covers public reprimands and probations as well as suspensions and disbarments.

This policy is effective immediately.

ma

STATE OF MINNESOTA
IN SUPREME COURT

C1-84-2140

RECEIVED
SEP 11 1992
LAWYERS PROF RESP BOARD

ADVISORY COMMITTEE TO REVIEW LAWYER
DISCIPLINE IN MINNESOTA AND EVALUATE
THE RECOMMENDATIONS OF THE AMERICAN
BAR ASSOCIATION

ORDER

WHEREAS, the Advisory Committee on Lawyer Discipline, created by this Court by an Order dated August 31, 1984 to study the lawyer discipline process and the procedures and operations of the Minnesota Lawyers Professional Responsibility Board, to report the results of the study to this Court and the Bar, and to recommend such changes in the Rules on Lawyers Professional Responsibility as the Committee deemed necessary, made a formal report dated April 15, 1985, supplemented on December 1, 1985, in which the Committee, among many recommendations, proposed a follow-up study in three to five years;

WHEREAS, after receiving written comments and holding a public hearing, by an Order dated June 18, 1986, this Court adopted revised Rules on Lawyers Professional Responsibility based primarily on the reports and recommendations of the Advisory Committee on Lawyers Discipline;

WHEREAS, the American Bar Association adopted on February 4, 1992 certain recommendations to the highest courts of the several states proposing changes in the regulation of the legal profession; and

WHEREAS, this Court has concluded that the creation of an advisory committee is necessary and appropriate to update the earlier report of the Advisory Committee on Lawyer Discipline and to evaluate the American Bar Association recommendations.

NOW, THEREFORE IT IS ORDERED that:

1. A fifteen member committee designated as the Supreme Court Advisory Committee on Lawyer Discipline and American Bar Association Recommendations be, and hereby is, established to carry out the responsibilities described above and to evaluate the recommendations of the American Bar Association.

2. The Committee shall be composed of nine attorneys admitted to the practice of law in the State of Minnesota, including the co-chairpersons designated below, and six nonlawyer citizens of Minnesota.

3. Janet Dolan and Robert F. Henson are appointed co-chairpersons of the Advisory Committee.

4. The Minnesota State Bar Association, other interested organizations and persons, and the co-chairpersons shall make such recommendations to this Court on or before October 5, 1992 for appointment to the Committee of attorneys and citizens broadly representative of the profession and the public.

5. Recommendations and resumes of the attorney and citizen candidates shall be addressed to Frederick K. Grittner, Supreme Court Administrator and Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155.

Upon receipt of such recommendations, this Court shall make such appointments to the Committee as it shall deem appropriate and in the public interest.

DATED: September 9, 1992

BY THE COURT

OFFICE OF
APPELLATE COURTS

SEP 9 1992

FILED


A.M. Keith
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

C1-84-2140

APPOINTMENTS TO THE ADVISORY COMMITTEE
TO REVIEW LAWYER DISCIPLINE IN MINNESOTA
AND EVALUATE THE RECOMMENDATIONS OF THE
AMERICAN BAR ASSOCIATION

ORDER

WHEREAS, this Court established, by an Order dated September 9, 1992, the
Advisory Committee on Lawyer Discipline and American Bar Association
Recommendations and appointed Janet Dolan and Robert F. Henson co-chairpersons of
the committee; and

WHEREAS, this Court asked for recommendations for appointment of attorneys
and nonlawyer citizens to the committee.

NOW, THEREFORE IT IS ORDERED that:

1. The committee is expanded to include ten attorneys.
2. The following attorneys are appointed to the Advisory Committee:

Honorable Nancy C. Dreher
330 Second Avenue South #600
Minneapolis, MN 55401

Honorable Marianne D. Short
25 Constitution Avenue
St. Paul, MN 55155-6102

James P. Shannon
429 Rice Street
Wayzata, MN 55391

Professor Kenneth F. Kirwin
875 Summit Avenue
St. Paul, MN 55105

Penny Herrickhoff
Route 1
Garden City, MN 56034

Keith F. Hughes
P.O. Box 1187
St. Cloud, MN 56302

Richard C. Taylor
P.O. Box 605
Crookston, MN 56716

David Knutson
317 2nd Ave S. Suite 200
Minneapolis, MN 55401

3. The following public members are appointed to the Advisory Committee:

Martha Zachary
6921 Arkansas Avenue W.
Inver Grove Heights, MN 55075

Jean Keffler
3033 Excelsior Blvd., #300
Minneapolis, MN 55416

Howard M. Guthmann
1300 Norwest Center
St. Paul, MN 55101

Professor Mel Gray
2114 Summit Avenue
St. Paul, MN 55105

Dennis Lazenberry
107 Transportation Building
395 John Ireland Blvd.
St. Paul, MN 55155

Mimi Villatune
4706 Golf Terrace
Edina, MN 55424

4. Frederick K. Grittner, Supreme Court Administrator and Clerk of Appellate Courts, shall serve as staff to the Advisory Committee.
5. The Advisory Committee shall make its final report to this Court on or before May 1, 1993.

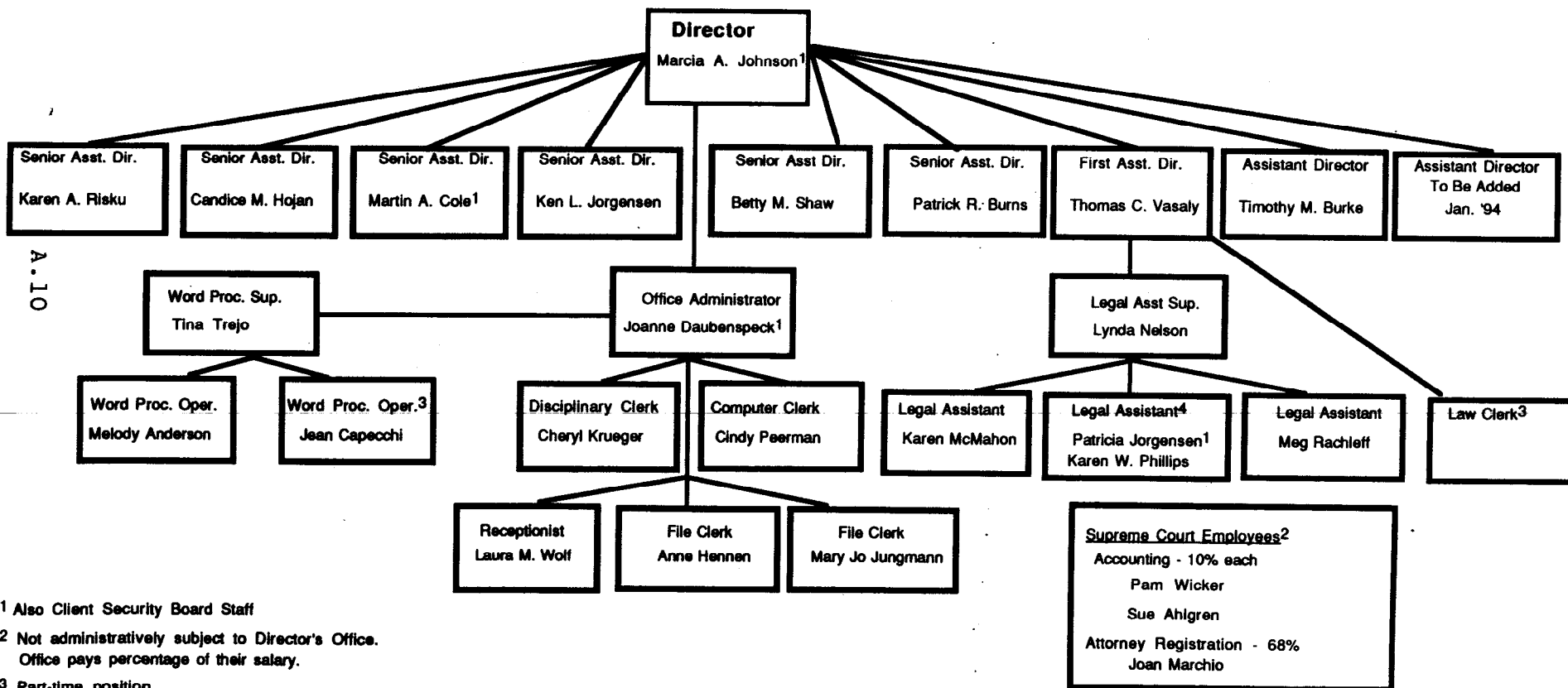
DATED: October 21, 1992

BY THE COURT:



A.M. Keith
Chief Justice

**Office of the Director of Lawyers Professional Responsibility
FY'94 Anticipated Organizational Chart**



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¹ Also Client Security Board Staff
² Not administratively subject to Director's Office.
 Office pays percentage of their salary.
³ Part-time position
⁴ Each employee works half-time