

**ANNUAL REPORT OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

**ANNUAL REPORT OF THE
OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY**

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TABLE OF CONTENTS

I.	INTRODUCTION AND HIGHLIGHTS	1
II.	MINNESOTA SUPREME COURT DISCIPLINARY CASES	3
III.	DIRECTOR'S OFFICE	5
	A. Budget	5
	B. Administration	6
	C. Personnel	6
	D. Trusteeships	7
	E. Complainant Appeals	7
	F. Probation	8
	G. Advisory Opinions	11
	H. Judgments and Collections	13
	I. Professional Firms	13
	J. Overdraft Notification	14
	K. Disclosure	16
IV.	DISTRICT ETHICS COMMITTEES	17
V.	FY'06 GOALS AND OBJECTIVES	19

I. INTRODUCTION AND HIGHLIGHTS

The Lawyers Professional Responsibility Board and the Director of the Office of Lawyers Professional Responsibility are required to report annually on the operation of the professional responsibility system in Minnesota. *See* Rules on Lawyers Professional Responsibility 4(c) and 5(b). The reports are hereby jointly made for the period June 2004 through June 2005.

Changes to the Board

Four new members began their respective terms in February 2005. New attorney members are Joe Ferguson of Duluth and Jan Zender of St. James. New public members are Debbie Toberman of Minneapolis and Ann Maas of Brooklyn Park.

The Lawyers Board Executive Committee was also reconstituted. The current Executive Committee members are: Chair, Kent A. Gernander; Vice-Chair, attorney Judie Rush of Roseville; attorney Vince Thomas of St. Paul; and public members Patty Murto of Duluth and Mary Medved of Shoreview.

The chairpersons of the six panels that preside over probable cause hearings are Dianne Ward, Wood Foster, Pat McGuigan, Cindy Telstad, Ken White and Neil Meyer. The Board's Rules Committee is chaired by David Sasseville and the Opinion Committee by Pat McGuigan.

A short biographical sketch of current Board members is attached at A. 1.

Complaint Statistics

Continuing a trend that started several years ago, the number of complaints received against lawyers fell from 1,168 in 2003 to 1,147 in calendar year 2004. At the same time, the number of advisory opinions requested continued to increase from 1,889 in 2003 to 1,974 in 2004. The statistical correlation over the past several years between complaints filed and advisory opinions issued continues to support the conclusion that advisory opinions reduce or prevent complaints against

lawyers. Beyond advisory opinions, the office has continued its mission to educate the bar by speaking at numerous CLE presentations. See list at A. 3. Both of these efforts are aimed at increasing awareness of professional standards and improving the delivery of legal services.

Petition to Amend the Minnesota Rules of Professional Conduct

A hearing was held on May 18, 2004, before the Minnesota Supreme Court concerning the Minnesota State Bar Association's (MSBA) petition to amend the Minnesota Rules of Professional Conduct (MRPC). After the hearing, The MSBA submitted a supplemental petition to the Court in September 2004 recommending changes to Rule 1.10(b) dealing with the imputation of conflicts of interest when lawyers change law firms. The Lawyers Board submitted its own recommendation for changes to Rule 1.10(b) after attempts to reach a compromise with the MSBA were unsuccessful. The petitions remain pending before the Court and a decision is expected soon.

Conditional Admission Process for New Admittees

In August 2004, the Court approved a new procedure for conditionally admitting new lawyers whose pre-admission conduct raises character and fitness issues that may present a risk to the public. The recommended procedure provides for the Board of Law Examiners to monitor new admittees during their initial years of practice. Violations of conditional admission requirements and/or revocation of the conditional admission status will be handled by the Office of Lawyers Professional Responsibility and Lawyers Board through the existing lawyer discipline process.

Pending Litigation Over the Code of Judicial Conduct

In October 2004, the Eighth Circuit heard *en banc* arguments in *Republican Party of Minnesota, et al. v. White et al.* after it had vacated a May 18, 2004, decision by a three judge panel. The case involves constitutional challenges to enforcement

of Canon 5 of the Code of Judicial Conduct.¹ There has been no decision from the Eighth Circuit to date.

II. MINNESOTA SUPREME COURT DISCIPLINARY CASES²

Attached at A. 4 is a list of the public lawyer discipline decisions decided by the Supreme Court during calendar year 2004. Among the public disciplinary cases decided in the last half of 2004 and during the first six months of 2005 are:

James J. Boyd of St. Paul was disbarred for commingling personal funds in his client trust account and a client estate account in order to shelter the funds from creditors, including tax authorities. Boyd had a significant discipline history that included three private admonitions, a 1988 suspension for preparing and filing a false deed, and a 2003 suspension for failing to timely file income tax returns.

Samuel M. Vaught of St. Paul was disbarred for misappropriating client funds, making false statements and failing to cooperate in the disciplinary investigation. At the time of his disbarment, Vaught had been suspended since 2002 for misappropriation of client funds. Vaught had also been reprimanded in 1998 for failing to timely file income tax returns.

Alfred Perez, Jr. of California was disbarred after it was discovered he had been convicted in California Federal District Court in 1993 of mail fraud and money laundering in his California law practice. Perez did not report his conviction to the Minnesota bar and after his conviction the California lawyer discipline authorities allowed Perez to resign rather than be disbarred. Perez had been using his

¹ Since February of 1998 the Director and the Lawyers Board Chair, along with the Chair of the Board on Judicial Standards, have been defendants in the federal lawsuit challenging enforcement of the Judicial Code. See *Republican Party of Minnesota, et al. v. White et al.*, 536 U.S. 765 (2002). Rule 8.2(b), MRPC, requires lawyer candidates for judicial office to comply with provisions of the Judicial Code applicable to judicial campaign conduct. The Board and the Director's Office are vested with jurisdiction over judicial campaign violations committed by lawyer candidates.

² For caseload and statistics, see A. 5 – A. 7.

Minnesota license between 1995 and 2004 to practice law before federal immigration tribunals in California and Arizona.

Winston W. Borden of St. Paul was indefinitely suspended after he was criminally convicted of willful failure to file federal income tax returns for the tax years 1997 through 2002.

Judge Harvey C. Ginsburg of St. Louis Park was suspended for one year as a lawyer and ordered to be placed on disability inactive status after the one year suspension period. Ginsburg's discipline resulted from a judicial misconduct proceeding in which he was removed from office and retired based on disability. Ginsburg's misconduct included criminal convictions for fifth degree assault and criminal damage to property and five instances of improper conduct occurring during legal proceedings over which he presided as a judge.

Steven F. Soronow of Minnetonka was suspended for an additional period of 30 months. Soronow had been indefinitely suspended from practice in 2002 for neglect, failure to return files and unearned fees, failure to cooperate and committing a misdemeanor involving dishonesty. The additional 30 month suspension resulted from Soronow's attempt to coerce a former client who had filed an ethics complaint against him to cease cooperating with the disciplinary investigation. Soronow's misconduct also included posting misleading statements on the law firm website used by Soronow prior to his suspension, and by his wife who is also a lawyer, after Soronow's suspension.

James M. Burseth of Minneapolis was indefinitely suspended with no right to apply for reinstatement until he has provided one year of negative non-dilute random urinalysis test results for alcohol and drugs. Burseth's suspension occurred when he violated a previous disciplinary order requiring him to remain abstinent and to submit to random urinalysis. Burseth's misconduct included appearing in court with alcohol on his breath, testing positive for alcohol in a random urinalysis,

having to be replaced as trial counsel in a murder trial because he failed to appear for jury selection and making misrepresentations to his employer and the Director's Office about his sobriety.

Jane E. Brooks of Roseville was indefinitely suspended for a minimum of two years for neglecting client matters, misusing her trust account and failing to cooperate with the discipline process. Brooks had previously been publicly reprimanded in 1993 for trust account violations.

Chester D. Swenson of Albert Lea was suspended for 60 days with reinstatement limited to permanent retired status for making misleading statements to his client and child support authorities. Swenson had previously been suspended for 30 days in 1995.

Jeff D. Bagniefski of Rochester was suspended for 90 days with the requirement that he petition for reinstatement to the practice of law after the expiration of the suspension. Bagniefski failed to file a brief, filed a frivolous motion resulting in a \$1,500 sanction, had his client sign a blank signature page that was later improperly notarized and attached to an inaccurate affidavit that was filed with the court without consulting the client and entering into a contingent fee agreement in a marriage dissolution case.

II. DIRECTOR'S OFFICE

A. Budget.

1. FY'05 and FY'06 Budgets.

Expenditures for the fiscal year ending June 30, 2005, are projected to be \$2,302,049. The FY'06 budget includes anticipated expenditures of \$2,560,251. The FY'06 payroll budget includes a 1.5% across the board increase and a 3% merit increase for those who have not reached the top of their salary range. The FY'06 budget includes no additional staffing.

Barring any unforeseen circumstances, there looks to be no need for a fee increase in the next three fiscal years.

The Office receives the following portion of the attorney registration fee:

\$ 122.00 - Admitted more than 3 years (\$218.00)/low income (\$193.00);

\$ 24.00 - Non-resident (\$107.00)/low income (\$82.00);

\$ 26.00 - Admitted 3 years and less (\$97.00)/low income (\$84.50).

B. Administration.

1. Website.

The Office of Lawyers Professional Responsibility continues to improve on its website. In January 2005, the Board approved a proposal to allow the public to access the public discipline records of lawyers via the website. At present, information about public discipline is available only by calling, visiting or writing the Office. The Macro Group was hired in May 2005 to enhance the lawyer search capability and redesign the existing website by adding public discipline search capabilities.

The website also contains a search engine enabling users to search *Bench & Bar* and *Minnesota Lawyer* articles using keywords or phrases. The website is maintained and updated regularly by the Director's Office. The address is www.courts.state.mn.us/lprb. Attached at A. 8 is the current title page of the website's homepage.

C. Personnel.

In June 2004, Cassie Hanson was promoted to an Attorney II classification. In July 2004, Julie Bennett was hired to fill the vacant Attorney I position. Julie came to the office from Central Minnesota Legal Services.

In July 2004, law clerk Angela Samec resigned to begin her legal career. Siama Chaudhary was hired in September 2004. Siama will be taking the bar exam this summer.

The Director's Office currently employs 8 attorneys plus the Director, 4.5 paralegals, 1 administrator, 7.5 support staff and 1 part-time law clerk (*see* organizational chart at A. 9).

D. Trusteeships.

Pursuant to Rule 27, Rules on Lawyers Professional Responsibility (RLPR), the Court periodically appoints the Office as trustee to inventory files and, when necessary, trust accounts of disabled, disappeared, deceased, suspended, disbarred or resigned lawyers.

In December 2004, the Director's Office was appointed trustee of the files of attorney Jane E. Brooks to contact clients and return files.

The Director's Office retains eight files from the 2002 Norman P. Friederichs, Jr. trusteeship, which are scheduled for expunction in October 2005.

E. Complainant Appeals.

Under Rule 8(e), RLPR, a dissatisfied complainant has the right to appeal most dismissals and all private discipline dispositions. Complainant appeals are reviewed by a Board member selected in rotation. During 2004, the Director's Office received 222 complainant appeals, compared to 182 such appeals in 2003. There were 218 complainant appeal determinations made by Board members in 2004 as follows:

		<u>%</u>
Approve Director's disposition	206	95
Direct further investigation	12	5

A total of 31.5 clerical hours were spent in 2004 processing and routing appeal files. Additional attorney time was expended primarily in reviewing appeal letters and responding to complainants who continued to correspond even after their appeals were denied.

F. Probation.

In 2004 the total number of new probations continued a ten-year decline from a high of 114 in 1994 to only 80 new probations opened in 2004. Of the new probations, only two involved chemical dependency (CD) or mental health (MH) conditions. This represents a significant change from the last two years when 9 of 81 probations in 2002 and 10 of 83 probations in 2003 involved CD or MH issues.

YEAR	TOTAL PROBATIONS OPEN DURING YEAR	NUMBER OF NEW PROBATIONS OPENED REQUIRING:			TOTAL ³
		AA ATTENDANCE	RANDOM UA	MENTAL HEALTH OR THERAPY	
1992	87	1	0	0	1
1993	100	1	0	0	1
1994	114	2	1	7	10
1995	102	1	1	5	7
1996	96	3	0	2	5
1997	87	0	2	3	5
1998	90	0	0	1	1
1999	101	0	0	5	5
2000	97	3	2	4	9
2001	95	1	2	5	8
2002	81	2	2	6	9
2003	83	3	2	8	10
2004	80	1	1	1	2

In 2004 only one new probation contained a therapy requirement.

Probations having a chemical dependency component have remained relatively constant over the past several years. Two probations requiring Alcohol Anonymous (AA) attendance and random urinalysis (UA) were opened in 2004.

³ Since a single probation may involve both chemical dependency and psychological therapy, totals may not balance.

Probation Supervisors. In 2001 the Probation Department started compiling feedback from volunteer probation supervisors using a survey form. During 2004 eleven probation supervisors (five solo practitioners, three from small firms with two to four attorneys, one from a 12-member firm and two from firms with over 150 attorneys) responded to the Director's survey. These supervisors had an average of 30 years of experience. Most volunteered between two and three hours per month reviewing client inventories and client files, speaking with probationers and quarterly reporting to the Director. The primary focus of most probations was client communications, file handling procedures and law office management skills.

PROBATION DEPARTMENT

TIME BY PROBATION DEPT. STAFF (hrs./wk.)	
Attorney 1	8
Attorney 2	8
Paralegal 1	8
Paralegal 2	<u>8</u>
TOTAL PROBATION STAFF TIME PER WEEK	32

PROBATION STATISTICS

TOTAL PROBATION FILES OPEN DURING 2004		
Public Supervised Probation Files (27.5%)	22	
Public Unsupervised Probation Files (11.2%)	<u>9</u>	
Total Public Probation Files (38.7%)		31
Private Supervised Probation Files (22.5%)	18	
Private Unsupervised Probation Files (38.8%)	<u>31</u>	
Total Private Probation Files (61.3%)		<u>49</u>
Total Probation Files Open During 2004		80

TOTAL PROBATION FILES		
Total probation files as of 1/1/04		59
Probation files opened during 2004		20
Private probations extended during 2004		1
Probation files closed during 2004		<u>(24)</u>
Total Open Probation files as of 12/31/04		56

PROBATIONS OPENED IN 2004

Public Probation Files

Court-ordered Probation Files		
Supervised	2	
Unsupervised	<u>2</u>	4

Reinstatements

Supervised	2	
Unsupervised	<u>1</u>	3
Total Public Probation Files		<u>7</u>

Private Probation Files

Supervised	8	
Unsupervised	<u>6</u>	14
Total Private Probation Files		<u>14</u>

Total New Probation Files Opened in 2004 21

PROBATIONS OPENED IN 2004 INVOLVING:

Client Related Violations		3
Non-Client Related Violations		9
Both Client & Non-Client Violations		<u>9</u>
Total Probation Files Opened		21

PROBATION FILES CLOSED IN 2004

Probations Successfully Completed		22
Probation Revocations		1
Probations Extensions		<u>1</u>
Total Probation Files Closed in 2004		24

LEADING AREAS OF MISCONDUCT

As reflected in 80 open files during 2004⁴

Neglect & Non-Communication (Violation of Rules 1.3 and 1.4, MRPC)	55
Trust Account Books and Records (Violation of Rule 1.15, MRPC, and LPRB Opinion 9)	34
Non-Cooperation (Violation of Rule 8.1, MRPC)	21
Dishonesty	18
Fees & Opinion 15 Violations	13
Taxes	8

DISABILITY RELATED PROBATIONS

Chemical Dependency – existing files on 1/1/04	6	
New files opened during 2004	<u>1</u>	
Total Chemical Dependency Related Files		7
Psychological Disorders – existing files on 1/1/04	17	
New files opened during 2004	<u>1</u>	
Total Psychological Disorder Related Files		<u>18</u>
Total Disability Related Probations		25

G. Advisory Opinions.

The number of advisory opinions requested by Minnesota lawyers and judges continued to rise in 2004. In 2004 the Director's Office received 1,974 requests for advisory opinions.

Advisory opinions are available to all licensed Minnesota lawyers and judges and can be obtained by calling the Director's Office at (651) 296-3952. Advisory opinions are limited to prospective conduct. Questions or inquiries relating to past conduct, third-party conduct (i.e. conduct of another lawyer), questions of substantive law or advertising and solicitation are not answered.

⁴ A file may involve more than one area of misconduct.

Advisory opinions are the personal opinion of the staff lawyer issuing the opinion and are not binding upon the Lawyers Board or the Supreme Court. Nevertheless, if the facts provided by the lawyer requesting the opinion are accurate and complete, compliance with the opinion would likely constitute evidence of a good faith attempt to comply with the professional regulations.

Set forth below is a statistical summary of advisory opinions for the period 1990 through 2004:

YEAR	OPINIONS GIVEN BY TELEPHONE	OPINIONS GIVEN IN WRITING	TOTAL OPINIONS GIVEN	OPINIONS DECLINED	TOTAL
1990	1130 (83%)	26 (2%)	1156 (85%)	199 (15%)	1355
1991	1083 (84%)	23 (2%)	1106 (86%)	186 (14%)	1292
1992	1201 (86%)	15 (1%)	1216 (87%)	182 (13%)	1398
1993	1410 (87%)	16 (1%)	1426 (88%)	201 (12%)	1627
1994	1489 (84%)	10 (1%)	1499 (85%)	266 (15%)	1765
1995	1567 (87%)	22 (1%)	1589 (88%)	206 (12%)	1795
1996	1568 (88%)	16 (1%)	1584 (89%)	199 (11%)	1783
1997	1577 (90%)	15 (1%)	1592 (91%)	165 (9%)	1757
1998	1478 (91%)	23 (1%)	1501 (92%)	131 (8%)	1632
1999	1464 (90%)	17 (1%)	1481 (91%)	154 (9%)	1635
2000	1600 (90%)*	28 (2%)	1628 (92%)*	142 (8%)	1770*
2001	1682 (92%)	9 (.5%)	1691 (93%)	133 (7%)	1824
2002	1695 (93%)	15 (.8%)	1710 (94%)	115 (6%)	1825
2003	1758 (93%)	9 (.5%)	1767 (94%)	122 (6%)**	1889
2004	1840 (93%)	3 (.2%)	1843 (93%)	131 (7%)	1974

* 2000 totals revised to reflect additional AO's that were not previously included.

** Percentage amount corrected.

In 2004 the Director's Office expended 411 assistant director hours in issuing advisory opinions. This compares with 351 hours in 2003. Adversity that may materially limit representation was the most frequent area of inquiry. The increasing number of opinion requests has resulted in the need to temporarily reallocate office resources to meet the demand.

H. Judgments and Collections.

In 2004 judgments were entered in 22 disciplinary matters totaling \$30,150.39. The Director's Office collected a total of \$18,139.14 from judgments entered during or prior to 2004; of this amount, \$17,696.30 (or 98% of the total) resulted from judgments entered in 2004. The total amount of all outstanding judgments as of January 1, 2005, was \$255,490.22.

A summary of the 2004 statistics is presented below:

	2004
Number of judgments entered:	22
Dollar value of judgments entered:	\$30,150.39
Total amount collected:	\$18,139.14
Portion attributable to current year's judgment:	\$17,696.30
Portion attributable to judgments of prior years:	\$442.84

I. Professional Firms.

Under the Minnesota Professional Firms Act, Minn. Stat. § 319B.01 to 319B.12, professional firms engaged in the practice of law must file an initial report and annual reports demonstrating compliance with the Act.

The Director's Office has handled the reporting requirements under statute since 1973. Annual reports are sought from all known legal professional firms, which include professional corporations, professional limited liability corporations and professional limited liability partnerships. The filing requirements for professional firms are described on the website.

Professional firms pay a filing fee of \$100 for the first report and a \$25 filing fee each year thereafter. In reporting year 2003-2004 there were 125 new professional firm filings. As of April 30, 2005, there were 104 new professional firm filings for reporting year 2004-2005.

Fees collected from professional firm filings are included in the Board's annual budget. As of April 30, 2005, the Director's Office received \$53,625 in

professional firm filing fees. The Director's Office received \$52,825 during fiscal year 2004.

An Assistant Director, paralegal, and file clerk staff the professional firms department in the Director's Office. The total attorney work time for overseeing the professional firms department was 14.5 hours. The total non-attorney work time was 256 hours.

J. Overdraft Notification.

The lawyer trust account overdraft reporting program provided for by Rule 1.15(j) – (o), MRPC, has been in effect since 1990. Since that time, banks wishing to maintain lawyer trust accounts have had to be "approved" to do so, by agreeing to report all overdrafts on such accounts to the Director's Office. When the Director receives notice of an overdraft on a lawyer trust account, the Director writes to the account-holder and requests an explanation for the cause of the overdraft, together with copies of the lawyer's trust account books and records.

Overdrafts Reported by Banks

2003	99
2004	124

Closed Inquiries During 2004

• Closed Without Need for Disciplinary Investigation	100
• Inquiry Converted to Disciplinary Investigation	<u>14</u>
Total Trust Account Inquiries Closed	<u>114</u>

Discipline Related to Trust Account Overdraft Inquiry

Public Discipline:

- *In Re White*, 677 N.W.2d 85 (Minn. 2004) (disbarment).

Private Discipline:

- 5 Private Probations.

In 66 of the inquiries terminated without a disciplinary investigation, the Director recommended changes or improvements to the lawyer's trust account books, records and/or practices. The most common deficiencies discovered in lawyers' trust account books and records were a lack of client subsidiary ledgers and a failure to properly reconcile the trust account.

In 2004 the causes of trust account overdrafts that were closed without a disciplinary investigation were as follows:

<u>Overdraft Cause</u>	<u>No. of Closings</u>
Late deposit	19
Bank error	14
Mathematical/clerical error	14
Service or check charges	14
Check written in error on TA	9
Third party check bounced	7
Deposit to wrong account	7
Improper/lacking endorsements	7
Bank hold on funds drawn	4
Reporting error	4
Other	1

Disciplinary File Openings

The Director initiates a disciplinary investigation if the lawyer fails to respond to the overdraft inquiry, the lawyer's response does not adequately explain the overdraft or significant problems are identified in reviewing the trust account books and records. During 2004, overdraft inquiries were converted into disciplinary investigations for the following reasons:

<u>Reason for Investigation</u>	
No response or inadequate explanation	5
Shortages	4
Commingling	1
Repeated overdrafts	1
Other	3
Total	14

Time Requirements

The Director's Office time requirements to administer the overdraft notification program are as follows:

	<u>1/03-12/03</u>	<u>1/04-12/04</u>
Attorney	168.75 hrs	198.50 hrs
Paralegal and other staff	<u>270.75 hrs</u>	<u>294.25 hrs</u>
Total	439.50 hrs	492.75 hrs

The number of overdraft notices reported to the Director's Office increased by 25% (from 99 to 124) in 2004. Much of this increase is almost certainly attributable to completion of the reporting agreement updating process the Director's Office undertook in 2003, and discussions with the three largest banks to ensure ongoing compliance with their reporting obligations. The Director's Office time requirements also increased, but by a lesser percentage (12%).

The number of overdrafts converted to disciplinary matters spiked in 2004 and the first six months of 2005. Two overdrafts resulted in disbarment (Boyd) and suspension (Brooks). Three overdrafts were the cause of pending petitions for disciplinary action and six overdrafts have resulted in pending charges of unprofessional conduct.

K. Disclosure.

1. Department Function.

The disclosure department responds to written requests for attorney disciplinary records. Public discipline is always disclosed. Private discipline is disclosed only with a properly executed authorization from the affected attorney. In addition, the Director's Office responds to telephone requests for attorney public discipline records. The telephone requests and responses are not tabulated.

2. Source and Number of Written Requests for Disclosure.
Calendar Year 2004.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	88	88	1	0
B. Individual Attorneys	4	4	1	0
C. Local Referral Services				
1. RCBA	20	70	0	0
2. Hennepin County	3	246	7	0
D. Governor's Office	12	37	0	0
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	317	317	23	3
F. F.B.I.	23	29	0	0
G. MSBA: Specialist Certification Program	11	103	8	2
H. Miscellaneous Requests	53	118	1	0
TOTAL	531	1012	41	5
(2003 Totals)	(534)	(1092)	(75)	(6)

IV. **DISTRICT ETHICS COMMITTEES.**

Minnesota is one of a few jurisdictions that continue to use the local district ethics committees (DECs) to investigate ethics complaints. The Minnesota system continues to work well.

Initial review of complaints by practitioners in their own area and by non-lawyers is valuable in reinforcing confidence in the system. The quantity and quality of the DEC investigative reports remain high. For calendar year 2004, the Director's Office followed DEC recommendations in 87 percent of investigated matters.

In 2004 the monthly average of files under DEC consideration was 131, fluctuating between a low of 108 and a high of 152. The year-to-date average for 2005 is 141. Rule 7(c), RLPR, provides a 90-day goal for completing investigations.

For the calendar year 2004, the DEC completed 431 investigations, taking an average of 4.1 months to complete each investigation. The Hennepin DEC was assigned 185 of these investigations, taking an average of 3.9 months per investigation (*see* A. 10, DEC Investigation Summary).

The Hennepin DEC uses a two tiered complaint review process not employed by other DEC. The Hennepin statistics are separately monitored to reflect file aging at the two decision points in the process. The Hennepin process involves investigator presentation to a screening committee. If the screening committee recommends dismissal, the complaint is returned to the Director's Office for disposition. If the screening committee concludes a violation occurred or that additional investigation is necessary, an Investigative Review Committee (IRC), made up of one of three Hennepin DEC panels, reviews the matter. Both the complainant and the respondent are invited to attend and testify at the IRC hearing.

In calendar year 2004, 122 matters were referred back to the Director's Office after screening without an IRC hearing; it took an average of 3.2 months to complete the DEC investigation of these matters. There were 54 matters referred to an IRC panel before being sent back to the Director's Office, which took an average of 5.1 months to complete.

For calendar year 2004, of the completed DEC investigations there resulted the following dispositions:

Determination discipline not warranted	288
Admonition	43
Private probation	2

A statewide professional responsibility seminar for DEC members, hosted by the Office and the Board, will be held on Friday, September 30, 2005. The Board and the Office remain committed to the support and training of ethics committee volunteers, both lawyer members and public members. For the Hennepin DEC, training/orientation seminars are held at least twice a year for new members. The Director's Office continues to provide support to all of the DECs through the liaisons assigned to each district.

V. FY'06 GOALS AND OBJECTIVES.

The Court's approval of the rewrite of the Rules of Professional Conduct is imminent. Plans have been made with existing continuing legal education providers to sponsor several seminars, not only in the Twin Cities but also in greater Minnesota.

With the revision of the substantive rules nearly completed, lawyer discipline procedures and procedural rules should also be reviewed. As mentioned in last year's report, the lawyer discipline procedures and procedural rules should also be reviewed and a periodic Supreme Court Committee review of the lawyer discipline process would be beneficial.

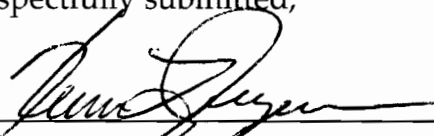
The number of cases involving inexperienced solo practitioners appears to be increasing, especially in the immigration area. This issue needs to be studied both in terms of statistics and the types of misconduct occurring in the cases. Further cooperation with the MSBA in efforts to provide mentoring and other resources to new solo lawyers is likely necessary.

Although the number of overall complaints is down, the number of serious cases has spiked over the past year. This issue needs to be monitored to determine whether resources are adequate to meet this demand if it continues. In addition, as the number of advisory opinions has continued to rise, the resources available for

the service have been insufficient at times to handle the demand without temporarily affecting other operations or responsibilities in the Office. Consideration needs to be given to whether more resources should be allocated to the advisory opinion service or whether the increasing demand can be met through alternative means such as additional website resources.

Dated: June 20, 2005.

Respectfully submitted,



KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

and



KENT A. GERNANDER
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

Lawyers Professional Responsibility Board Members

Kent A. Gernander, Winona. – Attorney member; current LPRB Board Chair; term indefinite; partner in the firm of Streater & Murphy, P.A.; former member and Chair of Third DEC. Areas of expertise: business and commercial law; nonprofit organizations; civil litigation.

Kathleen Clarke Anderson, Mpls. – Public member; term expires 1/31/06; worked with Hennepin County Bar Association Fee Arbitration Board; served over 8 years as member of the Fourth DEC. Areas of expertise: public policy, political process and governance.

Larry M. Anderson, Mpls. – Public member; term expires 1/31/07; serves on LPRB Opinion Committee; Arbitration Coordinator/Settlement Conference Administrator for Hennepin County District Court; served over 8 years on the Fourth DEC. Areas of expertise: civil and family arbitration and mediation.

Mark R. Anway, Anoka – Public member; term expires 1/31/06; Assistant Vice-President, Credit and Compliance, Wells Fargo Equipment Finance, Inc.; served on 21st DEC for five years.

Richard A. Beens, Mpls. – Attorney member; term expires 1/31/08; serves on LPRB Opinion Committee; partner in the firm of Felhaber, Larson, Fenlon & Vogt; served on the Twenty-First DEC for 8 years, including 6 years as Chair. Areas of expertise: general litigation, employment law and criminal law.

Joseph V. Ferguson III, Duluth. – Attorney member; term expires 1/31/08; partner in the firm of Johnson, Killen & Seiler, P.A.; served on Eleventh DEC for 12 years, including 6 years as Chair. Areas of expertise: business law/bankruptcy/admiralty.

Wood R. Foster, Jr. - Mpls. – Attorney member; MSBA nominee; term expires 1/31/06; serves on LPRB Rules Committee; partner in the firm of Siegel, Brill, Greupner, Duffy & Foster; former member of the Fourth DEC; past president of Hennepin County Bar Association and the Minnesota State Bar Association. Areas of expertise: commercial litigation. as well as class action litigation.

Lynn J. Hummel, Detroit Lakes - Attorney member; term expires 1/31/07; served 9 years on Seventh DEC, 3 years as Chair. Areas of expertise: civil litigation, employment law, general practice, mediation.

Ann E. Maas, Brooklyn Park - Public member; term expires 1/31/08; served on the Fourth DEC for 4 years; self-employed as a mental health consultant. Areas of expertise: health care evaluation, law office management, standards and compliance, performance improvement.

Patrick J. McGuigan, St. Paul – Attorney member; term expires 1/31/07; serves as Chair of the LPRB Opinion Committee; partner in the firm of McGuigan & Holly; served a total of 9 years on Second DEC, 6 years as Chair. Areas of expertise: probate/estate administration, estate planning, real estate law, and banking – loan documents.

Katie McWatt, St. Paul - Public member; term expires 1/31/08; served on the Second DEC; retired from her position as Coordinator of St. Paul Central's Minority Education program.

Mary L. Medved, St. Paul – Public member; term expires 1/31/07; serves on LPRB Executive Committee; serves as personnel liaison to Director's Office; served 2 terms (6

years) on the Second DEC; President, Medved Companies. Areas of expertise: Human Resource Generalist, Employment, Benefits, Compensation.

Neil M. Meyer, Mpls. – Attorney member; serves on LPRB Opinion Committee; term expires 1/31/07; partner in the firm of Meyer & Njus; longtime member of the Fourth DEC, served as volunteer trustee appointed by Supreme Court on behalf of the OLPR; named 1999 Lawyers Professional Responsibility Board Volunteer of the Year. Areas of expertise: business organizations, commercial transactions and estate planning.

Patty Murto, Duluth – Public member; term expires 1/31/06; serves on LPRB Executive Committee; responsible for development and implementation of a Volunteer Attorney Program. Areas of expertise: government, low income legal services and mediation.

Wallace Neal, Bloomington – Public member; term expires 1/31/08; serves on LPRB Rules Committee; self-employed as a consultant; served 12 years on the Fourth DEC. Areas of expertise: construction contracts and specifications, as well as interest in advertising issues.

Judith M. Rush, Roseville – Attorney member; MSBA nominee; term expires 1/31/07; LPRB Vice-Chair, serves on LPRB Rules Committee; solo practitioner in the areas of family and appellate law; served 6 years as member of the Second DEC. Areas of expertise: family law, appellate; based on areas of practice.

David L. Sasseville - Mpls. – Attorney member; MSBA nominee; term expires 1/31/06; serves as Chair of the LPRB Rules Committee; partner in the firm of Lindquist & Vennum; served on Fourth DEC for 6 years. Adjunct Professor of Law, Wm. Mitchell College of Law – Professional Responsibility. Areas of expertise: commercial litigation, regulated industries, and administrative law.

Cindy K. Telstad - Winona – Attorney member; MSBA nominee; term expires 1/31/08; serves on LPRB Opinion Committee; partner in the firm of Streater & Murphy; served on the Third DEC for 6 years, including 2 years as Chair. Areas of expertise: real property law, and employment law.

Vincent A. Thomas, St. Paul – Attorney member; MSBA nominee; term expires 1/31/07; serves on LPRB Executive Committee; Assistant Dean of Students and Adjunct Professor of Law, Hamline University School of Law.

Debbie Toberman, Plymouth - Public member; term expires 1/31/08; served on the Fourth DEC for 12 years; claim representative for Minnesota Lawyers Mutual Ins. Co. Area of expertise: legal malpractice.

Dianne A. Ward, St. Paul – Attorney member; term expires 1/31/06; serves on LPRB Rules Committee; Assistant Director in the Office of the Ramsey County Attorney; served on the Second DEC for 3 years. Areas of expertise: public law – criminal, juvenile, child support and public policy.

Kenneth R. White, Mankato – Attorney member; MSBA nominee; term expires 1/31/08; solo practitioner in the areas of appellate practice and civil litigation. Areas of expertise: appellate practice, personal injury and litigation.

Jan M. Zender, St. James – Attorney member; term expires 1/31/08; served on the Sixth DEC for 6 years; partner in law firm of Sunde, Olson, Kircher and Zender. Areas of expertise: real estate and estate planning.

**Advisory Opinion Requests Received
and
Number of Complaints Opened
from 1986 to 2004**

	Advisory Opinions	Complaints
<u>YEAR</u>	<u>Received</u>	<u>Opened</u>
1986	875	1233
1987	840	1091
1988	968	1149
1989	1143	1365
1990	1355	1384
1991	1292	1380
1992	1398	1399
1993	1627	1405
1994	1765	1456
1995	1795	1290
1996	1783	1438
1997	1757	1314
1998	1632	1275
1999	1635	1278
2000	1770 *	1362
2001	1824	1246
2002	1825	1165
2003	1889	1168
2004	1974	1147

* 2000 total was revised to reflect additional AO's not previously included.

**Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2004 – June 2005**

Date	Topic	Location	Organization
8/18/04	Starting Your Own Practice	Minneapolis	MN CLE
8/31/04	Jury Selection	Minneapolis	Lorman Ed
9/15/04	Lawyer Discipline System	St. Paul	Hamline Law School
9/16/04	Ethics Vignettes	Minneapolis	MLM Seminar
10/8/04	Immigration	Minneapolis	AILA CLE
10/12/04	Ethics for Paralegals	Brooklyn Park	North Hennepin CC
10/20/04	Ethics for Paralegals	St. Paul	Hamline U.
11/2/04	Ethics for Paralegals	Brooklyn Park	North Hennepin CC
11/4/04	DWI	Minneapolis	MN CLE
11/9/04	Unauthorized Practice	Minneapolis	Dorsey CLE
11/19/04	New Rules	St. Paul	MN CLE
11/19/04	Real Estate Institute	St. Paul	MN CLE
12/6/04	Trust Accounts	Minneapolis	MN CLE
12/7/04	Nuts & Bolts	Minneapolis	Hennepin Cty.
12/7/04	Changes in the MRPC	Minneapolis	Dorsey
12/10/04	Malpractice Insurance Reporting	Minneapolis	MSBA
12/16/04	Ethics Replay	Minneapolis	Hennepin Cty.
1/12/05	Ethical Considerations for School Attorneys	Minneapolis	MN School Bd. Assn.
1/20/05	New Rules	Minneapolis	Amdahl Inn of Court
1/21/05	Ethics for Public Attorneys	St. Paul	MN Attorney General
1/24/05	Probate Section	Minneapolis	HCBA
1/24/05	Avoiding Common Problems	St. Paul	RCBA
1/25/05	Lawyer Theft	Minneapolis	U of M
1/25/05	Lawyer Theft	St. Paul	Wm Mitchell Law School
1/26/05	Lawyer Theft	Minneapolis	St. Thomas Law School
1/31/05	Rules Committee	Minneapolis	MSBA
2/2/05	Life and Law	Minneapolis	MSBA
1/4/05	Ethics Issues in <i>Pro Bono</i> Work	Minneapolis	VLN
2/10/05	Disability	Minneapolis	Hennepin County
2/16/05	New Rules of Professional Conduct	Minneapolis	MN CLE
2/16/05	New Rules	St. Paul	RCBA
2/23/05	New Rules	Apple Valley	1 st District Bar Assn.
2/28/05	Probate and Trust	Minneapolis	Hennepin Cty.

Office of Lawyers Professional Responsibility
Speaking Engagements and Seminars July 2004 – June 2005

Date	Topic	Location	Organization
3/3/05	Diversity in the Workplace	Minneapolis	U of M
3/4/05	Ethics for Paralegals	Brooklyn Park	North Hennepin CC
3/5/05	New Rules	Duluth	MTLA
3/5/05	New Developments	Hinckley	Public Defender Assoc.
3/8/05	New Solo Lawyers	Minneapolis	MSBA
3/16/05	Fee Agreements & Handling Funds	Minneapolis	HCBA
3/16/05	Phi Delta	St. Paul	Wm Mitchell Law School
3/16/05	Setting Up Solo Practice	St. Paul	RCBA
3/17/05	Family Law Section	Rochester	Rochester Bar Assn.
3/18/05	Workers' Compensation Institute	Bloomington	MSBA
4/8/05	Collections	Minneapolis	NBI
4/13/05	Ethics for Paralegals	Brooklyn Center	MN School of Business
4/21/05	Life and Law Committee	Minneapolis	MSBA
4/21/05	New Rules	Kasota	6 th District Bar Assn.
4/22/05	Ethics for Corporate Counsel	Minneapolis	HCBA
4/28/05	Solo/Small Firm	St. Paul	Ramsey Cty.
5/2/05	Privilege and Confidentiality	Minneapolis	MN CLE
5/13/05	Trust Accounts & Other Money Matters	Eagan	Half Moon Seminars
5/24/05	Insurance Law Deskbook	Minneapolis	MN CLE
5/25/05	Impaired Lawyer Seminar	St. Paul	MLM & Ramsey Cty Bar
5/25/05	ADR Ethics	Minneapolis	MTLA
6/2/05	Employment Law	St. Paul	MN CLE
6/8/05	Ethics Vignettes	Minneapolis	MLM
6/10/05	Common Ethics Problems	Minneapolis	MN CLE
6/10/05	New Rules	Stillwater	MDLA
6/10/05	Disability	Minneapolis	Hennepin Cty.
6/16/05	Juvenile Law Section	Minneapolis	HCBA
6/23/05	Ethics and Elimination of Bias	St. Paul	MN County Atty Assn.
6/24/05	DWI/Implied Consent	St. Paul	MN County Atty Assn.

OLPR 2004 Summary of Public Matters Decided

28 Decisions Involving 51 Files

Disbarment	11 files	5 attorneys	Reprimand & Probation	7 files	2 attorneys
NELSON , JOHN A	A04-1037	3	COLEMAN , RICHARD J	A03-1451	6
OBERHAUSER , LOUIS B JR	C9-93-1342	1	RUHLAND , DOUGLAS A	A04-1936	1
PEREZ , ALFRED JR	A03-1327	1	Probation	1 files	1 attorneys
SCHAEFER , ROBERT J	A03-1980	1	POST , WILLIAM F JR	A04-1295	1
WHITE , THOMAS JOSEPH	A03-107	5	Disability Inactive Status	4 files	1 attorneys
Suspension & Probation	1 files	1 attorneys	VERBRICK , MICHAEL DENNIS	A04-1854	4
GOLDSMITH , SCOTT K	C8-03-41	1	Reinstatement	4 files	4 attorneys
Suspension	18 files	9 attorneys	BERGSTROM , PETER D	A04-1574	1
BOYD , JAMES J	A03-676	1	FLORES , MELANIE ANNE	A04-894	1
FLODINE , MICHAEL TERRY	A04-2048	6	JOHANNSON , KENNETH F	A04-0246	1
FLORES , MELANIE ANNE	A04-894	1	NORTON , DENISE M	A03-1599	1
FLYNN , WILLIAM C	A04-708	1	Reinstatement & Probation	3 files	3 attorneys
GHERITY , DAVID J	C5-87-1684	1	BASIAGO , SUZANNE KAYE	A03-1746	1
GINSBERG , HARVEY C	A03-1336	1	BURSETH , JAMES M	CX-00-2004	1
JOHANNSON , KENNETH F	A04-0246	1	KRUEGER , JOHN AUGUST	A04-0303	1
KRUEGER , JOHN AUGUST	A04-0303	2	Reinstatement Denied	1 files	1 attorneys
RHODES , JULIA K. SATTERLEE	A03-1979	4	LETT , BRIAN ANDREW	C1-02-78	1
Reprimand	1 files	1 attorneys	GALE , STUART E	A03-0058	1

TABLE I
Supreme Court Dispositions and Reinstatements 1990-2004
Number of Lawyers

	Disbar.	Susp.	Probation	Reprimand	Dismissal	Reinstated	Reinstate Denied	Disability	SC AD/Aff	Other	Total
1990	8	27	9	10	0	2	2	2	0	0	60
1991	8	14	10	6	2	3	2	3	0	0	49
1992	7	16	8	5	0	3	0	2	0	0	41
1993	5	15	12	3	1	9	2	1	0	0	48
1994	8	5	7	0	0	4	0	1	0	0	25
1995	6	26	9	4	1	5	0	4	4	0	59
1996	4	27	5	0	3	4	1	2	1	1*	48
1997	10	16	6	2	1	5	2	2	1	1**	46
1998	15	18	10	2	1	4	3	2	1	0	56
1999	3	12	5	0	0	8	1	1	0	2***	32
2000	6	19	10	2	0	3	0	2	1	0	43
2001	3	15	9	2	0	2	0	2	0	1*	34
2002	4	18	6	1	1	5	0	4	0	1**	40
2003	6	15	4	-	-	13	1	3	-	-	42
2004	5	10	3	1	-	7	1	1	-	-	28

* Supreme Court admonition reversed.

** Supreme Court stay.

*** 1 Supreme Court private admonition ordered, and 1 Supreme Court stay.

TABLE II

	Lawyers Board Goal	<u>12/00</u>	<u>12/01</u>	<u>12/02</u>	<u>12/03</u>	<u>12/04</u>	<u>4/30/05</u>
Total Open Files	500	557	525	463	487	525	522
Cases at Least One Year Old	100	123	146	106	97	134	143
Complaints Received YTD		1,362	1,246	1,165	1,168	1,147	410
Files Closed YTD		1,289	1,278	1,226	1,143	1,109	413

TABLE III

	Percentage of Files Closed						
	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
1. <u>Total Dismissals</u>	77%	82%	80%	77%	76%	79%	84%
a. Summary Dismissals	40%	45%	43%	43%	45%	43.5%	48%
b. DNW/DEC	31%	31%	31%	26%	25%	30%	31%
c. DNW/DIR	6%	5%	6%	8%	6%	5.5%	5%
2. <u>Admonitions</u>	10%	9%	7%	10%	7%	9.5%	8.5%
3. <u>Private Probation</u>	1%	3%	3%	3%	2%	3%	1.5%
4. <u>Supreme Court Dispositions</u>	9%	6%	7%	8%	11%	5%	4%
a. Supreme Court Dismissal	-	--	--	--	--	--	--
b. Supreme Court Reprimand	-	--	--	--	--	--	--
c. Supreme Court Probation	2%	.5%	1%	1%	.5%	.5%	1%
d. Supreme Court Suspension	3%	2%	5%	5%	7%	3.5%	2%
e. Supreme Court Disbarment	4%	1%	1%	2%	4%	1%	1%

TABLE IV

Number of Months File Was Open at Disposition

	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Discipline Not Warranted/ District Ethics Committee	--	--	5	5	5	6	6
Discipline Not Warranted/ Director	--	--	8	8	10	10	7
Discipline Not Warranted*	6	5	--	--	--	--	--
Admonition	9	10	9	9	10	9	10
Private Probation	14	14	14	13	10	20	17
Supreme Court Reprimand	19	--	16	21	10	--	16
Supreme Court Reprimand and Probation				14	12	20	18
Supreme Court Probation	14	16	20	12	--	11	4
Supreme Court Suspension and Probation				20	27	21	28
Supreme Court Suspension	18	13	20	16	18	22	24
Supreme Court Disbarment	27	8	26	30	21	16	24

*ADRS did not calculate number of months for DNW categories separately in 97-99. ADRS enhancements now allow such calculations.

TABLE V

Average Time Cases Under Advisement by Supreme Court - 2004

Disposition	No. of Matters	Actual Total Months	Average Months
Supreme Court Reprimand (Stipulated)	1	3.9	3.9
Supreme Court Reprimand & Probation (Stipulated)	2	3.3	1.6
Supreme Court Probation (Stipulated)	1	2	2
Supreme Court Suspension & Probation (Stipulated)	1	1.2	1.2
Supreme Court Suspension (Stipulated)	6	5.3	0.9
Supreme Court Suspension	3	3.5	1.2
Supreme Court Disability (Stipulated)	1	0.5	0.5
Supreme Court Disbarment (Stipulated)	3	2	0.5
Supreme Court Disbarment	2	3.6	1.8
Reinstatement (Stipulated)	1	0.7	0.7
Reinstatement	3	1.8	0.6
Reinstatement & Probation (Stipulated)	1	0.6	0.6
Reinstatement & Probation	2	1.8	0.9
Reinstatement Denied	1	3.2	3.2
Total Decisions	28		



- ABOUT LAWYERS BOARD & THE OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY
- PROFESSIONAL RESPONSIBILITY ARTICLES AND SUBJECT INDEX
- FILING A COMPLAINT AGAINST A LAWYER
- RULES GOVERNING MINNESOTA LAWYER DISCIPLINE SYSTEM
- TRUST ACCOUNTS
- OTHER RESOURCES
- RELATED LINKS

Minnesota Ethics Articles

Handling driver-passenger conflicts

May a lawyer represent both the driver and passenger in a personal injury claim? The answer is "it depends." [more](#)

Reprinted from *Minnesota Lawyer* (May 2, 2005).

[Index to Minnesota Lawyer Ethics Articles](#)

Strange but True: Lawyer Discipline Cases Elsewhere

Like other areas of law, lawyer discipline can be difficult, agonizing, and at times painful. However, it is rarely boring or dull. [more](#)

Reprinted from *Bench & Bar* (April 2005).

[Index to Bench & Bar Ethics Articles](#)

Lawyer Ethics Articles by Subject

Use our Subject Matter Index to research our archive of ethics articles from *Minnesota Bench & Bar* and *Minnesota Lawyer*. [more](#)

What's New

Lawyers Professional Responsibility Board Names John Koneck 2004 Volunteer of the Year

"Search" capability is now available on our web page.

Trying to find information on trust accounts? Conflicts of interest? Attorney liens? Try our new search engine above. Just type your search term(s) into the window and click on the magnifying glass.

2004 Lawyers Board and Office of Lawyers Professional Responsibility Annual Report

Report on events and statistics in the Minnesota Lawyer Discipline System over the past year. [more](#)

Proposed Amendments to Minnesota Rules of

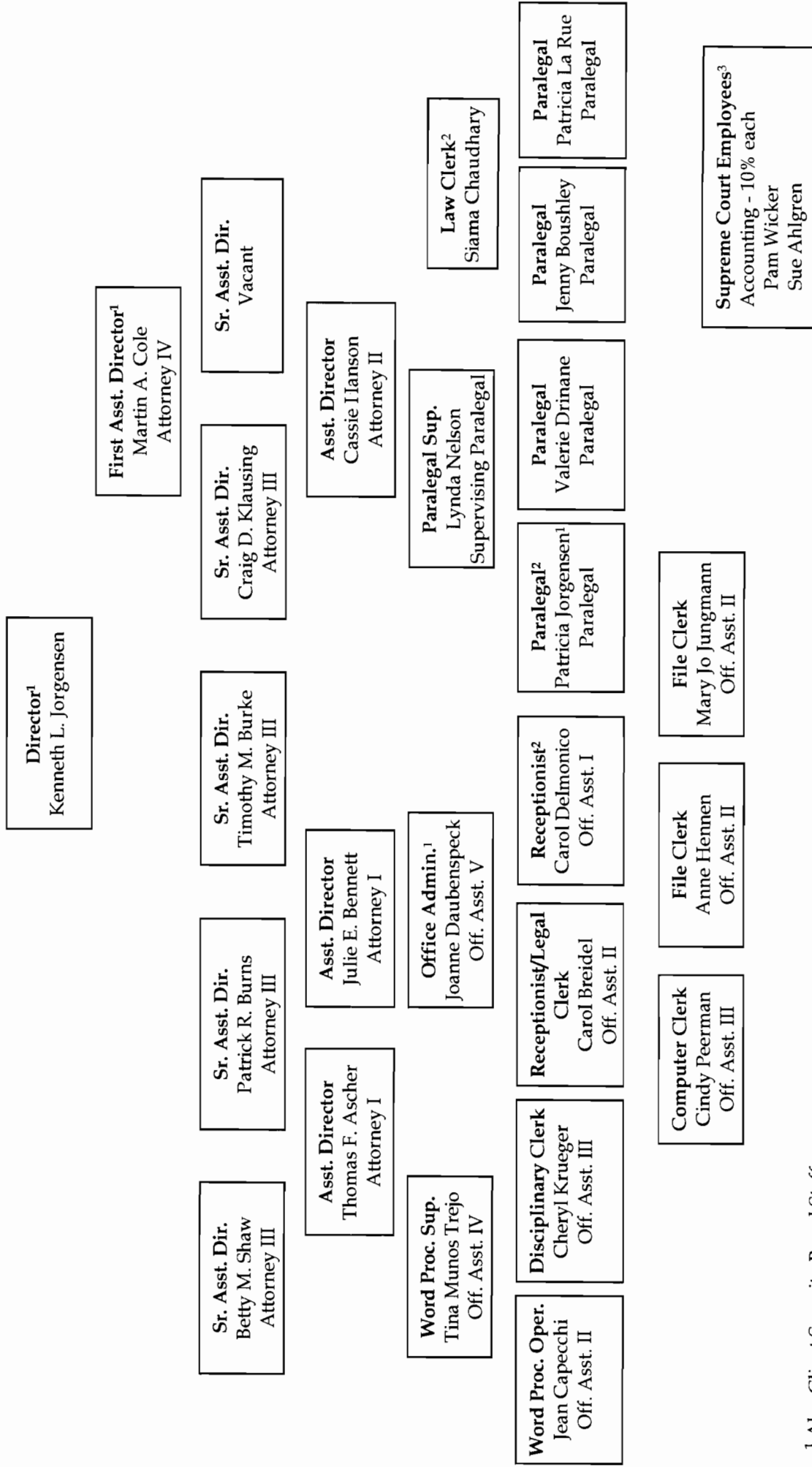
Professional Conduct

The Minnesota Supreme Court held a hearing on May 18, 2004, on the proposed amendments to the Minnesota Rules of Professional Conduct. Click here to see the amendments. The proposed changes are under advisement. [more](#)

[Top](#) | [Home](#)

Office of Lawyers Professional Responsibility

FY'05 Organizational Chart



¹ Also Client Security Board Staff

² Part-time position

³ Not administratively subject to Director's Office.

Office pays percentage of their salary

DEC INVESTIGATION SUMMARY
2004

DEC	Number of Files	Average Investigation Duration (Months)
1	21	5.2
2	74	3.7
3	13	2.9
4	185	3.9
5	4	4.5
6	5	4.6
7	33	3.8
8	7	5.3
9	4	2.5
10	9	10.4
11	11	5.2
12	5	3.6
13	1	4
14	7	6.3
15	11	4.2
16	0	0
17	1	5
18	8	3.6
19	12	3.7
20	8	2.3
21	12	3.2
Totals	431	4.1
(non 4th)	246	4.2