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PERSONAL AND CONFIDENTIAL

Mr. Wayne O. Tschimperle  
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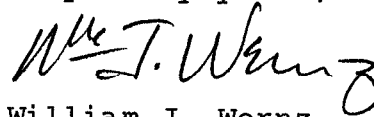
WAYNE TSCHIMPERLE  
CLERK

Re: Lawyers Board Report of Implementation of  
Supreme Court Advisory Committee Recommendations

Dear Mr. Tschimperle:

Enclosed for filing and distribution to the justices are the  
original and seven copies of the above report.

Very truly yours,



William J. Wernz  
Director

WJW/r1b

Enclosures

cc: Honorable Glenn E. Kelley  
Nancy C. Dreher  
John D. Levine

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## IMPLEMENTATION REPORT

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## OVERVIEW

### I. INTRODUCTION.

The Supreme Court Advisory Committee Report recommended (Rec. 66) that the Lawyers Professional Responsibility Board report to the Court in January, 1987, on the implementation of the Committee's recommendations. This report is submitted pursuant to that recommendation.

This report is made in two parts, an Overview and a more detailed listing of the recommendations of the Committee, in numerical order, followed by statements regarding the implementation status of each such recommendation.

The Lawyers Board has taken a number of constructive steps to meet the concerns of the Advisory Committee regarding delay in disciplinary matters, accountability, over-centralization and other matters. The Board and Advisory Committee worked cooperatively to make changes needed to renew the vigorous and fair system of professional responsibility in Minnesota.

### II. STRUCTURAL MODIFICATION AND PROCEDURAL FAIRNESS.

#### A. Delay in Handling Disciplinary Complaints (Recs. 5, 6, 16, 17).

The Report (pp. 8-13) stated certain facts and statistics showing a general problem of delay in handling disciplinary complaints. Several statistics show that the problem of delay has been almost entirely resolved.

**Old Cases.** Perhaps the most revealing statistic regarding delay in serious matters is the number of cases under

investigation or in pending litigation which are old cases. The Report (p. 12) noted that in December, 1984, there were 241 pending cases over one-year old. As of December 31, 1986, there were 52 such cases involving 32 attorneys, only 18 of which remain the subjects of private investigation. The overall number of files on hand has also decreased significantly, from 686 in December, 1984, to about 425 in December, 1986.

The statistics showing, "Case Dispositions Year-to-Date" for December 31, 1986, indicate very clearly that the problem of delay has been largely surmounted in the general run of cases. See A.1. These statistics show, regarding the minor cases, that the average time for dismissal of a complaint upon District Committee recommendation has been reduced from about six months in the 1984-5 period to four months in 1986. Dismissal of Director files has been reduced by about 50 percent from 1984-5 to 1986. The average time for an admonition has been reduced from 15 months in 1984 to seven months in 1986. The average time for commencing a private probation has been reduced from 22 months in 1984 to 13 months in 1986. All of these times are measured from the date the complaint is received to the date the disposition becomes final.

The Supreme Court disposition times have not been dramatically reduced, except in the case of disbarments. However, the continuing lengthy time for Supreme Court dispositions is a function of cases initiated in or before 1984. The backlog of Supreme Court files has been greatly reduced, and Supreme Court procedures have become faster, so that it is to be

expected that in the near future the average age of Supreme Court dispositions will decline significantly.

Committee Recommendation 16 (that the Court give referees return dates to expedite their reports) has been implemented by the Court. The Executive Committee regularly receives information regarding total case inventory, cases over one-year old, public matters pending, and public matters decided, to insure that a backlog does not reoccur (Rec. 17). A.2-11.

The prompt handling of disciplinary matters has not sacrificed disciplinary standards. The percentage of the disposition by various file categories for 1984, 1985 and 1986 are fairly constant with two exceptions. Disbarments increased in 1986, and summary dismissals increased from 15% to 34% over summary dismissals in 1984. A.1.

Attached at A.13 is a chart showing the numbers and categories of public discipline of Minnesota attorneys for the last 10 years. The numbers for 1985 and 1986 clearly show the results of a major effort to present the most serious cases most promptly.

**Summary Dismissals.** Since the percentage of dismissals overall has not increased, and the summary dismissal rate has doubled, it may be inferred that there has been a better early identification of complaints determined to be without merit. Efficiency in the use of resources has been enhanced by implementation of Recommendations 5 and 6 suggesting more regular deference by the Director's Office to other forums such as fee arbitration and post-conviction appellate review. Complaints which are primarily of malpractice are more often deferred to the

civil courts and matters clearly within the jurisdiction of probate, bankruptcy or other courts are more often deferred too. Attached at A.14-24 is a set of guidelines for summary dismissals adopted by the Lawyers Board.

**District Committee Reports.** The Committee also reported that for investigations conducted by District Ethics Committees "the average age of cases returned to the Director is 3.2 months," although a 45-day time frame is recommended. In 1986, the average District Ethics Committee report is returned in approximately 1.6 months.

Delay in discipline proceedings is one of the few problems that can be quantified and measured. All of the statistics cited above indicate that the chronic problem of delay in the handling of disciplinary cases overall is not presently a significant problem in Minnesota. The Supreme Court has pending before it several proposals by the Lawyers Board for rule changes designed to further reduce the problem of delay in the small number of cases involving the most serious misconduct.

B. Structural Modifications (Recs. 15, 38-43, 62).

A number of recommendations (Recs. 40-43, 62), relating to the disciplinary structure, have been incorporated into rule changes by the Court and implemented by policies and procedures in the litigation practice of the Director's office.<sup>1</sup>

**Complainant Appeals.** Reviewing Board members receive complainant appeals in rotation. They may not only affirm or

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<sup>1</sup>/Recommendations 38 and 39 were not adopted by the Court and Recommendation 15 was withdrawn by the Advisory Committee.

direct that the matter be sent to Panel but may instead require further investigation. During 1986 the Director's Office received 198 complainant appeals. This is approximately 16 percent of files closed. The reviewing Panel members made 163 determinations--nine of which were recommended for further investigation and two of which were directed be heard before a Panel. The remainder affirmed the Director's disposition. A total of 149 clerical hours were spent in 1986 processing the appeal files as well as a small amount of unrecorded attorney time.

**Panel Proceedings.** Panels now make probable cause determinations as to each charge brought by the Director (Rec. 41). A litigation policy and procedure memorandum has been implemented to ensure the dismissal of any charge for which the Panel finds no probable cause (Rec. 42). Joan Hackel of the Executive Committee has been appointed to review Panel workload and expertise and to modify Panel assignments where appropriate (Rec. 44). The Executive Committee has adopted policies and procedures to implement the changes in the Rules on Lawyers Professional Responsibility related to Panel assignments. (A.21-29.)

**Supplementary Petitions.** A policy and procedure memorandum has been adopted to implement Recommendation 43, requiring approval of supplementary petitions by Board Panel chairs. (A.30.)

**Disqualification.** Procedures have been adopted for replacement of District Ethics Committee investigators and Board

members who recuse themselves pursuant to Recommendation 63 as incorporated into amended Rules 4(d) and 6(a), RLPR.

C. Procedural Fairness (Recs. 52-59, 63, 65).

The Advisory Committee was concerned with the treatment of the "innocent lawyer" and the perceived adversariness of the system. A number of rule changes were adopted by the Court based upon the Advisory Committee's recommendations (Recs. 52, 54-59). Policies and procedures have been instituted to implement rule changes in the area of disclosure and expunction of complaints dismissed with a determination that discipline is not warranted (Recs. 57-58). A policy and procedure memorandum has been adopted regarding the pleading of prior discipline and the appropriate use of dismissed complaints (Rec. 59). Copies of the District Ethics Committee investigator's report are routinely furnished to respondent upon request (Rec. 55).

The Director's Office has addressed the concern of some respondent attorneys that they are unable to respond to unclear complaints. Several procedures to ameliorate the perceived problem of required responses to unintelligible complaints have been adopted. First, the rate of summary dismissals has been dramatically increased. Second, a regular form has been devised to ask complainants to make unintelligible complaints more intelligible or specific. Third, the Office has been willing to state the rule violations the complainant is apparently alleging upon the request of a respondent attorney. There have been very few such requests.

Recommendation 65 was that the Director's dismissal notice express appreciation for the respondent attorney's cooperation.



The Director's Office has instead expressed such appreciation in the initial notice of investigation.

**Rule 25 Changes.** One more recent procedural change by the Court providing Ramsey County District Court as a forum for good faith challenges to Rule 25 discovery requests (Rec. 54), has probably increased perception of the disciplinary system as fair to those subject to it. It must be reported, however, that like any additional procedural change, such challenges require more time and resources of the system, and are subject to abuse. Some respondent attorneys have made multiple motions to Ramsey County District Court during pending Lawyers Board Panel proceedings, thereby adding to the time for and expense of such proceedings.

### III. DECENTRALIZATION (Recs. 12, 31-37 and 48-49).

The Report perceived a problem with overcentralization of the discipline system and the Director's Office. Each of the Advisory Committee recommendations relating to District Ethics Committees has been implemented, thereby enhancing the role of the District Ethics Committees in the disciplinary system.

During 1986, the Director or Assistant Directors met with almost half of the local District Ethics Committees in addition to conducting the annual District Ethics Committee Seminar.

Since late 1985, the District Ethics Committees, when recommending dismissal of a complaint after investigation, have been asked to include with recommendations for dismissal or admonition a draft disposition document in a uniform format pursuant to Recommendation 35. This has saved drafting time in

the Director's Office and provided the Committees with an increased role in formulating disposition rationale. These recommended dispositions are reviewed by Assistant Directors who have final disposition authority pursuant to Recommendation 12.

The Executive Committee has named as its delegate for District Ethics Committee matters, Charles Kennedy, former Seventh District Ethics Chairperson. Kennedy receives copies of dispositions and explanations for Director departure from District Committee recommendations pursuant to Recommendation 31. In the seven months in which these statistics have been kept, the Director has departed from the DEC recommendation only seven times out of 726 recommendations. Quarterly aging analysis of the District Ethics Committee investigations is also provided to Kennedy pursuant to Recommendation 36. Policy and Procedure memoranda have been adopted implementing rule changes requiring review of investigator reports by DEC Chairs and the use of uniform DEC investigation and annual report formats (Recs. 32, 33, 37). Procedures to implement Recommendation 34 to avoid duplicating investigative work have also been instituted.

District Ethics Committee Chairs have been urged to appoint lawyer-members from various areas of practice (Rec. 48). Although there is no formal written policy, the Court has been soliciting recommendations for vacancies in DEC Chairs especially from local bar associations (Rec. 49).

#### IV. ACCOUNTABILITY (Recs. 1-4, 14, 19-30, 46-47, 60-61).

The Report was also concerned to clarify lines of authority and to provide more oversight of the Director, particularly

through the Executive Committee. The Court adopted the recommended changes to Rule 5 embodied in Recommendations 19, 20, 21 and 23 regarding the relationship of the Director, the Board and the Court. Recommendation 22 was not adopted. Instead, Rule 5(a) was amended to require the Board to review the Director's performance every two years. Pursuant to Recommendation 21 the Director submitted an annual report June 2, 1986, to the Lawyers Professional Responsibility Board.

In January, 1986, a new five-member Executive Committee was appointed: John D. Levine, Charles R. Kennedy, Fenita Foley, Joan M. Hackel and Paul Kinney (Rec. 25). Before and after that time, the Executive Committee has been performing the "general oversight" functions contemplated by Recommendations 24-29. With the appointment of an additional Board member in July, 1986, six three-person panels have been constituted, excluding Executive Committee members (Recs. 24, 25).

Since the fall of 1985, no Director-initiated investigations have been commenced without prior Executive Committee approval (Rec. 29). A revised news media policy was discussed with and approved by the Executive Committee (Rec. 64). A series of Director reports to the Executive Committee has been initiated (Recs. 14, 26) including a monthly summary of important statistics regarding cases and budget (A.1). The Executive Committee meets monthly (unless there is insufficient business for a meeting) with the Director and the Director meets more frequently with the Board Chair.

The Executive Committee has appointed its members as delegates to work with the Director on certain key matters.

Charles Kennedy is involved with the Director on major litigation plans (Rec. 4) and on district ethics committee matters (see supra III). Fenita Foley works with the Director regarding personnel matters including an MBO appraisal (Rec. 27), training and education (Rec. 60). Joan Hackel works with the Director regarding administrative matters (Recs. 1-3, 28). Paul Kinney works with the Director regarding budget.

The Lawyers Professional Responsibility Board meets quarterly. Although no formal written policy has been adopted, the Court has solicited applications for vacancies on the LPRB throughout the state. Notice of the vacancies are announced through the Secretary of State's open appointment process (Recs. 46, 47). Justice Kelley and other members of the Court are invited to attend appropriate portions of Board meetings (Rec. 30).

A number of Board committees have been established in order to share experience and expertise and to work and communicate even more effectively with members of the bar and the public and to promote education and good working relationships and understanding of the professional responsibility system (Rec. 61).

V. PERSONNEL AND OFFICE MANAGEMENT (Recs. 8-11, 13).

The Advisory Committee expressed concern that there be experienced attorneys in the Director's Office (Rec. 9, 10) and stability in non-lawyer employment (Rec. 8). The staff in the Director's office is now experienced and stable. During the summer of 1985 two Senior Assistant Directors were hired, one

with 20 years of experience, the other with six years of private practice experience. In addition, a new First Assistant Director, Thomas Vasaly, was hired in May, 1986, to replace Janet Dolan. He is a 1974 law school graduate, who has been a managing Legal Aid attorney for over five years.

Non-lawyer employment turnover has ceased to be a problem. In fact, the staff has become remarkably stable. Only one non-attorney has left employment since December, 1984. She resigned to move to Florida. The morale in the office is high.

Procedural changes have been implemented to relieve the legal assistants of clerical functions (Rec. 11). An organization chart (A.31) generally implementing Recommendation 13 shows the lines of supervision and authority of the employees in the Director's office. The word processing supervisor and legal assistant supervisor positions have been maintained. (See Rec. 13.)

The Supplemental Report recognized that there should be "considerable leeway" in the implementation of certain administrative recommendations (Recs. 2, 3, 9, 14, 27). Procedures have been implemented to ensure that the concerns expressed about prioritization of work, efficient use of resources, and timely handling of casework have been addressed. Assistant Directors meet regularly with the Director to ensure that problem cases are identified early and appropriate decisions made regarding time and resources to be expended on each file. A programmer was retained in 1986 to set up computer time recordkeeping. Unexpected problems in adapting the software to the office hardware has delayed implementation. The system is

expected to be in place in the near future. Other computer recordkeeping capabilities have been enhanced. Reports requested by the Executive Committee to oversee the general management of the office are regularly provided.

Personnel policies and procedures of the Director's Office have become closely integrated with those of the Supreme Court for its employees. Annual performance review evaluations are now required to be done on Supreme Court personnel forms and according to Court procedures. Salary adjustments for Office employees are more closely aligned with those available for Court employees.

#### VI. COST AND BUDGET.

The Committee Report (p. 1) listed "increased costs" first among the "perceived deficiencies" that needed to be addressed. The cost of the lawyer professional responsibility system has increased since the Report. Increases in numbers of lawyers and complaints; the transfer of attorney registration payroll expense from the Court; and inflation, account for cost increases. However, there is increased accountability for the cost of the system, and there is no indication that the cost is excessive.

The Report (p. 16) noted that the cost of the Minnesota lawyer discipline system had not been disproportionate to other states' until the 1984 cost increase, which placed Minnesota somewhat above other comparable states. The 1985 statistics released by the American Bar Association show Minnesota having an average cost per attorney of only \$1 over the nationwide average.

The Supreme Court has appointed an Attorney Registration Fee Committee to examine the cost of the several Court Boards to Minnesota attorneys. Although the Committee has not yet issued a final report, the preliminary report of a subcommittee is that the Director's office "operates efficiently and effectively." The Registration Fee Committee supported the Lawyers Board petition to the Court for increased revenue through greater assessments to disciplined attorneys.

The budgeting process of the Director's office has come under much closer scrutiny by the Executive Committee and the Court. The Executive Committee receives monthly reports on budget implementation. An Executive Committee member, Paul Kinney, a retired school district administrator with many years of budgeting experience, monitors the budgeting and budget implementation process. A Supreme Court policy and procedure affecting budgeting for all its boards has been adopted. It requires the Director's Office to submit current and future budgets for close scrutiny by the Court and its administrative personnel. Personnel additions come under particularly close scrutiny.

VI. OTHER RECOMMENDATIONS (Recs. 7, 18, 45, 50-51).

In August, 1984, the Office of the Director of Lawyers Professional Responsibility moved to 520 Lafayette Road, the first floor of the PCA building. A hearing room was made part of the office facilities (Rec. 18).

Recommendations 50 and 51 were directed to the MSBA and Continuing Legal Education Board regarding increased educational

efforts in the area of ethics. The Director's Office has done a great deal to encourage increased education in professional responsibility matters. Speakers have been provided for about 10 Continuing Legal Education programs and 20 professional groups. The annual ethics seminar was again well attended and presented. A brochure, describing the professional responsibility system, has been printed for wide dissemination to the public, complainants and lawyers. (A.32.)

The Advisory Committee recommended that the advisory opinion function be transferred to a committee of the MSBA (Rec. 45). The MSBA has indicated that it has no interest in taking over the advisory opinion service however. The Advisory Committee's recommendation appears to have been based primarily upon its perception that resources of the Director's Office were too overburdened to continue the advisory opinion service. This is no longer the case. The number of advisory opinions issued to members of the bar increased substantially in 1985 and 1986. Three Assistant Directors now rotate in providing this service.

The Advisory Committee recommended that the professional corporation department be removed from the Director's Office (Rec. 7). This recommendation has not been implemented, as it would require legislative action.

#### VIII. CONCLUSION.

The spirit, and most of the letter, of the Advisory Committee Report have been fully implemented. Statistics show that the most quantifiable problems--delay, cost and employee turnover--have been resolved. Structural concerns have been



implemented through rule change and through the enhanced operations of the Lawyers Board Executive Committee and the District Ethics Committees. The maintenance of good relations with the "innocent" lawyers, the bar generally, the bench and the public is not measured by statistics. Recognizing that there will always be a certain level of tension and criticism because of the nature and process of complaints, charges and dispositions, it is hoped and believed that the image and stature of the professional responsibility system is nearly as good as it can be.

## IMPLEMENTATION REPORT

1. Recommendation: Total attorney and paralegal resources should be allocated on the basis of the following five categories of case/activity: 1) Public, 2) Admonition, 3) Discipline Not Warranted (DNW), 4) Administrative Department (disclosure/expunctions, professional corporations/judgments, probation, and advisory opinions), and 5) Office Administration. The Director, subject to the approval of the Executive Committee, should determine the appropriate formula for allocating staff resources to these case/activity types. The Director and the Executive Committee should compare actual resource expenditures by the Director's Office with these allocation goals on a quarterly basis.

Workload priorities in the office have been established and are monitored by biweekly meetings between the staff attorneys and the Director, by quarterly departmental reports and monthly reports on cases over one year old. Departmental reports, case aging reports and a report of cases over one year old are provided regularly to the Executive Committee.

Computer-generated reports are now made on these matters, as well as district committee case lists and attorney case lists.

Regarding timekeeping and allocation, see No. 3.

2. Recommendation: Time parameters for the allocation of legal resources on individual cases should be established. Consultation with the Director, at least by junior staff, should be required to exceed these time expenditure guidelines. Similar time guidelines should be established for paralegal resources.

Allocation of legal resources on individual cases is monitored by biweekly meetings between the Director and staff attorneys and through the use of individual case lists for each attorney.

3. Recommendation: Attorneys and paralegals should be required to keep time reports on their cases as well as record the time spent in administrative and office management matters.

These reports should be reviewed by the Director and the Executive Committee on a regular basis.

In 1986, a computer programmer was hired to design software for computer timekeeping records. After consultation with Executive Committee member Joan Hackel, modifications to the software program were made so that reports envisioned by other Advisory Committee recommendations could be generated. The programmer then discovered a problem in getting the software to work on the office computer hardware. As soon as this problem is solved, the timekeeping program will be implemented.

4. Recommendation: A litigation plan should be developed at the earliest, practicable time for any complex case which is expected to consume an abnormally large amount of office resources. The plan should include, at least (1) a realistic and appropriate staffing decision, (2) a discovery plan and budget, (3) an estimate of the strength/weakness of each count and consideration of limiting the number of counts to be prosecuted, (4) consideration of the use of pro bono or a paid consultant in evaluating the strength of the case, (5) consideration of the appointment of a private attorney or a special assistant director to prosecute the case, (6) consideration of computerizing portions of the documentation or work product, (7) consideration of the use of litigation support services not available in the Director's Office, such as accountants, tax specialists and the like, and (8) plans for internally absorbing the demands of the case by the use of temporary clerical and law clerk assistants or temporarily re-ordering the office priorities. The Executive Committee should be notified of the pendency of such cases and approve the litigation plan to be followed by the Director's Office. It should review the plan, against actual experience, at least every quarter. The Executive Committee should support the Director's Office with extra resources in order to deal with complex cases or require a limitation of the scope of the proceedings.

The Executive Committee has delegated Charles Kennedy to work with the Director in the implementation of a litigation plan.

The Executive Committee approved procedures for and has monitored complex cases.

5. Recommendation. The Director should adopt a policy requiring complainants to exhaust their remedies in readily available alternative forums before initiating a disciplinary investigation. Criminal matters in which the complainant-defendant should pursue post conviction relief proceedings are an example of the type of case which should appropriately be diverted.

Duty attorneys regularly issue summary dismissals of complaints which involve primarily allegations of malpractice or which can be deferred to criminal appellate review or another civil forum such as bankruptcy or probate. Some standard paragraphs have been developed for use in the summary dismissals. Attached as Exhibit 1 is the policy approved by the Board for summary dismissals implementing and expanding the above Committee recommendations.

6. Recommendation: The Director's Office should continue its practice of referring fee arbitration disputes, and should adopt a policy that complaints alleging conduct which may involve solely a matter of possible malpractice typically should be returned to the complainant with a comment regarding retention of independent counsel.

The Director continues to refer complainants to fee arbitration where appropriate. A standard fee arbitration paragraph is provided for summary dismissals and for limiting the investigation of complaints which include both an ethical problem and a fee dispute. The Committee report (p. 10) noted a 15% summary dismissal rate, in 1984. In 1985-6, the summary dismissal rates have been 30% and 34%. The overall dismissal rates for 1984 (82%), 1985 (82%) and 1986 (81%) indicate that

increased summary dismissals have shown better earlier evaluation of complaints without dilution of discipline standards.

7. Recommendation: The Court should transfer the responsibility for collecting professional corporation registration fees and annual reports from the Director's Office to the attorney registration staff of the Court.

The Court has taken no action to transfer the professional corporation function from the Director's office. The Director has not urged the Court to do so because the procedures in place allow for the efficient handling of this function with a modest expenditure of attorney time.

8. Recommendation: The Director should implement an exit interview/questionnaire system for all terminating employees. The results of this system should be used by the Executive Committee and the Director to identify causes of prejudicial terminations and to make appropriate changes in an attempt to reduce employee turnover.

The Director and Executive Committee have adopted a procedure for an exit interview for all employees. The procedure involves an Executive Committee member (currently Fenita Foley) and the Supreme Court personnel director meeting with departing staff. Only one non-attorney has left the Director's office since December, 1984.

9. Recommendation: The Director and the Executive Committee should review the current staffing configuration and identify the percentage of attorney time which should be dedicated to the two basic classes of work: 1) appellate and trial litigation and 2) admonition and discipline not warranted investigation and disposition. This evaluation should serve as the basis for determining the number of positions required in the Attorney I and II classifications. Hiring from the outside into the Attorney II classification should occur when necessary to acquire an experienced litigator.

This is a recommendation which the Supplemental Report acknowledged should be given considerable leeway in its implementation. Two senior attorneys were hired as Senior Assistant Directors in 1985 and an experienced managing attorney was hired for the First Assistant Director position in 1986. The differences between the Attorney I and II functions have been reduced somewhat as junior attorneys have acquired experience. The District Committees and legal assistants, with attorney supervision, have done more of the admonition/dismissal work.

10. Recommendation: At a minimum, one attorney, in addition to the Director, should have had substantial litigation experience (five or more years) prior to appointment.

The two Senior Assistant Directors and First Assistant have 8, 12 and over 20 years of experience.

11. Recommendation: Clerical duties of the administrative legal assistant should be transferred to clerical employees. Administrative and clerical functions performed by other legal assistants should also be shifted, to the extent practical, to clerical employees. The Director should consider the assignment of additional case-related work, now performed by attorneys, to the legal assistants.

Staff responsibilities have been reorganized. There is no administrative legal assistant. A panel clerk position has been established to handle panel assignments, complainant appeals, and other administrative matters. See No. 9 above regarding increased legal assistant case responsibility.

12. Recommendation: Delegate final authority for disposing of cases by summary dismissal and DNW to Assistant Directors after an adequate training period.

A policy has been implemented delegating to Assistant Directors final authority for the disposing of cases recommended for DNW by

district ethics committees. Summary dismissal categories are clearly identified to Board guidelines and delegation of responsibility for some categories has been delegated to the Assistant Directors.

13. Recommendation: The Administration Committee should be discontinued and the First Assistant Director removed from the administrative hierarchy except in the absence of the Director or when serving as a training supervisor for new attorney staff. Direct supervision of Assistant Directors and Legal Assistants should rest with the Director. Final authority should be delegated to the Office Administrator for all matters concerning clerical staff and clerical processing; for facilities, supplies, and equipment acquisition within budgetary limitations, and for the interpretation and application of established office policies. The Office Administrator should be responsible for studying office operations generally and the workflow or assignment patterns to improve productivity, enhance the quality of work or reduce the cost of operations. The Word Processing Supervisor and Legal Assistant Supervisor positions should be reduced to lead worker. Immediate supervisory responsibility for these units should be assigned to the Office Administrator.

The administration committee has been discontinued. Supervision authority has been delegated to the office administrator for clerical personnel. Lines of supervisory responsibility have been made clear and appear to be working efficiently. The word processing supervisor and legal assistant supervisor positions have not been downgraded as recommended. However, the Committee may not have understood clearly that both of these positions involve small percentages of time involved in supervision. The Director believes that these positions are needed for the efficient management of the resources of the office. Supervision of the Word Processing Supervisor is done by the Office

Administrator, and the First Assistant Director supervises the Legal Assistant Supervisor.

14. Recommendation: Reports that produce no valuable information should be eliminated. A case monitoring system should be implemented to more closely track the progress of both individual cases and the caseload of the office. Filing-to-disposition time standards for various categories of cases should be established. Exception reports should be generated at least monthly that identify cases exceeding the filing-to-disposition time limits. Individual cases in which the amount of time expended by staff attorneys has exceeded the office policy for that type of case also should be flagged. In addition to the standard filing and disposition statistics, the case monitoring system should identify the total percentage of attorney time expended by the office on the five types of cases/activity discussed in Recommendation 1 above (Public, Admonition, DNW, Administrative Department, and Administration). The monthly case listings for Assistant Directors should be regularly monitored. The Director should be responsible for discussing the results of these reports with the attorney staff and with the Executive Committee.

The Director has implemented a case-monitoring system which tracks both individual cases and the caseload in the office. File opening to disposition time targets for various categories have been in place since February of 1985 and are monitored through case aging reports and individual attorney case lists. Exception reports will not be done unless category time targets are not met. The results of the computerized case reports are regularly discussed by the Director with the staff and the Executive Committee.

15. Recommendation: Having set dispositional time guidelines, the Executive Committee should promulgate a rule which would allow the lawyer or the complainant to petition the Executive Committee for a prompt hearing or disposition.

This recommendation was withdrawn by the Advisory Committee's Supplemental Report.



16. Recommendation: The Court should consider the inclusion of a return date in its order assigning a referee to a public matter as a means of insuring expeditious processing. Motions for extension of time should be granted for good cause shown.

The Court has implemented this recommendation and included a return date in its order assigning a referee to a public matter. The recommendation has been very useful.

17. Recommendation: The Executive Committee should closely monitor the delay situation and if, in its opinion, delay has reached unacceptably high levels, it should request that the Supreme Court call upon the Minnesota State Bar Association to provide a "blue-ribbon" group of lawyers familiar with the substantive law of ethics in the various areas of practice to provide pro bono assistance to the Director's Office on a crash program basis.

The Executive Committee has set an approved target of 500 for the total case inventory and 100 for cases over one year old. The Executive Committee receives monthly reports from the Director on meeting these targets as well as district ethics committee aging analysis for complaints which are under investigation by the DEC's. These reports indicate that there is presently no significant problem of delay in processing cases.

18. Recommendation: The Court should assure the adequacy of permanent hearing room facilities for the Board in the proposed Judicial Building. In the interim the State Court Administrator is urged to assist the Director's Office in locating adequate facilities.

In August, 1986, the Office of the Director of Lawyers Professional Responsibility moved to the PCA building at 520 Lafayette Road. A hearing room was included as part of its facilities.

19. Recommendation: Rule 5(a) should be amended to provide for the appointment and removal of the Director upon

recommendation by the Board to the Court, which recommendation should be accepted unless the recommendation is determined to be arbitrary and capricious.

The Court adopted recommended modifications of Rule 5 regarding the relationship between the Director, the Board and the Court.

20. Recommendation: Rule 5(b) should be amended to provide that the Director shall be directly responsible and accountable to the Board and through the Board to the Supreme Court.

The Court adopted recommended modifications of Rule 5 regarding the relationship between the Director, the Board and the Court.

21. Recommendation: Rule 5(b) should be amended to require the Director to report annually to the Board on the operations of the Director's Office. Rule 4(c) should be amended to require the Board to report annually to the Court on the operations of the discipline system.

The Court adopted recommended modifications of Rule 5 regarding the relationship between the Director, the Board and the Court.

The Director made an annual report to the Board on June 2, 1986.

22. Recommendation: Rule 5(a) should be amended to provide for two year renewable terms for the position of Director of the Office of Lawyers Professional Responsibility.

The Court did not adopt Recommendation 22. Instead the Court provided in Rule 5(a) that the Board review the Director's performance every two years and that the Board make recommendations to the Court concerning the continuing service of the Director.

23. Recommendation: The Supreme Court's personnel plan should be amended in accordance with the Rules to specify that the Director shall serve at the pleasure of the Court.

Rule 5(a) provides that the Director shall be appointed by and serve at the pleasure of this Court. The personnel plan has been amended accordingly.

24. Recommendation: Rule 4 should be amended to create a five person Executive Committee responsible for the general supervision of the Director's Office. Members should include the Board chairman, and two lawyers and two public members designated by the chairman, all of whom must have previously served at least one year as a member of the Board. Members should not be assigned to panels during their terms on the Executive Committee.

Effective February 1, 1986, a new five-person Executive Committee was elected by the Board. Panels were reorganized to exclude Executive Committee members from panel assignments.

25. Recommendation: Rule 4(a)(2) should be amended to add one additional member to the current Board size of twenty-two to provide six three-person panels in addition to the newly constituted five-person Executive Committee.

Rule 4(a)(2) was amended as recommended. An additional Board member, Rollin Whitcomb, was appointed to the Board in July, 1986. The panels were then adjusted to six three-person panels.

26. Recommendation: The Director and the Executive Committee should work jointly to develop a series of reports which will communicate concisely and regularly the status of the Director's Office operations and identify problem areas at an early stage. The following reports should be considered:

- \* Budget/Expenditure Report
- \* District Committee Case Aging Report
- \* Case Filing, Pending and Disposition Statistical Report
- \* Report of Cases Exceeding Filing-to-Disposition Time Standards
- \* Report of Cases Exceeding Guidelines for Expenditure of Time by Staff
- \* Attorney Caseload Statistics on Number and Type in Progress and Number Disposed
- \* Attorney and Paralegal Time Expended by Case/Activity Category
- \* Litigation Plans for Complex Cases

Substantially all of the information suggested for these reports is now available to the Executive Committee. Some of these

reports are included in the Appendix. There are presently no specific guidelines for the amount of time an attorney may spend on a particular case. However, the Director consults with staff attorneys regarding individual cases on a biweekly basis. Paralegal time reports and attorney caseload statistics by case/activity are available. The Executive Committee has not requested routine review of these matters.

27. Recommendation: A regular and comprehensive management by objectives appraisal of the Director's performance should be implemented. The Executive Committee annually should establish and communicate to the Director management objectives against which the Director's performance will be measured. The Executive Committee should meet with the Director at year end to evaluate the Director's performance and to permit an adequate opportunity for response.

The Executive Committee, and Fenita Foley particularly, have established goals and objectives for the Director regarding appropriate appraisal of the Director's performance.

28. Recommendation: The Executive Committee should consider undertaking a review of Director's Office files on a sample basis at least every two years.

This is a recommendation on which the Executive Committee was given considerable leeway. Executive Committee member Joan Hackel has been appointed to work with the Director regarding administrative oversight including consideration of a sample file review.

29. Recommendation: Rule 8(a) should be amended to provide that the Director initiated investigations may not commence without prior approval of the Executive Committee and then only if there is a reasonable belief that professional misconduct may have occurred.

In September, 1985, a written policy and procedure was initiated for obtaining Executive Committee prior approval of

Director-initiated investigations. There have been no Director initiated investigations without Executive Committee approval since that time. A written policy has been adopted by the Executive Committee for identifying which files are "Director-initiated" and subject to this policy--for example, matters brought to the Director's attention by judges who do not identify themselves as complainants may be investigated without prior approval.

30. Recommendation: The Supreme Court's liaison to the Board is urged to attend regularly the meetings of the Executive Committee and to participate actively in its consideration of administrative matters and general policy issues. The meetings should be structured to allow the liaison to avoid participation in the discussion of the processing of specific cases. The liaison should continue attendance at full Board meetings to provide the opportunity for communication of problems and concerns to the Court.

Supreme Court Justices are routinely invited to appropriate portions of Board meetings. In addition, the liaison has met from time to time with the Board Chair and other Justices have met with Board members at their request to discuss particular matters of concern as they have arisen.

31. Recommendation: The Director should be required to report to the Executive Committee whenever a district committee recommendation is rejected and to provide specific reasons for the action taken. A copy of that report should be provided to the chairman of the district committee whose recommendation was rejected.

A policy and procedure memorandum has been adopted to provide regular reports to Charles Kennedy, the Executive Committee liaison to the District Ethics Committees. The District Ethics Committee Chair and DEC investigators receive a copy of all dispositions investigated by them. In the seven months in which

statistics have been kept regarding deviation from DEC recommendations, there have been seven instances where the DEC recommendation was not followed out of 726 recommendations.

32. Recommendation: Rule 3(b) should be revised to require, prior to filing with the Director, the review of each report by the district committee chairman or, preferably, by a committee designated by the chairman for that purpose.

The recommended rule revisions were adopted by the Court. A policy and procedure memorandum, including a standard format has been approved by the Executive Committee and is being used by the District Ethics Committees.

33. Recommendation: Rule 3(b) should be amended to require the use by district committees of a standard report format approved by the Executive Committee.

The recommended rule revisions were adopted by the Court. A policy and procedure memorandum, including a standard format has been approved by the Executive Committee and is being used by the District Ethics Committees.

34. Recommendation: The Director should report to the Executive Committee the reasons for undertaking any significant reinvestigation of cases completed by district committees.

A policy and procedure memorandum has been adopted to implement this recommendation. Significant reinvestigation of cases completed by DECs is rarely undertaken.

35. Recommendation: If the district committee report recommends discipline not warranted or admonition, the investigator should prepare and include with the report a draft dispositional letter. The Director should prescribe the format and should include in the district ethics committee manual pattern paragraphs for use in drafting such dispositional letters.

The District Ethics Committees have been preparing draft memoranda for recommended DNWs and admonitions. A suggested

format and sample memoranda have been distributed in District Ethics Committee manuals and were included in the 1986 DEC Seminar materials.

36. Recommendation: Rule 7(c) should be amended to provide that a district committee's consistent failure to comply with the 45 day reporting requirement be reported to the Board Chairman who should seek to remedy the matter through the district, county or regional bar association President.

A policy and procedure memorandum has been adopted to keep Executive Committee member Kennedy apprised of case aging in the District Ethics Committees. It should be noted that the average length of DEC investigations is only 1.6 months.

37. Recommendation: Rule 3(b) should be modified to require each district committee to file an annual report of its activity with the Supreme Court and the Board in a format specified by the Executive Committee. Publication of comparative district committee statistics should be considered.

A policy and procedure memorandum has been adopted regarding the preparation and filing of District Ethics Committee annual reports. The format has been approved by the District Ethics Committee.

38. Recommendation: Rule 9(i) should be amended to expand the dispositional authority of the Board panels to include stipulated probation and admonition.

This recommendation was not adopted by the Court.

39. Recommendation: Rule 9(1) should be amended to provide that the respondent may seek a review by the Supreme Court of the panel's private discipline disposition.

This recommendation was not adopted by the Court.

40. Recommendation: Rule 8(d) should be amended to give the panel chairman the right to determine that discipline is not warranted, to admonish, to order private probation, with the consent of the lawyer, or to require a further investigation.

The rule should also be amended to provide the lawyer with a right to appeal an admonition.

The Court adopted only a portion of Recommendation 40. The Court amended Rule 8 to provide for review of complainant appeals by non-executive committee Board members appointed by the chair. Reviewing Board members may order further investigation, affirm the Director's disposition, or direct the matter to a Panel. The panel clerk assigns complainant appeals in rotation to reviewing Board members. Regular statistics are kept on the number of complainant appeals and the type of disposition made by reviewing Board members.

41. Recommendation: Rule 9(h)(1) and 9(i) should be amended to require the Board panels to determine whether there is probable cause to believe that public discipline is warranted on each charge brought by the Director's Office.

The Court adopted the rule change recommended by the Advisory Committee. Panels now make a determination as to probable cause on each charge brought by the Director's office.

42. Recommendation: The Executive Committee should establish a policy directing the Director to dismiss each charge in which the Board panel fails to find probable cause or to impose private discipline.

A policy and procedure memorandum has been approved by the Executive Committee regarding the dismissal of charges for which the Board finds no probable cause.

43. Recommendation: Rule 10(d) should be amended to provide that charges may not be added following the panel hearing if presented to the panel and there was a determination of no probable cause or facts were known on which charges could have been brought to a panel but such charges were not brought.

A policy and procedure memorandum implementing the revision of



Rule 10(d) has been approved by the Executive Committee. All supplementary petitions filed with the Court are signed by the Panel Chair to whom the initial charges were presented, or if no Panel was assigned, supplementary petitions are signed by another Panel Chair in rotation. A letter authorizing filing of the supplemental petition is signed by the appropriate Panel Chair.

44. Recommendation: Rule 4(e) should be amended to give to the Executive Committee the authority to redistribute case assignments to balance panel workloads and to make use of Board member expertise in appropriate cases.

Executive Committee member Joan Hackel has been delegated the responsibility of reviewing panel workloads and making assignments to balance panel workloads or to make use of Board member expertise in appropriate cases.

45. Recommendations: The Minnesota State Bar Association should establish a single pro bono committee of experienced lawyers or a series of committees representing the various areas of practice to implement a system for issuing oral and written advisory opinions. The committee should issue an annual report on its activities to the Supreme Court and the Board.

Assignments to written opinions should be made on a rotating basis. Draft written opinions should be prepared promptly and submitted to the Director. The Director should approve or modify the opinion to the extent he feels is necessary. However, substantial modification should occur only after consultation with the committee member who drafted the initial opinion. Each written opinion should contain the following final paragraph:

"Based upon the facts submitted, it is the present intention of the Director not to seek discipline if this opinion is followed and if the facts are as stated. If there is a change in enforcement intention, general publicity will be given to that effect and enforcement may be commenced but only for conduct subsequent to the date of the publicity."

Assignments to requests for immediate oral opinions should be made on a rotating basis with consideration given to the area of expertise needed. Only the most experienced members of the committee should be assigned to respond to requests for oral opinions. A record should be kept of the name, date, facts and opinion rendered. If disciplinary proceedings are later brought, the fact of following or not following the opinion should be considered in determining the degree of discipline imposed, if a violation is found to have occurred.

This recommendation has not been implemented. The MSBA has indicated that it does not wish to provide an opinion service. The Advisory Committee's recommendation appears to have been based primarily on its perception that resources of the Director's office were too overburdened to continue this service. This is no longer the case. The Director's office is able to provide the telephone advisory opinion service without an undue expenditure of office resources. This service is greatly needed and much appreciated by the Minnesota Bar. The service responds to approximately 1,000 inquiries a year.

46. Recommendation: Rule 4(a)(2) should be amended to recognize the Court's traditional practice of assuring geographic diversity in Board membership and to provide that a similar diversity in areas of practice also be represented on the Board.

This recommendation was adopted by the Court and is being implemented by the Court through its appointments.

47. Recommendation: The Court should consider adopting an open appointments system to expand the pool of candidates from which Board members are appointed.

Since at least January, 1986, the Court has solicited applications state wide for Board appointments and has used the Secretary of State's open appointment process to post notice of vacancies of Board positions.

48. Recommendation: Rule 3(a)(2) should be amended to urge the appointment to district committees of lawyer members from the various areas of practice. The Board should monitor and report to the Court compliance of district committees with this objective.

This rule change was adopted by the Court. The Director and district committee liaisons have informed the District Committee chairs of this rule change and encouraged them to seek out such diversity in their appointment of District Ethics Committee members.

49. Recommendation: The Court should consider adopting an open appointments system to expand the pool of available candidates from which district chairmen are appointed. A principal criterion for selection should be experience in disciplinary matters.

The Court apparently has no written policy regarding appointment of DEC Chairs. The Court does, however, solicit recommendations from local district bar associations.

50. Recommendation: The Continuing Legal Education Board should monitor and annually report to the Court compliance by course sponsors with Rule 2 of the Rules of Continuing Legal Education which expresses the Court's strong preference that each continuing legal education course include a professional responsibility component.

The Director's office has informed the Board of Continuing Legal Education of this recommendation. The Director's office provides faculty members for numerous CLE courses each year. (See p. 15 of the Overview.)

51. Recommendation: The Minnesota State Bar Association should formulate a plan for facilitating and encouraging its various sections to sponsor free ethics related educational programs. District bar associations and sections thereof should do likewise.

The Director's office provides speakers for numerous local bar

association and section meetings. The Director's office provided faculty for discussion sections in conjunction with a video tape presentation of an ethics seminar on the new Rules of Professional Conduct.

52. Recommendation: Rule 2 should be amended to expand the purpose of the lawyer discipline system to include, in addition to the protection of the public, insuring fairness to the lawyer complained of and to the profession as a whole.

The recommended rule change was adopted by the Court. No further implementation is required.

53. Recommendation: The duty attorney in the Director's Office should identify, during the initial screening of complaints, the disciplinary rule or ethical consideration which is believed to have been violated in order that the accused attorney be given specific notice of the charges.

The Director's office has addressed the concern of the Advisory Committee underlying this recommendation in a number of ways:

- (1) a more aggressive use is made of summary dismissals;
- (2) letters are sent to complainants requesting more specific information where complaints are vague or unintelligible; and
- (3) specific rule violations are provided to respondent attorneys upon request.

54. Recommendation: Rule 25(a) should be amended to provide that discovery requests shall not be disproportionate to the gravity and complexity of the alleged ethical violation, that the Ramsey County District Court has jurisdiction over challenges to the reasonableness of Director requests, and that a good faith challenge to requests shall not constitute a failure to cooperate.

The proposed rule change was adopted by the Court. No further implementation is required.

55. Recommendation: Rule 6(c) shall be amended to require the Director to furnish a copy of the investigator's report to the respondent upon request.

The Director routinely furnishes a copy of the investigator's report to respondents upon request.

56. Recommendation: Rule 25(a) should be amended to direct the use of copies in lieu of the original and to require the Director to promptly return originals.

The proposed rule change was adopted by the Court. Office procedures and practice are in accord with revised Rule 25(a) although no written policy and procedure memorandum has been adopted to implement it.

57. Recommendation: Rule 20(d) should be amended to reduce the records retention period for dismissed cases from five to three years and to eliminate the permanent docket entry of the disposition of such cases.

Rule 20(d) was so amended. Disclosure letters have been revised to conform to revised Rule 20. Office procedures have been revised to implement these rule changes.

58. Recommendation: Rule 20(b) should be amended to prohibit the disclosure of records of complaints to individuals and agencies external to the discipline system where it was determined that discipline was not warranted.

Rule 20(b) was so amended. Disclosure letters have been revised to conform to revised Rule 20. Office procedures have been revised to implement these rule changes.

59. Recommendation: Rule 19(b)(1) should be amended to provide that conduct which was the subject of a previously dismissed complaint may not be considered in subsequent proceedings except to show a pattern of conduct the cumulative effect of which constitutes an ethical violation. Rule 19(b)(4) should be added to make clear that previous discipline shall be made known and used only in determining the nature of the discipline and not in determining whether a violation occurred.

The Court adopted the revision to Rule 19 as revised in the Advisory Committee Supplemental Report of December 2, 1985. Litigation procedures have been amended so that prior discipline is pled only in limited circumstances.

60. Recommendation: The Executive Committee and the Board should develop formalized training programs for all new district committee and Board members. Attendance in person or by tape should be mandated. Continuing members hold be encouraged to attend as well. Procedures manuals for Board members and specialized training for district and Board panel chairmen also should be developed.

The Executive Committee has appointed Fenita Foley to work with the Director in developing such training programs. A brochure has been developed, describing the professional responsibility system, for distribution to complainants, the public and other interested parties.

61. Recommendation: A primary purpose of Board meetings should be the interchange of information concerning Board panel actions as a means of promoting dispositional consistency among the panels.

The Board's objection to the recommendation as stated was noted by the Advisory Committee which acknowledged the broader purpose of the LPRB.

62. Recommendation: Rules 4(d) and 6(a) should be amended to require disqualification of an investigator, district committee member or Board member in circumstances which would require disqualification of a judge under Canon 3 of the Code of Judicial Conduct.

The Court adopted the proposed Rule amendments. A policy and procedure memorandum has been adopted regarding assignment of panel members when a Board member is disqualified pursuant to Rule 4. District Ethics Committee Chairs have been made aware of

the revision to Rule 6(a). The District Ethics Committee seminar included a session on DEC procedures under the amended RLPR. Changes in Rule 6(a) were included in the session.

63. Recommendation: It is recommended that the Rules be amended to provide that ex parte communications should not occur except after first attempting to contact the adversary and then only if that person is unavailable and an emergency exists.

This recommendation was incorporated in the Rules on Lawyers Professional Responsibility by the inclusion of a new Rule 29. No further implementation is required.

64. Recommendation: The Executive Committee should review the need to modify its current media communications policy upon the filing of public petitions in light of other recommendations contained in this report. A policy covering procedures for the issuance of news releases of a general nature also should be formulated.

The Executive Committee reviewed and adopted a revised media policy and procedure memorandum in April, 1986.

65. Recommendation: The Director's notice of a discipline not warranted disposition should be revised to express appreciation for the lawyer's cooperation and solicit the lawyer's continuing support of the system.

The file opening form (rather than the dismissal) has been revised to express appreciation for the lawyer's cooperation. A conscientious effort has been made, however, to express those sentiments in correspondence and meetings with respondent attorneys.

66. Recommendation: By June 1986, the Executive Committee should report to the Court on the implementation of the recommendations contained in this report. The court should consider creating, after a three to five year period, a similar oversight committee to review the discipline system and make recommendations for improvement.

The Supplemental Report revised the date for reporting on implementation to January, 1987.



Case Dispositions Year to Date  
December 31, 1986

	Percentage of Total Files Closed			No. of Files Closed 1986	Mean No. of Months Open at Disposition		
	1984 %	1985 %	1986 %		1984 Aging	1985 Aging	1986 Aging
1. Total Dismissals	82%	82%	82%				
a. Summary Dismissal	15%	30%	34%	420	0	0	0
b. Dis. Not Warranted/ DEC	56%	36%	39%	479	6	6	4
c. Dis. Not Warranted/ Director	11%	17%	9%	113	11	13	6
2. Admonition	10%	7%	8%	94	15	12	8
3. Private Probation	2%	4%	1%	12	22	19	13
4. Panel Dispositions	--	--	--	--	--	--	--
a. Admonition Affirmed	--	--	--	--	--	--	--
b. Admonition Reversed	--	--	--	--	--	--	--
c. Panel Dismissal	--	--	--	1	--	--	7
5. S. Ct. Dispositions	6%	6%	8%	--	--	--	--
a. S. Ct. Dismissal	--	--	--	0	--	28	--
b. S. Ct. Reprimand	1%	1%	--	5	18	30	24
c. S. Ct. Probation	1%	1%	0%	6	30	13	42
d. S. Ct. Suspension	3%	3%	3%	38	27	30	27
e. S. Ct. Disbarment	1%	1%	5%	61	35	11	13
f. S. Ct. Transfer to Disability Stat.	--	--	--	0	12	9	--
6. Miscellaneous (dec'd)	--	--	--	2	1	21	--
Total Dispositions	985	1,509		1,244	--	--	--
Other (specify) No Jurisdiction	20	4	1%	11	--	--	--
SD Affirmed	--	--	--	1	--	--	2
DNW/Aff	--	--	--	1	--	--	1

	Files Opened		Files Closed		Inventory Control	
	1986	1985	1986	1985	1986	1985
January	103	102	84	189	+19	(87)
February	95	92	128	120	(33)	(28)
March	107	127	91	140	+16	(13)
April	129	121	114	185	+15	(64)
May	92	95	91	106	+ 1	(11)
June	97	106	147	170	(50)	(64)
July	97	102	101	107	(4)	(4)
August	97	111	109	87	(12)	+24
September	88	107	75	115	+13	(9)
October	145	98	124	112	+21	(14)
November	84	88	79	113	+ 5	(25)
December	99	95	101	69	(2)	+26

Year to Date

	1986	1985	1986	1985	1986	1985
January	103	102	84	189	436	599
February	198	194	212	309	403	571
March	305	321	303	449	419	558
April	434	442	417	634	434	494
May	526	537	508	740	435	483
June	623	643	655	910	385	419
July	720	745	756	1,017	381	415
August	817	856	865	1,104	369	439
September	905	963	940	1,219	382	430
October	1,050	1,061	1,064	1,331	403	416
November	1,134	1,149	1,143	1,444	408	391
December	1,233	1,244	1,244	1,513	406	417

SUMMARY OF CASES OVER ONE YEAR OLD  
December 31, 1986

	<u>Total</u>	<u>Supreme Court</u>
1979 Total	<u>1</u>	<u>1</u>
1-82	1	1
4-82	1	1
7-82	<u>1</u>	<u>1</u>
1982 Total	3	3
6-83	1	1
7-83	2	2
9-83	<u>1</u>	<u>1</u>
1983 Total	4	4
2-84	1	1
3-84	1	1
4-84	2	2
7-84	1	1
11-84	<u>2</u>	<u>1</u>
1984 Total	7	6
1-85	3	3
2-85	1	2
3-85	1	0
4-85	6	2
5-85	1	1
6-85	4	1
7-85	1	0
8-85	1	1
9-85	1	0
10-85	3	1
11-85	8	5
12-85	<u>2</u>	<u>1</u>
1985 Total	32	17
Cases Under Submission or Respondent not Found	5	5
GRAND TOTAL	<u>52</u>	<u>36</u>

SUMMARY OF PUBLIC MATTERS PENDING - 12/31/86

SUPREME COURT  
FILE NO.

Argued or Stipulated and Under Advisement by Court (2)

1. Holmay/TCV - Petition and stipulation 8/27/86. C6-86-1442  
Director's motion and proposed order for summary relief 9/30/86. Director's proposal for discipline filed 10/31/86. Supreme Court argument 11/17/86.
2. Isaacs/WJW - Petition 12/17/84; Supplemental C6-84-2215  
Petition 9/13/85. Supreme Court oral argument 12/1/86.

Referee or Panel (Reinstatement) Findings Submitted to Court (11)

3. Wm. Peters/BMS - 8/15/84 C8-84-1311  
Hearing 6/28/85; re-hearing 5/12/86. Motion letters referred to special term panel to decide on without oral argument 8/1/86. Motion for immediate reinstatement denied 8/13/86.
4. Bernstein/WJW - Petition 4/24/86. (Collins, L.). C1-86-717  
Supplemental petition 8/28/86. Temporarily suspended 9/2/86. Referee report received. Order for briefing and notice of hearing 11/14/86. Brief filed 12/12/86.
5. Getty/CMH - Petition and stipulation 12/27/85 C8-85-2372  
(James D. Mason). Supplementary petition 3/28/86. Transcript ordered. Amended order for briefing 10/13/86. Amended order for briefing 10/17/86. Director's brief filed 12/8/86. Oral argument 2/87.
6. Danna/TCV - Petition 6/4/86 (Otis). Oral C9-86-950  
argument 1/14/87.
7. Simonson/TCV - PDA, Stipulation for temporary CO-82-1654  
suspension and for dispensing with panel proceedings 11/8/85. Temporarily suspended 11/14/85. (Faricy). Referee recommendation: indefinite suspension. Briefs filed. Oral argument not yet scheduled.
8. Schmidt/CMH - Petition 1/28/86 (Preece). C8-86-177  
Hearing 6/18/86-6/20/86. Director's brief filed

SUMMARY OF PUBLIC MATTERS PENDING - 12/31/86

SUPREME COURT  
FILE NO.

- 12/15/86. Reply brief due 12/26/86. Schmidt's reply brief due 1/5/87. Oral argument 2/87.
9. Sampson, Mark A./KLJ - Petition and stipulation 6/4/86 (Smith). Hearing 9/11/86 and 9/12/86. Referee brief 10/3/86. Referee recommendation: six months suspension and two years probation 10/15/86. Trustees appointed 10/23/86. Temporarily suspended 10/28/86. Supp. Pet. 12/22/86. CO-86-951
10. Knutson/BMS - Petition 7/17/86. (Mason). Referee Report 11/7/86. Order for briefing and hearing 11/20/86. Court granted Knutson 15-day extension to file brief 12/12/86. Due 1/6/87. C5-86-1187
11. Simmonds, John E./PDN - Petition 5/22/86. (Marrinan). Hearing 10/7-9/86, 10/22-24/86. Received referee's findings 12/8/86. Transcript 2/15/87. C7-86-879
12. Ray, Paul/MAC - Petition 11/7/85. (Christensen) Hearing 11/17/86. Received referee findings 12/15/86. C7-76-47327
13. Williams, J. M./PDN - Petition 12/16/85 (William A. Johnson). Received referee findings 12/22. Transcript ordered; requested additional 30 days. Due 2/24/87. C8-85-2307

Tried and Under Advisement by Referee or Panel (Reinst. Only) (0)

Referee Appointed (7)

14. Oldenkamp, Roger L./BMS - Petition and petition for temporary suspension 7/15/85. Imm. suspension hearing 9/12/85. Second supplemental PDA 10/17/85. Third supplemental PDA 10/18/85. Transferred to disability inactive status 10/31/85. Referee hearing 11/7-8/85 (Warren E. Lytynski). Motion to remand hearing to the referee granted 10/7/86. Motion to determine disability status and set hearing date 1/9/87. Fourth supplemental PDA 12/8/86. C2-85-1329

SUMMARY OF PUBLIC MATTERS PENDING - 12/31/86

SUPREME COURT  
FILE NO.

15. Wareham, John R./MAC - Petition 9/24/86. (Ward) Extension for referee to file findings to 4/15/87. Hearing 2/18-19/87. C9-79-50664
16. Morris, R. Kathleen/TCV - Petition 10/21/86. (Preece). Motion to declare Commission findings res judicata granted 12/22. Hearing tentatively scheduled mid-May. Referee findings due 6/30/87. C1-86-1770
17. Peters, Geoffrey W./BMS - Petition 9/2/86. (Hoffman). Referee hearing 1/28-29/87. C2-86-1468
18. Perl/PDN - Petition 2/28/86 (Larson). Referee appointed 4/10/86. Hearing 7/15/86. Motion hearing held 7/16/86. Proceedings stayed 7/17/86. Opinion issued; one year suspension and three years probation 8/1/86; petition for re-hearing 8/5/86. Petition for re-hearing granted 10/6/86. Respondent's motion for reconsideration and petition for re-hearing denied 11/6/86. Referee hearing 11/10/86 - 12/31/86. Briefs due 1/12/87. CX-86-343
19. Thompson, J./KLJ - Petition 11/25/85. (Litynski) Trustee appointed 5/5/86. Supplemental Petition for Disciplinary Action or Transfer to Disability Status 10/29/86. Notice of Motion and Motion for Summary Relief and Proposed Order; Notice of Motion and Motion to Compel, a memorandum in support of the motion and proposed order - 12/17/86. Hearing on motions 1/9/87. C5-85-2202
20. Schaefer/TCV - Petition for disciplinary action 12/3/86. (Campbell) C1-86-2045

New Filings (4)

21. McGovern/WJW - Petition 5/1/84. Suspended 5/30/84. C5-84-892
22. Anderson, Marshall G./MAC - PDA and petition for suspension 11/4/85. Suspended 11/18/85. Order to show cause 12/8/86. Oral argument 3/11/87. C7-82-81

SUMMARY OF PUBLIC MATTERS PENDING - 12/31/86

SUPREME COURT  
FILE NO.

- |   |            |
|---|------------|
| 23. <u>Henke/MAC</u> - Petition and stipulation 10/30/86. Director's Brief filed 12/18/86. Oral argument 1/12/87. | C8-86-1846 |
| 24. <u>Hartke/BMS</u> - Petition for disciplinary action 11/21/86. Referee requested.                             | C5-86-1996 |

Reinstatement Petitions (3)

- |  |             |
|--|-------------|
| 1. <u>Swanson, Carl Sigurd/BMS</u> - 7/1/86. Panel hearing 11/20/86. Panel recommended denial. Filed panel's recommendation 12/23/86. Order for briefing and notice of hearing 12/30/86. | C2-75-46057 |
| 2. <u>Wersal/BMS</u> - 9/26/86.  | C1-80-50969 |
| 3. <u>Wegner/BMS</u> - 10/6/86.  | 50111       |

Reinstatement Affidavits (1)

- |                                    |            |
|------------------------------------|------------|
| 1. <u>Southwell/BMS</u> - 10/6/86. | C8-84-1034 |
|------------------------------------|------------|

Miscellaneous Filings (2)

- |   |            |
|---|------------|
| 1. <u>G.P./BMS</u> - Writ of mandamus denied 1/23/86. Motion to dismiss denied 9/25/86. | C1-86-120  |
| 2. <u>R.P./MAC</u> - Response of Director to R.P.'s petition for re-hearing 9/5/86.     | CX-85-1773 |

PUBLIC MATTERS DECIDED - 12/31/86

SUPREME COURT  
FILE NO.

1986 Decisions (31)

1. Hoffman/WJW - Public reprimand; three month suspension; probation 1/3/86. C4-84-463
- \* 2. Nardi/PDN - 30 day suspension; one year unsupervised probation 1/13/86. Amended order received 1/17/86. CX-85-2308
- \* 3. Zimmerman/CMH - Public reprimand 1/31/86. CO-86-108
4. Smith, Robert L./BMS - Indefinite supervised probation 2/7/86. CO-85-1152
5. Carey, David J./BEM - Indefinitely suspended 2/7/86. CO-84-1142
6. Gubbins/WJW - Public reprimand; 4 month suspension 2/7/86. C3-85-61
7. Gorgos/WJW - 6 month suspension 3/14/86. C0-85-857
8. Jones, Lynnel L./BMS - Disbarred 3/14/86. C7-85-2010
9. Jones, Dixon/WJW - Indefinitely suspended 3/21/86. C7-83-1080
10. Pearson/WJW - Disbarred 3/28/86. C6-82-671
11. Moore, Howard J./MAC - Six month suspension 5/23/86. C2-86-272
- \*12. White, James E./KLJ - Indefinite suspension 5/29/86. C6-86-842
- \*13. Piper, Paul C./WJW - Public reprimand 5/29/86. C8-82-1658
- \*14. Johnson, Richard A./MAC - Public reprimand and supervised probation 5/20/86. C6-86-212
- \*15. Flanagan/MAC - Disbarred 6/26/86. C1-85-1368
- \*16. Marshall, Gary/KLJ - Disbarred 6/26/86. C9-86-270



PUBLIC MATTERS DECIDED - 12/31/86

SUPREME COURT  
FILE NO.

- |      |  |             |
|------|--|-------------|
| 17.  | <u>Fallon/MAC</u> - Indefinite suspension 7/11/86.   | C5-84-2223  |
| *18. | <u>Rued/MAC</u> - Six month suspension; two year probation following reinstatement 8/1/86.   | C2-86-76    |
| 19.  | <u>Feldman/MAC</u> - Disbarred 8/8/86.   | C7-85-2203  |
| 20.  | <u>Jorissen/BMS</u> - Disbarred 8/8/86.  | C3-79-50661 |
| 21.  | <u>Mansur/TCV</u> - Indefinitely suspended 8/25/86.  | C2-83-659   |
| *22. | <u>Perry/KLJ</u> - Indefinitely suspended 9/19/86.   | C1-86-1509  |
| *23. | <u>Graham, Chester C./TCV</u> - Public reprimand and two-year supervised probation 10/22/86. | C4-86-1715  |
| *24. | <u>Selb/WJW</u> - Disbarred 10/27/86.  | C9-86-303   |
| *25. | <u>Marshall, Kent/KLJ</u> - Indefinite suspension 10/27/86.                                  | C0-86-271   |
| 26.  | <u>Tieso/BMS</u> - Suspended 11/14/86.   | C4-85-2210  |
| 27.  | <u>Helder/MAC</u> - Indefinite suspension 11/17/86.  | C6-86-1246  |
| 28.  | <u>Parks/WJW</u> - Disbarred 11/26/86.   | C4-84-1869  |
| *29. | <u>Kroening/MAC</u> - Indefinite suspension 12/1/86.   | CX-83-912   |
| 30.  | <u>Shaw/WJW</u> - Indefinite suspension 12/5/86.   | C9-79-50289 |
| *31. | <u>Alderman/TCV</u> - Public reprimand; one year unsupervised probation.                     | C3-86-1771  |

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\* Stipulated dispositions.

Miscellaneous (13)

- |    |  |  |
|----|--|--|
| 1. | <u>N.P./WJW</u> - Reply to Petition for Writ of Prohibition - 12/24/85; writ denied 1/10/86. | C9-85-2316<br>C4-85-2322<br>C6-85-2323 |
|----|--|--|

PUBLIC MATTERS DECIDED - 12/31/86

SUPREME COURT  
FILE NO.

2. J.M.W./WJW - (1) U.S. District Court declined to disqualify itself from these proceedings; (2) plaintiff's action against Smith dismissed; (3) plaintiff's motion for a preliminary injunction denied; (4) defendant Wernz's motion for dismissal denied 1/10/86. Discovery stayed by magistrate until disciplinary proceedings completed 2/26/86. Magistrate's order appealed to federal district court judge. Civil No. 4-85-1570
3. Appert/Pyle - Martha L. Neese's motion for disclosure of documents denied. 48803  
C9-85-243  
C0-85-244
4. R.J.C. and E.H.C/MAC - Complainant's petition denied 4/18/86. C9-85-2266
5. Thompson, J./KLJ - Trustee order 5/5/86. Director appointed successor trustee 10/7/86. C5-85-2202
6. Segall/WJW - Petition dismissed; attorney deceased 5/15/86. C4-83-1389
7. Peterson, Duane M./KLJ - Trustee order 5/22/86. CX-86-875
8. Hardy, Michael J. v. P.F. - Petition for review denied 5/29/86. C6-86-694
9. Peterson, Duane M./KLJ - Trusteeship terminated 7/31/86. CX-86-875
10. R.P./MAC - Admonition affirmed 8/8/86 as modified. R.P.'s Petition for Rehearing denied 9/15/86. CX-85-1773
11. Michaelson/BMS - Reinstatement petition withdrawn 7/24/86. C9-79-50180
12. Appert/WJW - Reinstated to the unrestricted practice of law 9/23/86. C9-85-243
13. Beal/WJW - Reinstated 12/8/86. C5-82-466
14. Flanagan/MAC - Order discharging Trustee 12/16/86. C1-85-1368

PUBLIC MATTERS DECIDED - 12/31/86

SUPREME COURT  
FILE NO.

15. M.M./BMS - Judith A. Marty's petition for further review of the LPRB's Panel is denied 12/17/86. C4-86-1651

SUMMARY OF STATISTICAL DATA 12/31/86

**I. CASES**

	Approved Target	History			
		3/86	6/86	9/86	12/86
A. Total Case Inventory					
1) Total Files Open	500	<u>419</u>	<u>385</u>	<u>382</u>	<u>406</u>
2) Openings/Closings Y.T.D.		<u>305/303</u>	<u>623/655</u>	<u>905/940</u>	<u>1,233/1,244</u>
B. Old Cases		<u>12/85</u>	<u>6/86</u>	<u>9/86</u>	<u>12/86</u>
1) All Cases Over 1 Year Old	100	66	58	51	50
2) "Inactive"* Cases Over 1 Year Old		29	8	3	5
C. DEC Aging Analysis (Ave. # of mos. file in DEC)	2.0	<u>12/85</u> 1.9	<u>6/86</u> 1.6	<u>9/86</u> 1.7	<u>12/86</u> 1.7
D. Summary of Public Matters Pending (# of lawyers)	None	<u>12/83</u> 35	<u>12/84</u> 34	<u>12/85</u> 29	<u>12/86</u> 28
E. Summary of Public Matters Decided (# of lawyers)	None	<u>12/83</u> 16	<u>12/84</u> 26	<u>12/85</u> 46	<u>12/86</u> 31

F. Panel Chart attached listing matters currently before each panel.

**II. BUDGET**

A. FY'87 Balance Forward In	\$ 292,387
B. FY'87 Anticipated Revenue	870,965
Total	<u>1,163,352</u>
C. FY'87 Originally Approved Budget	[933,500]
D. Originally Estimated Balance Forward Out	<u>229,852</u>
E. FY'87 Significant Budget Revisions	
1) <u>Increased Expenditures</u>	
Professional services -	\$16,000
2) <u>Decreased Expenditures</u>	
Payroll	24,794
F. Total Budget Revisions	8,794
G. Revised Estimated FY'87 Balance Forward Out	238,645

\* Inactive cases are those submitted to the Supreme Court or respondent not found.

SUPREME COURT DISPOSITIONS 1976-1986

	DBR	SUS	REP	CEN	PRO	DIS	REIN	REIN DEN	RES	MED SUS	DAB	INA STAT	REST PRAC	TRAN/BD/ JUD/STAN	DEAD
1976	4	5	0	0	0	0	1	0	0	1	0	0	0	0	0
1977	1	0	0	1	0	0	0	1	0	0	0	0	0	0	0
1978	6	8	0	3	1	0	0	0	0	0	0	0	0	0	0
1979	6	3	1	2	2	0	1	1	0	0	0	0	1	0	0
1980	1	3	1	0	2	0	0	0	1	0	0	0	0	0	0
1981	3	5	1	0	1	1	0	1	0	0	0	0	0	0	0
1982	6	8	5	1	0	2	1	0	0	0	1	1	0	0	1
1983	4	5	4	0	0	2	2	0	0	0	1	0	0	0	0
1984	3	7	8	0	4	0	2	2	0	0	1	0	0	1	0
1985	4	14	22	0	0	3	0	1	0	0	1	0	0	0	0
1986	8	17	5	0	1	0	0	0	0	0	0	0	0	0	1
<b>TOTAL</b>	<b>46</b>	<b>75</b>	<b>47</b>	<b>7</b>	<b>11</b>	<b>8</b>	<b>7</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>

DBR - DISBARRED  
 SUS - SUSPENDED  
 REP - REPRIMAND  
 CEN - CENSURE  
 PRO - PROBATION

DIS - PETITION DISMISSAL  
 REIN - REINSTATED  
 REIN/DEN - REINSTATEMENT DENIED  
 RES - RESIGNED  
 MED SUS - MEDICAL SUSPENSION

DAB - DISABILITY STATUS  
 INA STAT - INACTIVE STATUS  
 REST PRAC - RESTRICTED PRACTICE  
 TRAN/BD/JUD/STAN - TRANSFERRED TO BOARD ON  
 JUDICIAL STANDARDS  
 DEAD - DECEASED

FILE OPENING AND CLOSING  
POLICY AND PROCEDURE NO. 7

TO: All Staff  
FROM: William J. Wernz *yw*  
Director  
DATE: January 5, 1987  
RE: Dispositional Authority to Assistant Directors on  
DEC Recommendations of DNWs and Certain Summary  
Dismissals

INTRODUCTION

The Supreme Court Advisory Committee on Lawyer Discipline (Dreher Committee), among its recommendations, at page 26, stated as follows:

D. Delegation

The Committee finds insufficient delegation of authority within the Director's Office for disciplinary processing and for office administration. In both areas, a greater delegation could result in improved productivity.

All dispositions, from summary dismissals to public discipline petitions, are personally reviewed and approved by the Director. Final screening by the Director increases staff time spent on each case and the delay in final disposition. Final authority for summary dismissal and discipline not warranted (DNW) dispositions should be delegated to Assistant Directors. Although this creates a potential for inconsistency among staff decisions, inconsistencies should be kept within tolerable limits through adequate supervision, Director's post-review, and the availability of an appeal by the complainant.

12. Recommendation: Delegate final authority for disposing of cases by summary dismissal and DNW to Assistant Directors after an adequate training period.

This memorandum continues implementation of this recommendation.

PROCEDURE FOR ASSISTANT DIRECTOR DNW UPON DEC/DNW RECOMMENDATIONS

Upon receipt of a file from the DEC with a DNW recommendation, the disciplinary clerk shall assign files to Assistant Directors (AD) by rotation and maintain a separate tally to ensure equal distribution of files for review. The AD who receives the file shall promptly review it. If the AD agrees with the DEC recommendation, he/she shall dictate a memorandum and forward the file with dictation to the disciplinary clerk for preparation of a CL1 form.

If the file is received from the DEC with a memorandum prepared by the DEC investigator, the disciplinary clerk shall retain the file and prepare a CL1 form. The file will be forwarded to the AD next in rotation to be reviewed and signed. If the AD does not agree with the DEC memorandum, or feels it is inadequate, the AD will return the file with revisions to the disciplinary clerk.

If the AD does not agree with the DEC-DNW (because it is wrong or inadequately investigated), the AD shall forward the file to the Director for review or assignment to an AD. The reviewing AD shall prepare a brief (usually handwritten) memo to the Director stating reasons for forwarding the file.

Although identifying complete and explicit criteria upon which the AD's agreement/disagreement is based is difficult, appropriate criteria include:

1. Whether a written response was received from the respondent attorney, and included in the file from the DEC.
2. Whether the investigator made personal contact with the complainant, in writing, by phone, or in-person.
3. Whether it appears the investigator adequately investigated the key issues in the complaint, or whether only peripheral issues were investigated.
4. Whether the investigator, or the committee, applied the correct disciplinary rules to the alleged misconduct, and whether those rules appear to have been applied correctly.
5. Whether, especially with Hennepin and Ramsey County investigations, the reviewing committee agreed or disagreed with the investigator's recommendation, and

if the committee disagreed with the investigator, whether specific rationale for the disagreement was set out.

The ADs should dispose of all files sent to them for review promptly. To insure prompt handling, the disciplinary clerk shall note any DEC-DNW recommendations on which the AD has not acted within two days and report the delay to the First Assistant Director.

PROCEDURE FOR ASSISTANT DIRECTOR SUMMARY DISMISSAL OF CERTAIN TYPES OF COMPLAINTS

At its 9/5/86 meeting, the LPRB approved summary dismissal guidelines as proposed in an 8/1/86 memorandum (attached). ADs are hereby authorized, as a routine delegation of the Director's authority, to summarily dismiss upon their own signatures complaints which they receive and which clearly fall into one or more of the following categories:

1. Fee disputes.
2. Non-payment of professionally-incurred indebtedness.
3. Advertising and written solicitation.
4. Complaints alleging abuse of prosecutorial discretion.
5. Complaints involving criminal defendants' post-conviction relief.

If the AD is in doubt whether the complaint falls solely within one or more of these categories, the summary dismissal should be submitted for the Director's review and signature.

This procedure is to be implemented effective January 5, 1987. ADs receiving complaints as duty attorney or otherwise will continue to fill out the complaint opening forms as before, except that they will indicate the signature should be their own, rather than the Director's on the above categories of summary dismissals.

This delegation of summary dismissal authority extends only to DEC/DNW recommendations and to complaints which fall clearly into the above categories. Other categories which the AD believes should be dismissed should be submitted, as before, to the Director for signature.



DIRECTOR OF  
LAWYERS PROFESSIONAL RESPONSIBILITY

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ASSISTANT DIRECTORS  
CANDICE M. HOJAN  
PHILLIP D. NELSON  
KENNETH L. JORGENSEN  
MARTIN A. COLE  
BETTY M. SHAW

PERSONAL AND CONFIDENTIAL

MEMORANDUM

TO: The Lawyers Professional Responsibility  
Board Executive Committee

FROM: William J. Wernz  
Director

DATED: August 1, 1986

RE: Summary Dismissal Guidelines

I. INTRODUCTION.

Several recent developments make it desirable to have the Lawyers Board approve uniform guidelines for summary dismissals by the Director's Office. "Summary dismissal" means that the Director determines from the complaint itself, without any investigation at all, that discipline is not warranted in a particular matter. The complainant is not interviewed, the respondent attorney is not asked for a reply; the file is summarily closed, subject to the complainant's right to appeal. Summary dismissals of complaints against attorneys have always accounted for a significant percentage of the final decisions by the Director. The following developments make establishment of uniform policies desirable.

II. RECENT DEVELOPMENTS.

A. Supreme Court Advisory Committee.

Recommendation 5 of the Supreme Court Advisory Committee was:

The Director should adopt a policy requiring complainants to exhaust their remedies in readily available alternative forums before initiating a disciplinary investigation. Criminal matters in which

the complainant-defendant should pursue post conviction relief proceedings are an example of the type of case which should appropriately be diverted. (p. 20)

The Committee also recommended diversion to alternative forums of fee disputes and complaints that appear to be solely of possible malpractice. The Supreme Court "adopted" its Advisory Committee's Report, although it is unclear whether this adoption means approval of every recommendation.

**B. Increase in Summary Dismissal Rate.**

During the period 1982 through 1984, the summary dismissal rate averaged about 20 percent of all files closed. During 1985-6 the summary dismissal rate has increased to about 35 percent of all files closed. It should be noted, however, that the overall dismissal rate (that is summary dismissals plus dismissals after investigation), remains at just over 80 percent of all files closed, as it has for many years. This suggests that the complaints dismissed summarily would generally have been dismissed had there been investigations. The increased summary dismissal rate may, however, give some cause for concern--complainants may perceive the system to be unfair, and it may be that further investigation of some matters is warranted.

**C. Amendments to the Rules on Lawyers Professional Responsibility.**

The amendments to the Rules, effective July 1, 1986, increase the "supervisory" role of the Executive Committee and the Lawyers Board over the general operation of the Director's Office. The Board and Committee are not normally involved in exercises of the Director's discretion whether to investigate or charge a particular matter. Amendments have been made, however, to involve the Committee in the decision whether to investigate matters when no complaint has been received, and to involve Board members in such charging decisions as whether to supplement a petition for disciplinary action. The supervisory authority of the Board and Committee would not be directly involved in individual summary dismissal determinations, except through the complainant appeals process. However, the allocation of resources and the overall criteria for general categories of summary dismissal are appropriate supervisory involvements of the Board and Committee. It may be noted that the New Jersey Office of Attorney Ethics has summary dismissal guidelines adopted and approved by the New Jersey Supreme Court.

D. Amendments to Complainant Appeal Process.

The Court amended Rule 8(d) in two ways: (1) To allow the Board Chair to appoint a group of Board members to review complainant appeals. The Chair has appointed a group larger than just the Panel Chairs. This means that there is more of a need for uniform standards to guide a larger group of decision-makers. (2) The Court added to Rule 8(d) the option that the reviewing Board member could direct further investigation. Presumably this option would be exercised most often in appeals of summary dismissals; again, the need for uniformity becomes apparent.

III. PROPOSED GUIDELINES.

In proposing the following guidelines, it is understood that discretion is expected in applying them. There may be examples of alleged misconduct of a type which would ordinarily not be investigated, but because of its alleged flagrant nature at least some investigation is warranted. There may also be unusual circumstances that suggest investigation of allegations which might otherwise not be investigated.

Form paragraphs have been adopted by this office for most of the proposed guidelines. These paragraphs are set out below.

A. General Standard.

If a complaint makes allegations which, when assumed to be true, still do not state a violation of the Minnesota Rules of Professional Conduct, the complaint will ordinarily be summarily dismissed. One example would be an allegation that an attorney used profane language. However, there could be situations in which a lawyer was abusive, in violation of Rule 4.4, "Respect for Rights of Third Persons." Another example of a complaint which does not state a disciplinary rule violation would be the claim that the attorney for a complainant's opponent in litigation did not respond to the complainant's telephone calls. No rule requires such responses.

B. Fee Disputes.

The Minnesota State Bar Association has established fee arbitration committees in each area of the state. Routine fee disputes are referred to these committees on a regular basis. However, the Rules of Professional Conduct tighten the disciplinary standards for fee matters in several ways. Also,

Rule 1.5(a), Rules of Professional Conduct, provides, "A lawyer's fee shall be reasonable." This is a tighter standard than the former DR 2-106(A), which forbade, "An illegal or clearly excessive fee."

Even under the old disciplinary rule, attorneys were disciplined for charging unauthorized worker's compensation fees; probate fees based solely on a percentage; and accepting retainers without providing any significant services. Most fee complaints will be summarily dismissed, either because a court (e.g., probate, bankruptcy) routinely reviews such fees, or because another forum (fee arbitration or the civil courts) would be a better forum. However, clear violations will be subject to discipline.

Fee disputes usually take the form of a complaint that the attorney's services were not worth the amount charged, that the attorney "ran up the bill" unreasonably, or that the attorney promised the total bill would not be over "X" amount, etc. Along the same line are complaints primarily requesting refunds of claimed unearned portions of retainer fees. The issue is simply how much the client must pay. This office has no special expertise in determining this issue and fee arbitration exists solely for this purpose already.

#### FEE DISPUTES FORM DISMISSAL PARAGRAPH

This complaint involves a dispute concerning legal fees. In 1985, the Supreme Court Advisory Committee strongly recommended that the limited resources of this office not be used to review fee disputes. Most fee disputes do not involve alleged unethical conduct or conduct which violates the Rules of Professional Conduct. Most fee disputes are better resolved through court action or fee arbitration. The Minnesota State Bar Association has established fee arbitration committees around the state to help resolve disputes between attorneys and clients concerning legal fees. Fee arbitration procedures are often quicker, cheaper, and less formal than court proceedings. The cases are usually heard by a panel consisting of one attorney and two non-lawyers. Not every fee dispute can be submitted to the fee arbitration boards. To determine whether complainant's case can be submitted to fee arbitration, and for further information about fee arbitration procedures, complainant should contact:

☒ (Here the fee arbitration chair's address and phone number are set out.)

C. Malpractice Complaints.

The Advisory Committee recommended summary dismissal of complaints involving "only possible malpractice." At about the same time the Court adopted a new Rule of Professional Conduct, Rule 1.1, providing, "A lawyer shall provide competent representation to a client." Competence has become more clearly an ethics requirement, but claims of incompetence are more routinely to be decided outside the disciplinary process.

The Director's Office has exercised discretion in this situation by more regularly referring complaints alleging malpractice to civil forums. There are, however, limits to this policy. The purpose of a civil malpractice action is to provide an award of damages to one who has been harmed by a lawyer's negligence. The purpose of disciplinary proceedings is to protect the public, as well as the bench and bar. A malpractice claim which suggests gross incompetence, a habitual pattern, or intentional wrongdoing indicates the possible need for protection in the future, in the form of discipline. An allegation of an isolated and inadvertent mistake, such as an untimely filing of a pleading, would normally be summarily dismissed, and the complainant advised to seek private counsel.

Somewhat similar standards are applied to claims of bad faith litigation and pleadings, and failures to obey court orders. This office will normally refer the latter kind of complaint to the court whose order has allegedly been violated. Complainants who allege bad faith litigation and pleadings will normally receive summary dismissals with citations to the potentially applicable remedies under the Rules of Civil Procedure or statutory bad faith remedy. The summary dismissal will be without prejudice, so that if the civil court does find bad faith or the like, the complaint can be re-submitted for possible discipline.

MALPRACTICE DISMISSAL FORM PARAGRAPH

This complaint involves allegations of attorney negligence or malpractice. In 1985, the Supreme Court Advisory Committee on attorney discipline strongly recommended that complainants whose complaints primarily alleged malpractice be referred to their civil remedies. The recommendation was based on the limited resources of this office and the availability of the civil courts for determining malpractice claims. Not all acts of alleged malpractice involve conduct which violates the Rules of Professional Conduct. Malpractice claims typically involve

claims of poor quality representation rather than conduct which is allegedly unethical.

D. Non-payment of Professionally-Incurred Indebtedness.

Routine claims that attorneys have not paid debts are summarily dismissed, whether the complainant is a professional (such as a court reporter) or a private creditor. Opinion No. 7 of the Lawyers Professional Responsibility Board at one time made this conduct subject to discipline. That opinion has been repealed. Our office will investigate situations where there is an unsatisfied judgment against the attorney, since this may raise more serious questions concerning the attorney's honesty or interference with the administration of justice. Otherwise, we cannot act as a collection agency, and we have no legal authority to order payment by an attorney to another party. In most situations where litigation expenses are unpaid, it may well be the client's ultimate obligation to pay those expenses in any event, not the attorney's.

PROFESSIONALLY-INCURRED INDEBTEDNESS DISMISSAL FORM PARAGRAPH

The Director's office does not condone the nonpayment of professionally incurred indebtedness by attorneys. This office cannot, however, involve itself in every such matter lest it become a collection agency instead of a disciplinary office. Accordingly, this office has limited its involvement to those cases where there is an unsatisfied judgment or where there are other aggravating circumstances. The complaint is, therefore, dismissed with leave to refile it if complainant should obtain a judgment against respondent for the indebtedness mentioned in the complaint.

E. Advertising and Written Solicitation.

A number of Minnesota and United States Supreme Court decisions have held that lawyers may advertise in various ways. Rules of Professional Conduct have been amended in Minnesota to embody these developments and also to allow written solicitation of legal business. Generally speaking, if advertising is not misleading, or if solicitation is not personal, there is no basis for discipline.

ADVERTISING DISMISSAL FORM PARAGRAPH

The United States Supreme Court has held that lawyers are permitted to advertise. Minnesota Supreme Court rules allow

lawyers to use written communications including direct mail to advertise and to solicit. A letter offering legal services does not itself violate the Disciplinary Rules. In reviewing respondent's letter, there is nothing in it which on its face appears to be false, fraudulent, deceptive or misleading. Accordingly, a finding that discipline is not warranted must be made.

F. Personal Behavior Outside the Practice of Law.

Although this Office's jurisdiction is not limited to attorney behavior within the practice of law, discretion has been exercised so that there is no investigation of many allegations regarding the private lives of attorneys. If an attorney was allegedly involved in criminal or fraudulent activity outside the practice of law, this Office would normally investigate. There are, however, no rules requiring attorneys to be gentlemen, good citizens, kindly landlords, careful drivers or faithful spouses. Accordingly, a number of complaints are dismissed with the following paragraph.

PRIVATE CONDUCT DISMISSAL FORM PARAGRAPH

The subject of the complaint is the respondent attorney's allegedly improper actions outside the practice of law. This office has jurisdiction to consider allegations of attorney misconduct whether or not the actions were in the practice of law. Matter of Scallen, 269 N.W.2d 834, 841 (Minn. 1978). The Director of this office also has discretion, however, to "make such investigation as he deems appropriate as to the conduct of any lawyer or lawyers." Rule 8(a), Rules on Lawyers Professional Responsibility. In general, discretion has been exercised to use the limited resources of this office to investigate allegations of attorney misconduct in non-attorney matters only when the allegations, if true, would constitute serious misconduct reflecting adversely on the attorney's fitness to practice law. See Comment to Rule 8.4, Rules of Professional Conduct: ". . . a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice." In this matter, the Director's office has determined that no investigation will be conducted.

G. The Criminal Process: Prosecutorial Discretion and Criminal Defendants' Post-Conviction Relief.

Complaints concerning a prosecutor's discretion whether to charge a certain individual with a crime, or to conduct his or

her investigation or trial in a certain way, normally are summarily dismissed under the standard of prosecutorial discretion. We do not "second-guess" a prosecutor's discretionary decisions. A prosecutor has limited resources and must make decisions on how best to allocate those resources.

Many criminal defendants make allegations in the nature of ineffective assistance of counsel claims, which are properly raised either through the appellate process or in federal court on habeas corpus petitions. The basis for summarily dismissing such claims is similar to the rationale behind dismissing malpractice claims, in that it is the quality of the lawyer's representation that is being challenged, not a specific violation of the Rules of Professional Conduct. Another rationale for summarily dismissing such complaints is that they usually involve review of a voluminous trial transcript and exhibits, not readily available to this office, and involving the use of significant resources by this office.

#### IV. UNINTELLIGIBLE COMPLAINTS.

Sometimes a complaint is received which is either unintelligible or it is difficult to discern the exact nature of the allegations. Rather than summarily dismissing such complaints, this Office writes to ask the complainant for more information. See attached sample form letter. If no reply is received, no file is opened, or, if it seems appropriate, there is a summary dismissal.

#### V. CONCLUSION.

Summary dismissal guidelines approved by the Board would be published in the Director's Bench & Bar column. A news release to the general media might also be appropriate. Judges, attorneys and the interested public would then be aware of some of the more common standards applied to certain kinds of ethics complaints.

WJW/rlb



LAWYERS PROFESSIONAL RESPONSIBILITY BOARD  
EXECUTIVE COMMITTEE  
POLICY AND PROCEDURE NO. 2

DATE: January 7, 1987

RE: Panel Assignment Procedures

PANEL ASSIGNMENTS

Rule 4(f), RLPR, provides in part, "The Director shall assign matters to Panels in rotation; . . . ." To enhance the appearance of fairness and avoid any perception that the Director's Office could manipulate Panel assignments, effective February 1, 1987, the task of assigning Panel matters to Lawyers Board panels will be implemented by use of a blind rotation system, which will be transferred from the Director's Office to an Executive Committee member designated by the Board Chair.

The procedure to be followed is outlined as follows:

1. A rotation chart shall be prepared by the Executive Committee designee. The chart shall designate Panel rotations from one through six, picked arbitrarily for 102 cases. The designee will provide the Board Chairman with a copy of the rotation schedule. See Exhibit A.
2. In the Director's Office, the following should be immediately forwarded to the disciplinary clerk for Panel assignment: charges when signed; admonition appeals when received; expunction petitions; and reinstatement petitions when received.
3. The disciplinary clerk will promptly contact the designee's secretary. The disciplinary clerk will inform the secretary of the name of the respondent and type of proceeding. The secretary will give the disciplinary clerk the name of the Panel Chair and number of the next Panel on the rotation chart. The clerk will furnish copies of her rotation chart to the designee regularly.

If the disciplinary clerk is unable to reach the secretary within 24 hours, she will attempt to contact the Executive Committee designee. If the clerk is unable to contact either the secretary or the designee, she shall contact the Board Chair or Vice-Chair who shall choose a Panel randomly.

SUBSTITUTIONS

Rule 4(e), RLPR, provides in part, "The Board's Chairman or the Vice-Chairman may designate substitute Panel members . . . ." It

is impractical for such substitutions to be made personally by the Chair or Vice-Chair, or by the Executive Committee designee. Therefore, this function is delegated to the disciplinary clerk in the Director's Office. The procedures to be followed by the clerk are as follows.

If a Board member has a conflict in a matter or cannot serve on a Panel for some other reason, a substitute Panel member must be obtained. The disciplinary clerk shall find a substitute Panel member using a rotation schedule. This rotation schedule is separate from the Panel rotation schedule. The disciplinary clerk must, however, take into consideration the following:

1. Panel Chairpersons are not called to substitute unless there is an emergency or no non-chairpersons are available.
2. Panels must include at least one lawyer and one public member.

The disciplinary clerk should note on her rotation chart the reason why each Board member could not serve as a substitute.

BOARD MEMBER EXPERTISE AND WORKLOADS; DISTRICT COMMITTEE  
AND FORMER BOARD MEMBER PANEL SUBSTITUTIONS

Rule 4(e) and (f), RLPR, provide in part,

(e) . . . The Board's Chairman or the Vice-Chairman may designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided that any Panel with other than current Board members must include at least one current lawyer Board member. . . .

(f) . . . the Executive Committee may redistribute case assignments to balance workloads among the Panels or to utilize Board member expertise.

A. Expertise.

A Panel Chair, a respondent or the Director may request that there be a substitution on a particular Panel to utilize the expertise of a Board member or a District Committee member. The request should be addressed to the Board Chair, in writing, with copies to appropriate parties, and to the Board Vice-Chair. The request shall be made at or before the time of the pre-hearing meeting and shall state the particular expertise needed. The

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Board Chair (or by delegation from the Chair, the Vice-Chair) shall decide whether expertise is needed, and if so, substitute an expert Board member or District Committee member. The Director's Office shall maintain a directory of Board members, showing expertise, and a list of District Committee chairpersons.

The substitution must harmonize with the requirements that each Panel include a current Board member and a public member. The substitution should not be for the Panel Chair. The Board Chair or Vice-Chair shall choose the person substituted for by the above criteria and, secondarily, by seniority.

B. Workload Balancing.

Either on the Executive Committee's own initiative or at the request of a Panel Chair, the Executive Committee designee may redistribute case assignments among panels or among Board members in such a way as in the designee's discretion balances workloads in a reasonable fashion.

C. Substitution of District Committee Members.

Normally, reasonable efforts should be made to utilize current Board members on panels. However, when an expert is desirable, or Board members generally have excessive workloads in view of their volunteer status or when some other particular exigency requires, the Executive Committee designee may on the designee's initiative or after receiving a written request from any interested party, substitute current or former District Committee members.

CHOOSING "THE PANEL CHAIR" UNDER RULE 10

Rule 10(d), RLPR, as amended effective July 1, 1986, provides,

Additional charges. If a petition under Rule 12 is pending before this Court, the Director must present the matter to the Panel chair for approval before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

In order to eliminate any difficulties in identifying "the Panel Chair" for purposes of this rule, the following procedures are to be implemented. If charges were made against the respondent and assigned to a Panel, the Chair of that Panel shall approve (or decline to approve) supplemental petitions based on additional charges. If the matter against the respondent was never assigned to a Panel (e.g., the respondent waived the Panel

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before charges were filed), the Panel Chair shall be chosen in rotation by the following method. The disciplinary clerk shall call the designee's secretary and obtain the name of the Chair of the Panel to which the next matter would ordinarily be assigned. However, the designation of this Chair to consider additional charges in a petition shall not affect the Panel rotation. If the Panel Chair chosen by this method is unavailable for any reason, the disciplinary clerk shall contact the designee's secretary and be given the name of the Chair of the next Panel in rotation.

Note: There is presently pending before the Minnesota Supreme Court a Lawyers Board petition for amendments to the RLPR. One such proposed amendment would provide for an amendment to Rule 10, RLPR, by which certain matters would, if "approved by the Panel Chair," by-pass the Panel. If the Court approves this amendment, the Panel Chair shall be chosen in rotation by the designee's secretary, upon request of the disciplinary clerk. Again, if the chosen Panel Chair is unavailable for any reason, the disciplinary clerk shall contact the designee's secretary for identification of the next Panel Chair chosen in rotation. The rotation matters assigned to Panels shall not be affected by designations of Panel Chairs for Rule 10 purposes.

WJW/rlb  
Enclosure

Approved by:


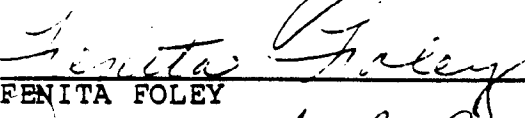

Dated: \_\_\_\_\_ JOHN D. LEVINE  
Dated: 1-12-87  CHARLES R. KENNEDY  
Dated: 1-12-87  FENITA FOLEY  
Dated: 1-12-87  JOAN M. HACKEL  
Dated: \_\_\_\_\_ PAUL KINNEY

EXHIBIT A

PANEL ROTATION CHART

<u>Panel File No.</u>	<u>Panel No.</u>	<u>Panel Chair</u>	<u>Respondent</u>	<u>Type of Proceeding (Charges; Admonition Appeal; or Reinstatement Petition)</u>	<u>Date Assigned</u>
87-1	3	Taylor			
87-2	2	Nys			
87-3	4	Schwebel			
87-4	6	Kerr			
87-5	1	Flynn			
87-6	5	Lerner			
87-7					
87-8					
87-9					
87-10					
87-11					
87-12					

LITIGATION  
POLICY AND PROCEDURE NO. 18

2070  
5/1/86

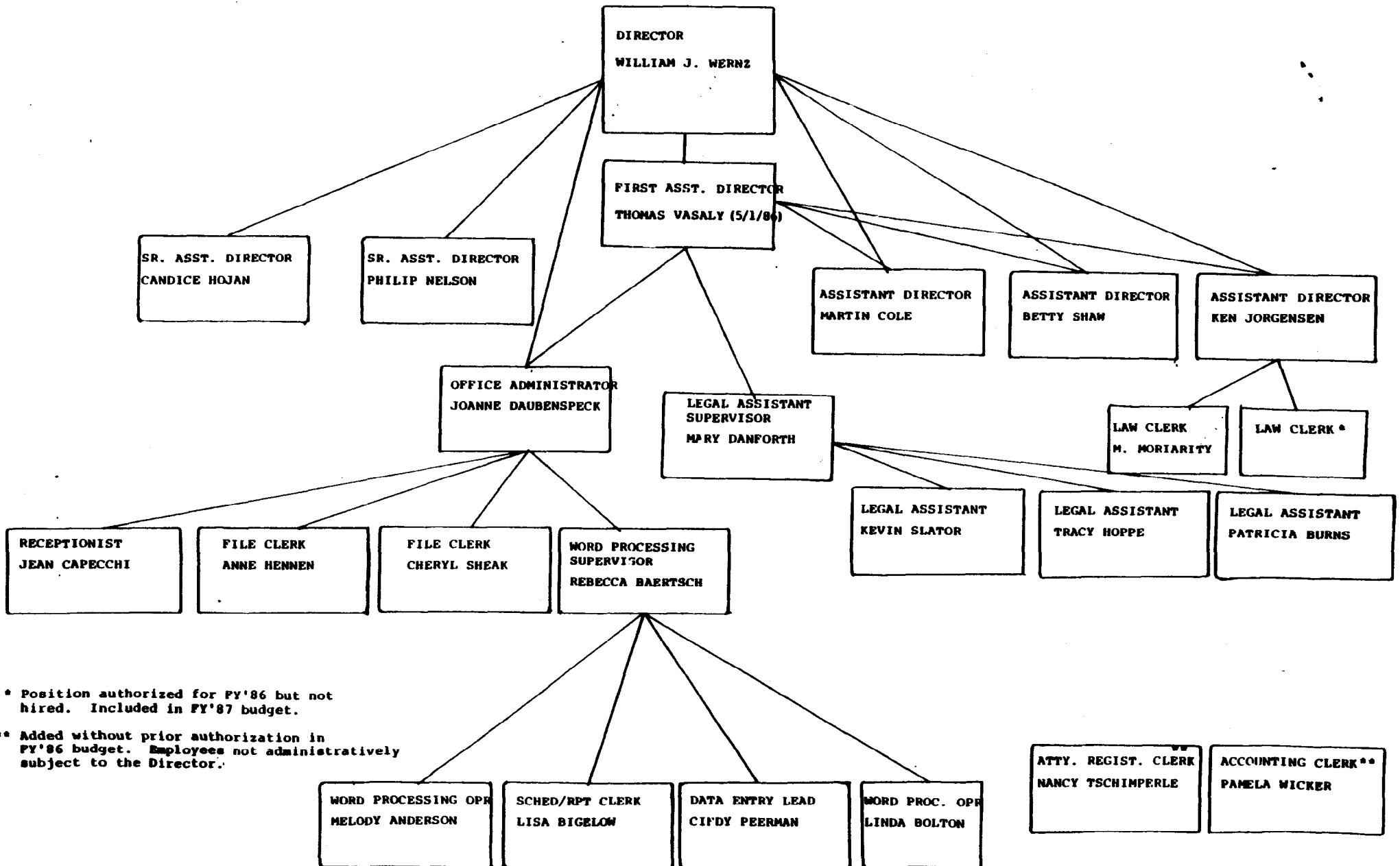
TO: All Staff  
FROM: William J. Wernz  
Director  
DATE: April 22, 1986  
RE: Supplemental Petitions for Disciplinary Action

The Supreme Court Advisory Committee has recommended that each charge against an attorney be reviewed by a LPRB panel or chair before the filing of a public petition. See Rec. 43, as modified in Supp. Rep., p. 18 and LPRB Reply of 1/31/86, p. 20. The Lawyers Board has agreed to this recommendation and will institute procedures to implement this recommendation forthwith. The Committee's proposed revision of Rule 10(b) requiring such a procedure is presently under consideration by the Supreme Court.

Supplemental petitions for disciplinary action shall be approved by either (a) the Panel Chair of the panel which considered the initial charges or (b) the Board Chair or Vice-Chair where the initial petition was not authorized by any particular panel, but rather by stipulation or other rule. The procedure to be followed for requesting this approval will be for the attorney in charge of the case to submit the proposed supplemental petition for disciplinary action to the appropriate Panel Chair, Board Chair or Vice-Chair using form SC26.

No supplemental petition shall be filed without such approval.

WJW/BMS/rlb



\* Position authorized for FY'86 but not hired. Included in FY'87 budget.

\*\* Added without prior authorization in FY'86 budget. Employees not administratively subject to the Director.

# Office of Lawyers Professional Responsibility

## Complaint and Investigation Procedures



### THE MINNESOTA LAWYER PROFESSIONAL RESPONSIBILITY SYSTEM

This brochure explains the procedures that are followed in filing and handling ethics complaints against Minnesota lawyers. It is designed to help understand the Minnesota lawyer disciplinary system and the roles of the Minnesota Supreme Court, Lawyers Professional Responsibility Board, Director of the Office of Lawyers Professional Responsibility and district ethics committees in the system. It is also intended to inform the public and lawyers of the procedures, rules, and regulations which govern the Minnesota disciplinary agency in the investigation of complaints against Minnesota lawyers.

#### I. Who Can Be Investigated?

The Director's staff and the district ethics committees investigate complaints against individual lawyers licensed to practice law in the State of Minnesota. Complaints against entire law firms are not normally investigated as such. Complaints against judges are handled by a separate agency, the Board on Judicial Standards.

#### II. What Will or Will Not be Investigated.

Complaints that lawyers have acted unprofessionally are investigated. "Unprofessional" is specified by the Minnesota Rules of Professional Conduct. Examples of unprofessional conduct claims which are investigated include:

- (1) neglect of a legal matter;
- (2) failure to communicate adequately;
- (3) conflict of interest;
- (4) misrepresentations;
- (5) mishandling funds.

There are some kinds of complaints which will not be investigated. For example, when (1) the subject of the complaint is not a Minnesota lawyer; or (2) the allegations of the complaint do not amount to unprofessional conduct as defined by the Rules of Professional Conduct -- for example, a claim of bad manners; or (3) there is another forum or court which can best consider the claim -- for example, an appeals court reviewing a criminal conviction or a civil court for a malpractice claim. Certain kinds of fee disputes are usually not investigated.

#### III. Complaints Concerning Legal Fees.

The Director's Office receives many com-

plaints involving legal fees. Except in extraordinary cases, when a lawyer has charged an obviously illegal or grossly excessive fee, the Director's Office does not investigate fee disputes. This office does not try to help people have legal fees reduced. The Minnesota State Bar Association has established fee arbitration committees around the state to help resolve disputes between lawyers and clients concerning legal fees. Fee arbitration procedures are often quicker, cheaper, and less formal than court proceedings. The cases are usually heard by a panel consisting of one lawyer and two non lawyers. Not every fee dispute can be submitted to the fee arbitration boards. To determine whether a case can be submitted to fee arbitration, and for further information contact the Minnesota State Bar Association, 430 Marquette Avenue, Suite 403, Minneapolis, MN 55401 (612) 333 1183. Fee disputes are also handled in probate court for estates and in bankruptcy court for bankruptcy matters.

#### IV. Organization: District Ethics Committees, Director, Lawyers Board and the Supreme Court.

**District Ethics Committees.** District ethics committees investigate most ethics complaints initially, and submit a report and recommendations to the Director for a decision. District ethics committee members are volunteer lawyers and public members throughout the state.

**Director.** The Director of the Office of Lawyers Professional Responsibility is responsible for investigating and processing all complaints of unprofessional conduct against Minnesota lawyers. The Director and his staff work full-time to investigate and process complaints. The salaries and expenses of the Director's office are paid entirely by Minnesota lawyers through their annual attorney registration fee.

**Lawyers Board.** The Minnesota Lawyers Professional Responsibility Board (Board) consists of a chairman and 22 members. The chairman and 13 members are lawyers. The other nine members, called public members, are not lawyers. Members of the Board are appointed by the Minnesota Supreme Court for terms of up to three years. Board members are volunteers who come from communities around the State of

Minnesota and work in the professional responsibility system as a service to the public. An Executive Committee of the Board provides general supervision for the system. Other Board members divide into panels and conduct preliminary hearings on charges against lawyers. Board members also review appeals by complainants. The Board's goal is to maintain the honor and high standards of the legal profession.

**Supreme Court.** The Minnesota Supreme Court is responsible for the rules creating and governing the lawyer professional responsibility system. The Court makes the final decision in all public discipline cases. The Court also appoints the Lawyers Professional Responsibility Board members and the Director of the Office of Lawyers Professional Responsibility.

#### V. Rules

The Rules on Lawyers Professional Responsibility (Rules) set out the procedures for investigating complaints of alleged lawyer unprofessional conduct or disability. In addition to these procedural rules, there are the Rules of Professional Conduct which establish the standards of conduct for Minnesota attorneys. The Rules of Professional Conduct do not attempt to define all the ethical standards which should guide lawyers, but only those fundamental norms which must be observed. Both sets of Rules can be found in law libraries and public libraries in the Minnesota Rules of Court and in Minnesota Statutes, Court Rules.

#### VI. Complaint Procedures.

To file a complaint a person can either call the Director's Office, and a complaint form will be sent, or write a letter. The letter must include the writer's name and address, the lawyer's name and address, and a statement of the facts setting out what is alleged to be unethical conduct. Copies of any important documents or letters should be sent with the letter of complaint to:

Office of Lawyers Professional  
Responsibility  
520 Lafayette Road, First Floor  
St. Paul, MN 55155

Within about a week after a complaint is received, the Director's Office will send a notice to the complainant and the respondent attorney.



acknowledging receipt of the complaint and sending the attorney a copy. The notice will also state whether there will be an investigation. If there is an investigation, the investigator will be named in the notice, and the attorney's reply will be requested.

Oftentimes, a person may not know exactly what information to include in the complaint. For this reason, after reviewing the complaint, one of the Director's assistants or a district ethics committee member may send a letter asking for additional information. Cooperation in providing requested information and/or materials is necessary.

If a complaint requires investigation, it will be investigated by a volunteer investigator for one of the district ethics committees around the state or by the Director's Office. Most complaints are investigated by the local district committees. If a committee investigates, both the complainant and the respondent attorney should communicate and cooperate with the committee. Rule 25 requires lawyers to cooperate with the investigation. Under the Rules, the committee will make a report and recommendation to the Director concerning the complaint. The Director will review the matter and conduct any necessary further investigation. Investigations, whether by the district committees or the Director's Office, include reviewing papers or court records, speaking to witnesses, and asking further, if necessary, to the complainant and/or the lawyer. District Committee investigations normally take about 45 days, but sometimes several months are needed.

#### Final Decision.

When the investigation or consideration is completed, the complaint will be resolved in one of four ways:

(1) The complaint may be dismissed. This may mean there was not clear and convincing evidence of misconduct, or, that what the lawyer did was not unprofessional; or, that the complaint was not the kind the Director's Office investigates - such as an ordinary fee dispute.

(2) The Director may issue an "admonition." This is a permanent record stating that the lawyer's conduct was improper and warn-

ing the lawyer not to repeat the conduct. An admonition is used where the lawyer's conduct was unprofessional, but isolated and relatively non-serious. The Director will send copies of the admonition to the parties but admonitions are otherwise private.

(3) The Director and the lawyer may enter into a private "stipulated probation." A probation means that the Director and lawyer agree that for a specified period of time the lawyer must comply with certain conditions, sometimes including supervision. Private stipulated probation is appropriate where the lawyer's misconduct is more than isolated and non-serious but is not serious enough to warrant public discipline. Examples would include a lawyer who has neglected several files or who has a personal health problem that caused his misconduct.

(4) In the most serious cases of unprofessional conduct, the Director may present the complaint to a Panel of the Lawyers Professional Responsibility Board. Only about one complaint out of twenty has been found serious enough to present to a Board Panel. The Panel will determine whether public discipline is probably appropriate. If not, the Panel will dismiss the complaint. If the Panel does find probable cause that public discipline is warranted, it will instruct the Director to file a petition for disciplinary action against the lawyer in the Minnesota Supreme Court.

If a public petition is directed, the case will usually be heard by a referee appointed by the Supreme Court. The Supreme Court ultimately decides what discipline, if any, is appropriate. The Court may:

- (1) Disbar the lawyer;
- (2) Suspend the lawyer indefinitely or for a stated period of time;
- (3) Order the lawyer to pay a fine, costs, or both;
- (4) Place the lawyer on a probationary status for a stated period, or until further order of the court, with such conditions as the court may specify and to be supervised by the Director;
- (5) Reprimand the lawyer;

(6) Order the lawyer to take an ethics examination;

(7) Make such other dispositions as the court deems appropriate; or

(8) Dismiss the petition for disciplinary action.

All parties are notified in writing of the final decision.

#### VIII. Appeal Rights.

Any decision except the Supreme Court's can be appealed. The complainant may appeal a dismissal of complaint, admonition or private probation within fourteen days of the decision by notifying the Director in writing. The appeal will be considered by a Lawyers Board member, who can (1) approve the Director's decision, or (2) direct the matter to a Panel for a probable cause review, or (3) direct further investigation. On any matter submitted to a Panel, in which the complainant is dissatisfied with the result, a petition for review may be filed with the Supreme Court within two weeks.

A lawyer may demand a Panel hearing if an admonition is issued. If the Panel affirms the admonition, the lawyer may appeal to the Supreme Court.

#### IX. What The Director's Office Does.

It is the Director's function and duty to enforce the Minnesota Rules of Professional Conduct which are the standard of conduct for attorneys. If the Director determines that a lawyer violated the Rules, appropriate action will be taken as described above. That action is not to benefit any individual, but to instruct or discipline the lawyer and to protect the public.

#### X. What the Director's Office Cannot Do.

A. The Director's Office cannot represent people in any legal matter or give legal advice. Complainants must retain their own lawyer if they need either legal advice or representation.

B. The Director's Office cannot take money or property from a lawyer to return to a client or creditor.

C. The Director's Office cannot sue a lawyer for careless work, nor can the Director's Office do work a lawyer failed to do.

D. The Director's Office cannot change the

fee a lawyer charged or require a refund, even if the fee is clearly excessive.

The Director's Office is limited to investigating complaints of unethical conduct and prosecuting disciplinary actions against lawyers.

#### XI. Client Security Fund.

The Minnesota Supreme Court has established a Client Security Fund to pay genuine claims against attorneys who have intentionally defrauded clients. Further information can be obtained from the Fund administrator, whose name and address can be obtained from the Director's Office.

#### XII. Answers to Frequently Asked Questions.

Q. Is there a charge for investigation of a complaint?

A. There is never a charge for filing a complaint or for investigation. The Director's office is funded by attorney registration fees.

Q. Can I get into trouble for complaining against a lawyer?

A. Rule 21 states that a statement or complaint against a lawyer in connection with the Director's investigation, "is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge or statement."

Q. Are complaints against lawyers public?

A. The general rule is that complaints against lawyers are not public. The investigation files are not available to anyone except the lawyer. Parts of the file may be disclosed only when necessary for investigation. One exception to this rule is the Supreme Court filings and hearings, including trials before Supreme Court referees, are open to the public.

#### XIII. Conclusion.

The Minnesota lawyer discipline system is a service to the public and the legal profession, to review complaints that lawyers have acted unethically. It is meant to be fair to complainants and lawyers, so that claims are promptly and reasonably considered.

Further questions about lawyers professional responsibility can be asked by calling (612) 296-3952.