

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

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OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY**

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## I. INTRODUCTION AND HIGHLIGHTS.

Pursuant to Rules 4(c) and 5(b), Rules on Lawyers Professional Responsibility (RLPR), the Lawyers Professional Responsibility Board and the Director of the Office of Lawyers Professional Responsibility report annually on the operation of the professional responsibility system in Minnesota. These reports are made for the period from July 2009 to June 2010, which represents the Board's and Office's fiscal year. The majority of the statistical information, however, is based upon calendar year 2009.

### **Changes to the Board.**

A major change in the makeup of the Lawyers Board occurred in January 2010 with the end of Kent Gernander's six-year term as Board Chair. Mr. Gernander had served the lawyer discipline system as a DEC investigator and Chair, and as a Board member for six years before his period as Board Chair. Few people have given as much of their time and talents to serve and improve the discipline system as did Mr. Gernander, all in addition to his extensive service to the bar as a Minnesota State Bar Association officer and president. His knowledge and steady leadership helped guide the system through the hiring of a new Director, the United States Supreme Court decision in *RPM v. White*,<sup>1</sup> and the Minnesota Supreme Court Advisory Committee review process.

Fortunately, the discipline system is being left in capable hands. Judith Rush replaced Mr. Gernander as Board Chair upon her appointment by the Supreme Court. She is the first woman to serve as Lawyers Board Chair and is the first solo practitioner. She is former Vice Chair of the Board, was a Panel Chair and has served in various capacities on the DEC, the Board, the Advisory Committee and with the state bar. It should be as seamless a transition as is possible.

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<sup>1</sup> Republican Party of Minnesota.

The terms of three other members of the Lawyers Board ended this past January 2010: Vincent Thomas, Mary Medved and Lynn Hummel. Mr. Thomas most recently was the Board Vice-Chair; Ms. Medved also was a member of the Executive Committee and personnel liaison to the Director's Office; Mr. Hummel served as a Panel Chair. Named to replace these departing members were attorney members Christopher Cain of Mankato and Kenneth Engel of Minneapolis; the new non-lawyer member is Steven Bolluyt of Eagan.

There was extensive change to the Board's Executive Committee with the departures of Mr. Gernander, Mr. Thomas and Ms. Medved. Ms. Rush appointed Joseph Ferguson to remain on the Executive Committee as Vice-Chair and named Michael Unger and Geri Krueger as new members. Ann Maas remained on the Executive Committee as well. The Board members who act as Panel Chairs for probable cause determinations are now: Robert Bauer, William Donohue, Sheridan Hawley, Richard Kyle, Stuart Williams and Jan Zender. Mr. Williams also chairs the Board's Opinion Committee; Mr. Donohue chairs the Board's Rules Committee. A complete listing with short biographical information of all Board members is attached at A. 1 – A. 2.

#### **Final Implementation of Supreme Court Advisory Committee to Review the Lawyer Discipline System Recommendations.**

As reported over the past two years, the Minnesota Supreme Court appointed an Advisory Committee in 2008 to review the lawyer discipline system in Minnesota and report its findings and make recommendations for change. The Lawyers Board Executive Committee have overseen implementation of several of the Advisory Committee's administrative recommendations. The new Executive Committee is continuing to work with the Director's Office to implement time guidelines for each step in the investigatory process, with the intention that at least 75 percent (or higher) of all complaints will be handled within those timelines. It is understood that when

the Director's Office is awaiting dispositions in other forums or when the responding attorney is not cooperating with the investigation that such timelines will not be met. It is nevertheless hoped that such situations will not account for more than the 25% of matters anticipated to fall outside the time guidelines.

The Supreme Court adopted several of the Advisory Committee recommendations for changes to the Rules on Lawyers Professional Responsibility (RLPR), the procedural rules that govern the discipline system. These changes became effective July 1, 2009. Most significantly, the procedure by which probable cause determinations are made by Lawyers Board Panels has changed. Now, in most matters, probable cause determinations are made upon written submissions rather than after evidentiary hearing. A hearing will be held only if the Lawyers Board Panel specifically authorizes it. In addition, the Rule no longer provides that Panels make a determination of probable cause on each count of a petition so the Panels determine only whether there is a basis for public discipline. After close to a full year's experience under the new procedures, where probable cause is reasonably clear the process has definitely allowed the filing of a public petition sooner than was true in the past. Complying with the new timelines for written submissions, whether to grant a hearing or oral argument, and confusion over counts that do not individually merit public discipline have presented a challenge to the overall effectiveness of the new process.

**Lawyers Board Opinion Committee.**

Rule 4(c), RLPR, authorizes the Board to issue non-binding opinions that interpret Rules of Professional Conduct on topics of interest to the profession. The Opinion Committee recommended one additional opinion in 2009 and another in early 2010. Pursuant to the Board's new procedure, proposed Opinions 21 and 22 were first published for comment and later voted on after incorporating many changes that were considered helpful.

Opinion 21, adopted October 2, 2009, is entitled "A Lawyer's Duty to Consult with a Client About the Lawyer's Own Malpractice." (A. 3 – A. 5.) Opinion 22, adopted March 26, 2010, is entitled, "A Lawyer's Ethical Obligations Regarding Metadata." (A. 6 – A. 9.) Both opinions are advisory in nature and are not expected to cause significant enforcement issues.

### **Complaint Statistics.**

The number of complaints received in 2009 was 1,206, a reduction from the previous year's total of 1258. This slight reduction allowed the Director's Office to reduce the total number of open files slightly as well. Tables outlining these and related statistics are at A. 10 – A. 14.

Unfortunately, totals for the first five months of 2010 project to a year-end total of just over 1,400, which would maintain open file levels in excess of 600, and again strain the resources of the DEC's and the Director's Office to keep up with such an increase. Complaints tend to peak in the first half of most years, so perhaps this sharp upward spike will not continue all year, but if it does, it will be cause for concern and possible reductions in some services the Office provides to the public and the bar. The Director's Office has already instituted a "moratorium" of at least three months on attorneys in the Office speaking at Continuing Legal Education seminars and on writing articles for *Minnesota Lawyer*. While these steps may not create significant additional time for case resolution, it is hoped to at least prevent further backlog. (See A. 15 – A. 17 for a list of Office speaking engagements for the past fiscal year.)

The Board's Executive Committee, in addition to monitoring overall file numbers, receives information on case management time guidelines, which, as noted above, the Executive Committee established at the recommendation of the 2008 Supreme Court Advisory Committee on the Lawyer Discipline System. The Office

targets that 75 percent of all cases will meet certain time expectations for each step in the investigation process.

#### **Lawyers Board Seminar.**

On October 2, 2009, the Board and Director's Office hosted its annual professional responsibility seminar at the Ramada Plaza Minneapolis. It was one of, if not the best attended seminar in Office history. A major draw for the seminar and one of the highlights was a presentation by F. Lane Williamson, who chaired the North Carolina State Bar hearing panel that heard and decided the Michael Nifong disbarment matter. Mr. Nifong was the prosecutor in a case initiated against members of the Duke University lacrosse team for an alleged sexual assault. Nifong failed to disclose exculpatory evidence to the defense in an effort to obtain a conviction and made numerous misrepresentations to the media. The case drew national attention and is believed to be the only lawyer discipline case televised on Court TV. Mr. Williamson's personal recollections and insights were well received.

Other presentations included a session by Martin Cole on prosecutorial ethics issues arising in recent Minnesota cases, a panel of Board Chair Kent Gernander, William Mitchell College of Law professor Ken Kirwin and Patrick Burns discussing the current debate about the use of "nonrefundable" retainers, and a current developments overview by Robin Crabb. In addition there were break-out sessions on district ethics committee training, probation and the new procedural changes (discussed above).

The other highlight was the annual presentation by the Board's liaison Justice Alan Page of the annual Volunteer of the Year Award, this year to Ann Tessneer, outgoing Chair of the Eighteenth District Ethics Committee, who along with her committee members, volunteered to participate in the pilot project with the Director's Office in establishing the new DEC SharePoint intranet, which is also discussed further below. The intranet allows DEC members to share information with one other,

including the capability to view other members' reports, and allow each member to then vote on the recommendation of the investigator right on the intranet site. It will be expanding to other DEC's in the future.

## II. PUBLIC DISCIPLINE DECISIONS.

Thirty-eight attorneys were publicly disciplined in calendar year 2009, which has been approximately the average number for most recent years.<sup>2</sup> Thirty-six attorneys were publicly disciplined in 2008. Five attorneys were disbarred. Another eleven attorneys have been publicly disciplined through May of this year, including two additional disbarments. Another 16 public matters were pending as of June 1, 2010.

The attorneys who were disbarred in 2009 were:

Patricia Ryerson	Jason Fischer
Robert Light	Camille Foster
Michael Frants	

Criminal conduct, misappropriation, fraud or other types of serious dishonesty are the most serious violations an attorney can commit, and the most likely to lead to disbarment. Four of the disbarments identified above fit into these categories. One disbarment was the result of a reciprocal discipline (Mr. Light) of a disbarred North Dakota lawyer who was also licensed in Minnesota. The two lawyers disbarred so far in 2010 are Thomas Rothstein and Michael Margulies, both for theft, principally from their law firms.

In addition to the disciplined lawyers, there were also fourteen attorneys reinstated to the practice of law in 2009, most following short suspensions. One

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<sup>2</sup> Public disciplines include disbarments, suspensions, stayed suspensions, public reprimands and probations.

attorney's petition for reinstatement was denied and two others withdrew their reinstatement petitions. One attorney was transferred to disability inactive status.

### **III. DIRECTOR'S OFFICE.**

#### **A. Budget.**

##### **1. FY'10 and FY'11 Budgets.**

Expenditures for the fiscal year ending June 30, 2010, are projected to be \$2,691,663. The FY'11 budget, which begins July 1, 2010 and runs through June 30, 2011, contains anticipated expenditures of \$3,104,707. The Director's Office budget is funded principally by lawyer registration fees, and therefore is not dependent upon legislative action, as is the judicial branch's overall budget. Nevertheless, due to the judiciary's continued budget situation, State Court Administration has directed that the FY'11 payroll budget again include no salary increases for employees. Increases in benefit costs, especially health insurance, have continued, however. There appears to be no need for a fee increase in the coming years.

The FY'11 budget does include significant funds to rebuild the Attorney Disciplinary Record System (ADRS) which was originally scheduled to begin in FY'09. Due to the more pressing urgency of the Web site project more fully discussed below, the ADRS project was postponed.

#### **B. Personnel.**

The Director's Office currently employs 11 attorneys including the Director, 5.5 paralegals, an office administrator and 8 support staff (*see* organizational chart at A. 18). Two personnel changes this year occurred: one was the internal promotion of Josh Brand to be an assistant director. He served as the Office's law clerk for almost three years and it was determined that his talents could be better used in a full attorney position. The other was the addition of Julie Staum as an additional

paralegal. The judicial branch policy currently limits outside hiring to essential positions only. This addition was considered essential.

**C. Web Site.**

In April 2009, the Office contracted with Computer Integration Technologies to develop a new Web site. After many delays, the new SharePoint Web site is finally live and we are excited about it. Visit the Web site at <http://lprb.mncourts.gov>. A significant new addition to the Web site is the capability to file complaints online. Attached at A. 19 is the current title page of the Web site's homepage.

**D. 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, other than members of the Board's Executive Committee, selected in rotation. During 2009, the Director's Office received 236 complainant appeals, compared to 228 such appeals in 2008. There were 246 complainant appeal determinations made by Board members in 2009 as follows:

		<u>%</u>
Approve Director's disposition	229	93.1
Direct further investigation	15	6.1
Instruct Director to issue an admonition	0	0
Instruct Director to issue charges	2	.8

A total of 56 clerical hours were spent in 2009 processing and routing appeal files. Limited attorney time was expended in reviewing appeal letters and responding to some complainants who continued to correspond even after their appeals were decided.

#### **E. Probation.**

In addition to the work of the Director's Office involving attorney disciplinary matters, attorney disciplinary probations remain an important function of the Office of Lawyers Professional Responsibility. Along with the overdraft notification program, it is one of the two most time-consuming departments that are conducted by the Director's Office.

There are two types of probations which may be imposed: public and private. Public probations are often used after a lawyer has been suspended from the practice of law. In that context the probations provide a structure for the lawyer to avoid the type of misconduct that resulted in the public discipline and afford greater protection to the public. Public probations also are ordered by the Minnesota Supreme Court and are often based upon more serious misconduct; e.g., criminal conduct, dishonesty and conduct prejudicial to the administration of justice. In the case of private probation, this type of probation provides the Director with a disciplinary option for those matters in which an admonition (the lowest level of discipline that the Director can impose) may be insufficient.

In 2009, there were 29 new probations and only 13 of those were public. This represents a slight decline from 2008 in both total of new probations (when there were 32) and the percentage of probations that were public (with half of the new probations in 2008 being public). Of those 13 public probations in 2009, eight were for attorneys reinstated to the practice of law.

In some instances lawyers are not able to successfully comply with terms of their probations. If the non-compliance issues are serious enough the Director seeks to have the probation terminated. In other instances, where the lawyer is having problems with compliance but continues to work with the Director's Office, the probation may be extended. There were three such instances in 2008. However, in 2009, the Director did not have to revoke or extend any public probations.

The Rules on Lawyers Professional Responsibility permit the Director and a lawyer to enter into a private probation, subject to Lawyers Board Chair approval, where the Director concludes that the lawyer's conduct was unprofessional and a private probation is appropriate. Of the 29 new probations opened in 2009, 16 were private. Private probations can be followed by public discipline and a public probation when the probationer fails to comply with the terms of the private probation.

The type of attorney misconduct that leads to discipline often involves the attorney's failure to provide competent and diligent representation and failing to adequately communicate with clients. Of the 93 probation files open during some part of 2009, in over half the underlying misconduct giving rise to probations involved a violation of the rules concerning competence, diligence or communication. The next most common form of misconduct underlying a probation is failure to follow the requirements for maintenance of the lawyer's trust account. Chemical dependency and mental health concerns also contribute to attorney misconduct and accordingly, a number of the lawyers on probation have a history of such issues.

Whether public or private, probations always include requirements designed to address, to the extent possible, the underlying misconduct. Since more than half of the probation files opened in 2009 involved the attorney's failure to provide competent and diligent representation to their client and failing to adequately communicate with clients, probations often include requirements that lawyers maintain case lists documenting the nature of the file, upcoming deadlines, communications with clients, and next anticipated action on the file.

Fourteen, or roughly half, of all new probations in 2009 were supervised by volunteer lawyers who met with the probationers on a regular basis, reviewed the probationers' case lists, and offered suggestions on file management and law office procedures. The fact that a probationer does not have a probation supervisor does

not mean that the probation is “unsupervised.” Even in probations where no supervisor is appointed, the Director’s Office is often involved in monitoring various aspects of the lawyer’s probation. For example, of the 15 probations without a supervisor, the lawyers in five of those probations were required to submit their trust account books and records to the Director for audit. Two of the probationers were required to provide the Director with evidence of their continued treatment for mental health issues and one was required to submit to random urinalysis.

In 2009, 10 of the new probations resulted, at least in part, from the lawyer improperly maintaining his or her trust account. Accordingly, whether those lawyers had supervisors or not, they were required to provide their trust account books and records to the Director for review. The Director’s Office reviews the records for completeness, accuracy and compliance with the Rules. When deficiencies are noted, the Director’s Office provides a detailed explanation of how to correct the problem. Over the course of the probation, most probationers acquire the skills necessary to maintain their trust account books in compliance with the Rules of Professional Conduct. If, over the course of the probation the probationer fails to bring his or her books and records in compliance with the Rules, the Director may seek an extension of probation or a revocation of the probation and further discipline.

In 2009, the Director opened four new probations in which mental health or chemical dependency played a role in the underlying misconduct. In those probations, the lawyers were required to initiate or continue current treatment by a licensed psychologist or other mental health professional acceptable to the Director, complete all recommended therapy and provide the Director with authorizations to confirm compliance with treatment recommendations. The Director may also require attorneys to participate in support groups, such as those offered by Lawyers Concerned for Lawyers, or ask supervisors to monitor a probationer’s mental status.

Chemical dependency issues may be addressed in a probation by requiring attendance at a twelve-step program or other abstinence-based program, such as Alcoholics Anonymous (AA) or Narcotics Anonymous. Frequently, therapy with a mental health professional is required in addition to AA attendance. When appropriate, the Director may also require completion of a chemical dependency evaluation and the completion of all recommended treatment including in or out-patient treatment and aftercare or psychotherapy.

As a condition of probation in some cases involving chemical dependency, the Director may require the probationer to participate in the Director's random urinalysis (UA) program. In those cases, the probationer is required to call the Director's Office three days a week to determine if UA testing is required. Probationers are obligated to appear for testing, at their own expense, up to six times per month. Depending on the specific terms of the stipulation or order the Director may decrease the number of tests per month or terminate the UA requirement if the probationer is fully compliant with the terms of the Director's UA program and all tests are negative. In 2009, the Director opened one probation and closed another requiring UAs. Currently, there are a total of five probationers participating in the Director's random UA program.

Of the probationers whose probations closed in 2009 (and accordingly for whom the Director has data on the nature of their practice while on probation), all were either in solo practice or were part of very small (i.e., two to three person) firms. With the exception of two probationers who were in practice eight and nine years, the majority of the probationers had practiced for a number of years; ranging from 15 years to more than 30.

**DISABILITY RELATED PROBATIONS**

Psychological Disorders – existing files on 1/1/09	13	
New files opened during 2009	<u>4</u>	
Total Psychological Disorder Related Files		17
Chemical Dependency <sup>5</sup> – existing files on 1/1/09	6	
New files opened during 2009	<u>1</u>	
Total Chemical Dependency Related Files		<u>7</u>
<b>Total Disability Related Probations</b>		<b>24</b>

**HISTORICAL BREAKDOWN OF DISABILITY PROBATIONS**

YEAR	TOTAL PROBATION FILES OPENED	NUMBER OF MENTAL HEALTH & CHEM DEP PROBATIONS <sup>6</sup>	PROBATION REQUIREMENTS:		
			THERAPY	AA/NA	RANDOM UAS
1993	26	3	0	3	1
1994	40	9	7	1	2
1995	40	7	5	1	1
1996	29	4	2	3	0
1997	29	5	3	0	2
1998	23	1	1	0	0
1999	40	5	5	0	0
2000	33	5	4	2	2
2001	32	7	6	2	2
2002	32	8	7	2	1
2003	27	10	8	3	2
2004	21	4	2	2	3
2005	20	7	6	2	2
2006	29	10	5	6	3
2007	31	8	7	0	1
2008	32	9	8	4	1
2009	29	4	4	0	1

<sup>5</sup> Probations involving AA attendance and/or Random UAs.

<sup>6</sup> Since mental health and chemical dependency probations may require some contribution of psychological therapy, AA attendance, or random urinalysis, the totals of those categories may be greater than the number of mental health and chemical dependency probations for any given year.

**Probation Supervisors.** During 2009, 30 Minnesota attorneys served as volunteer probation supervisors. Upon closing a probation, the Director asks supervisors to complete a survey regarding their practice of law, the probationer law practice and their supervisory experience. Nine probation supervisors (six solo practitioners and three small firm attorneys) responded to the Director's survey in 2009.

The supervisors volunteered an average of 2.2 hours per month reviewing client inventories and client files, speaking with probationers either during in-person visits or over the phone, and reporting their observations quarterly to the Director. The primary focus of most probations was maintaining and documenting client communications, calendar and docket control systems, file organization, law office management skills and winding up and closing a law practice. It is not unusual for a supervisor's efforts go beyond office management issues and focus on the probationer's overall compliance with the requirements of probation or mental health issues and compliance with treatment.

Most of the supervisors surveyed in 2009 were pleased with the probation system, would serve again and would consider recommending service as a probation supervisor to a friend. One supervisor declined to serve again citing the time commitment. All found their probationers to be cooperative and responsive to their suggestions. All of the supervisors surveyed were pleased with the support received from the Director's Office. Three supervisors contacted the Director's Office with questions during their terms of supervision and received the needed information. One supervisor stated he found the written materials to be very helpful and provided good guidance, but suggested more standardized training could improve the system. Several supervisors would have liked to know the amount of time needed before undertaking supervision. One supervisor, who stepped in when

another supervisor withdrew, would have like to have more information from the prior supervisor and copies of the prior supervisor's quarterly reports.

**PROBATION STATISTICS**

**TOTAL PROBATION FILES OPEN DURING 2009**

Public Supervised Probation Files (25%)	23	
Public Unsupervised Probation Files (20%)	<u>19</u>	
Total Public Probation Files (45%)		42
Private Supervised Probation Files (25%)	23	
Private Unsupervised Probation Files (30%)	<u>28</u>	
Total Private Probation Files (55%)		<u>51</u>
<b>Total Probation Files Open During 2009</b>		<b>93</b>

**TOTAL PROBATION FILES**

Total probation files as of 1/1/09		64
Probation files opened during 2009		29
Public probation extended during 2009		-0-
Probation files closed during 2009		<u>(26)</u>
<b>Total Open Probation files as of 12/31/09</b>		<b>67</b>

**PROBATIONS OPENED IN 2009**

**Public Probation Files**

<b>Court-ordered Probation Files</b>		
Supervised	3	
Unsupervised	<u>2</u>	
		5

**Reinstatements**

Supervised	4	
Unsupervised	<u>4</u>	
		<u>8</u>

**Total Public Probation Files** **13**

**Private Probation Files**

Supervised	7	
Unsupervised	<u>9</u>	
<b>Total Private Probation Files</b>		<b><u>16</u></b>

**Total New Probation Files in 2009** **29**

**PROBATIONS OPENED IN 2009 INVOLVING:**

Client Related Violations	6
Non-Client Related Violations	9
Both Client & Non-Client Violations	<u>14</u>
<b>Total New Probation Files in 2009</b>	<b>29</b>

**PROBATION FILES CLOSED IN 2009**

Probations Successfully Completed	26
Probation Revocations	-0-
Probations Extensions	<u>-0-</u>
<b>Total Probation Files Closed in 2009</b>	<b>26</b>

**AREAS OF MISCONDUCT**

As reflected in 93 open probations during 2009<sup>6</sup>

Competence (Violation of Rules 1.1 and 1.2, MRPC)	14
Neglect & Non-Communication (Violation of Rules 1.3 and 1.4, MRPC)	72
Breach of Confidentiality (Violation of Rule 1.6, MRPC)	1
Conflict of Interest (Violation of Rules 1.7 and 1.8, MRPC)	6
Duty to Former Client (Violation of Rules 1.9 and 1.11, MRPC)	2
Fee Violations	10
Trust Account Books and Records (Violation of Rule 1.15, MRPC)	30
Termination of Representation (Violation of Rule 1.16)	9
Respect for Rights of Third Persons (Violation of Rule 4.4)	1
Unauthorized Practice of Law (Violation of Rule 5.5, MRPC)	6
Taxes	2
Supervision on Non-Lawyer Assistants. (Violation of Rule 5.3, MRPC)	5
Non-Cooperation (Violation of Rule 8.1, MRPC)	19
Violate the MRPC (Violation of Rule 8.4(a), MRPC)	2
Criminal Conduct (Violation of Rule 8.4(b), MRPC)	12
Misrepresentations (Violation of Rule 8.4(c), MRPC)	22
Conduct Prejudicial to the Administration of Justice (Violation of Rule 8.4(d), MRPC)	33

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<sup>6</sup> A file may involve more than one area of misconduct.

**Probation Department.** During 2009 Senior Assistant Director Craig Klausing and Assistant Director Robin Crabb, with the assistance of two paralegals, monitored all probations.

<b>TIME BY PROBATION DEPT. STAFF (hrs./wk.)</b>	
Attorney 1	12
Attorney 2	8
Paralegal 1	8
Paralegal 2	<u>6</u>
<b>TOTAL PROBATION STAFF TIME PER WEEK</b>	<b>34</b>

**F. Advisory Opinions.**

The number of advisory opinions requested by Minnesota lawyers and judges increased in 2009. In 2009 the Director's Office received 2,282 requests for advisory opinions, compared to 2,135 in 2008. This represents a 6 percent increase over last year. *See A. 20.*

Attorneys submitted 262 advisory opinion requests via the email link on the OLPR Web site in 2009, compared to 216 requests received in 2008. This represents more than an 18 percent increase over last year. Like telephone advisory requests, inquiries from the Web site are responded to by telephone.

In addition to the Web link, advisory opinions are available to all licensed Minnesota lawyers and judges and are 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. 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 2009:

<b>YEAR</b>	<b>OPINIONS GIVEN BY TELEPHONE</b>	<b>OPINIONS GIVEN IN WRITING</b>	<b>TOTAL OPINIONS GIVEN</b>	<b>OPINIONS DECLINED</b>	<b>TOTAL</b>
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
2005	2041 (94%)	1 (.5%)	2042 (94%)	135 ( 6%)	2177
2006	2119 (92%)	2 (.8%)	2121 (92%)	186 ( 8%)	2307
2007	2080 (94%)	2 (.9%)	2082 (94%)	141 (6%)	2223
2008	1982 (93%)	2 (.9%)	1984 (93%)	151 (7%)	2135
2009	2137 (94%)	1 (.4%)	2138 (94%)	144 (6%)	2282

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

\*\* Percentage amount corrected.

In 2009 the Director's Office expended 363 assistant director hours in issuing advisory opinions. This compares with 353 hours in 2008. Family law was the most frequently inquired about area of law. Conflicts of interest was the most frequent area of specific inquiry.

### G. 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, Minnesota banks wanting 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 and proof that it has been corrected, together with three months of the lawyer’s trust account books and records, *i.e.*, bank statements, checkbook register, client subsidiary ledgers, trial balances and reconciliations. The purposes of requesting these books and records are to (1) interpret and verify the account-holder’s overdraft explanation, and (2) educate the account-holder regarding the trust account books and records requirements and assist him/her in conforming his/her trust account books and records to those requirements.

The number of trust account overdraft notices reported to the Director in 2009 (81) was comparable to the number reported in 2008 (78). The *total* number of overdraft inquiries closed<sup>7</sup> by the Director in 2009 (76) was likewise comparable to the number closed in 2008 (82). The percentage of total closings that did not involve conversion to a disciplinary investigation decreased from 2008 (76 or 93%) to 2009 (64 or 84%). In other words, a greater percentage of closed overdraft inquiries resulted in conversion of the inquiry into a disciplinary investigation. As most disciplinary matters involving trust account audits are extremely time-consuming, this increase

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<sup>7</sup> When the Director receives a satisfactory explanation for the overdraft and is assured that the account-holder is adequately maintaining his/her trust account books and records, the Director will simply close the overdraft notice inquiry without any further action. Where, however, the overdraft appears to have been caused by a shortage in the account-holder’s trust account and/or there are other serious deficiencies identified in the account, the Director will convert the overdraft inquiry into a formal disciplinary investigation. These numbers reflect a combination of these two types of overdraft inquiry closings.

represents a significant additional use of resources. This in part accounts for the hiring of an additional paralegal this past year.

At the end of 2009, 22 overdraft inquiry files remained open. This was a slight increase from the number of overdraft inquiry files remaining open at the end of 2008 (18). The Director's staff's overall time requirements for processing overdrafts in 2009 (311.25 hours) were less than that required in 2008 (349.50).

Overdrafts Reported by Banks

2008	78
2009	81

Closed Inquiries During 2009

• Closed Without Need for Disciplinary Investigation	64
• Inquiry Converted to Disciplinary Investigation	12
Total Trust Account Inquiries Closed	<u>76</u>

Public Discipline Decisions Related to Trust Account Overdraft Inquiry

- *In re Weisberg*, 775 N.W.2d 650 (Minn. 2009) (three-year suspension).
- *In re Usumanu*, 766 N.W.2d 701 (Minn. 2009) (30-day suspension).
- *In re Harris*, 765 N.W.2d 389 (Minn. 2009) (90-day suspension)

In 40 (or 63%) of the inquiries closed 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 proper books, failure to properly reconcile the account and commingling.

In 2009 the overdraft inquiries closed without a disciplinary investigation were closed for the following reasons:

<b>Overdraft Cause</b>	<b>No. of Closings</b>
Bank error	14
Mathematical/clerical error	14
Service or check charges	9
Late deposit	7
Check written in error on TA	6

<u>Overdraft Cause</u>	<u>No. of Closings</u>
Bank hold on funds drawn	5
Third party check bounced	4
Deposit to wrong account	2
Improper/lacking endorsement	1
Reporting error	1
Other	1

#### Disciplinary File Openings

As noted, the Director will convert an overdraft inquiry into a disciplinary investigation if shortages or other significant problems are identified in the lawyer's trust account books and records, the lawyer fails to respond to the overdraft inquiry or the lawyer's response does not adequately explain the overdraft. During 2009 overdraft inquiries were converted into disciplinary investigations for the following reasons:

<u>Reason for Investigation</u>	
Shortages	10
Response fails to explain OD	1
Commingling	1
<b>Total</b>	<u>12</u>

#### Time Requirements

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

	<u>1/08-12/08</u>	<u>1/09-12/09</u>
Attorney	125.00 hrs	127.50 hrs
Paralegal and other staff	<u>224.50 hrs</u>	<u>183.75 hrs</u>
<b>Total</b>	<b>349.50 hrs</b>	<b>311.25 hrs</b>

#### H. Judgments and Collections.

In 2009 judgments were entered in 39 disciplinary matters totaling \$42,500.26.<sup>8</sup> The Director's Office collected a total of \$24,141.60 from judgments entered during or prior to 2009.

A comparison of the 2009 statistics and 2008 statistics is presented below:

	2008	2009
Number of judgments entered:	31	39
Dollar value of judgments entered:	\$30,976.52	\$42,500.26
Total amount collected:	\$28,520.18	\$24,141.60
Portion attributable to current year's judgment:	\$17,283.18	\$15,400.00
Portion attributable to judgments of prior years:	\$11,237.00	\$8,741.60

There may be several reasons for the decreased collections in 2009. The recent economic downturn may have played a role. Several suspended respondents have indicated they simply are unable to pay the judgments against them. Others have entered into payment agreements with the Director's Office which allow for small monthly or bi-monthly payments.

Additionally, in 2008 one lawyer applying for reinstatement paid a past due judgment in the amount of \$4,392.47.

Finally, in 2009, three judgments, totaling \$5,317.09, were entered against respondents who did not participate in the disciplinary proceedings against them. The Director does not know of the whereabouts of these respondents, and thus has been unsuccessful in efforts to obtain payment of the judgments against them.

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<sup>8</sup> The total amount of all outstanding judgments as of January 1, 2010, was \$303,584.16.

I. **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. Public discipline information also is available through the OLPR Web site. These informal telephone requests and responses are not tabulated.

2. Source and Number of Written Requests for Disclosure.  
Calendar Year 2009.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	114	114	4	1
B. Individual Attorneys	332	332	24	3
C. Local Referral Services				
1. RCBA	25	66	0	0
2. Hennepin County	5	227	8	1
D. Governor's Office	8	22	0	0
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	64	64	4	1
F. F.B.I.	21	24	0	0
G. MSBA: Specialist Certification Program	9	98	8	1
H. Miscellaneous Requests	19	94	7	2
<b>TOTAL</b>	<b>597</b>	<b>1041</b>	<b>55</b>	<b>9</b>
(2008 Totals)	(537)	(1124)	(55)	(15)

3. Press Releases.

The disclosure department also handles the issuance of press releases, which are issued upon the filing of contested public petitions seeking suspension or disbarment, and again with every Supreme Court public disciplinary decision.

## **J. Trusteeships.**

### **Rule 27(a), RLPR, states:**

**Appointment of Trustee.** Upon a showing that a lawyer is unable to properly discharge responsibilities to clients due to disability, disappearance or death, or that a suspended, disbarred, resigned, or disabled lawyer, or a lawyer whose conditional admission has been revoked, has not complied with Rule 26, and that no arrangement has been made for another lawyer to discharge such responsibilities, this Court may appoint a lawyer to serve as the trustee to inventory the files of the disabled, disappeared, deceased, suspended, disbarred or resigned lawyer, or a lawyer whose conditional admission has been revoked, and to take whatever other action seems indicated to protect the interests of the clients and other affected parties.

The trusteeship function appears to be growing in recent years, and has become a considerable drain on OLPR resources. Extra office and storage space has been necessary and extensive staff time is required. This is an area of resource use that will require close monitoring in the future, especially with the recent appointment as trustee over the closed files of Centro Legal, Inc., a closed non-profit legal services provider.

On May 14, 2009, the Director was appointed trustee of the trust account of deceased attorney John Joseph Curi. The Director, after review, disbursed the funds in the trust account and was discharged as trustee on April 27, 2010.

On June 23, 2009, the Director was appointed trustee of the open and closed files of deceased attorney Thornton P. Anderson. The Director took possession of 185 client files. Files were returned to 7 clients or their designated agents. The Director inventoried and destroyed 174 files. Four files remain in the Director's possession and are scheduled for expunction in April 2013. The Director was discharged as trustee on April 27, 2010.

As reported in last year's annual report, The Director was appointed trustee of the trust account of deceased attorney Howard J. Groves. The Director, after review,

disbursed the funds in the trust account and was discharged as trustee on July 30, 2009.

On August 7, 2009, the Director was appointed trustee of the legal files of deceased attorney William J. Platto. The Director took possession of approximately 1800 client files. The Director's Office has contacted the clients and this trusteeship is in the final stages of completion.

On August 28, 2009, the Director was appointed trustee of the trust account of deceased attorney Todd Stedtfeld. The Director, after review, disbursed the funds in the trust account and was discharged as trustee on February 18, 2010.

On April 27, 2010, the Director was appointed trustee of the client files of Albert A. Garcia, Jr., who is currently incarcerated. The files have been inventoried and letters have been sent to over 800 clients.

On May 10, 2010, the Director was appointed trustee of the trust account of deceased attorney John H. Martin. The Director will be pursuing legal action necessary to maintain the account, protect or recover assets that may be client property and disburse funds.

On June 10, 2010, the Director was appointed trustee over the closed files of Centro Legal, Inc. Centro Legal ceased operations and has hundreds of closed files in storage. The Director will assist in efforts to return these files upon request. This is the first time the trusteeship authority has been used with a law firm.

The Director's Office continues to retain:

- Alfred Edwall trusteeship – 6 files which are eligible for expunction in December 2013;
- Michael W. Coopet trusteeship – 103 files which are eligible for expunction November 1, 2011; and
- Charles O. Amdahl trusteeship – 325 files which are eligible for expunction November 1, 2011.

#### **K. 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 thereafter 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 Lawyers Board Web site.

Professional firms pay a filing fee of \$100 for the first report and a \$25 filing fee each year thereafter. In reporting year 2008-2009 there were 170 new professional firm filings. Fees collected from professional firm filings are included in the Board's annual budget. As of April 30, 2010, the Director's Office received \$58,725 from 1,989 professional firm filings. The Director's Office received \$63,675 during fiscal year 2009. As of April 30, 2010, there were 90 new professional firm filings for reporting year 2009-2010.

An Assistant Director, paralegal, and file clerk staff the professional firms department in the Director's Office. The work rarely requires direct attorney involvement. The total attorney work time for overseeing the professional firms department was 8 hours. The total non-attorney work time was 306 hours.

#### **IV. DISTRICT ETHICS COMMITTEES.**

Minnesota is one of a few jurisdictions that extensively uses local district ethics committees (DEC) to conduct the preliminary investigation of the majority of ethics complaints. The Supreme Court Advisory Committee considered the continued vitality of the DEC system in 2008 and determined that the Minnesota system continues to work well, and strongly urged its continuation.

Initial review of complaints by practitioners in their own area and by non-lawyers is valuable in reinforcing confidence in the system. The overall quantity and quality of the DEC investigative reports remain high. For calendar year 2009, the Director's Office followed DEC recommendations in 82 percent of investigated matters. Many of the matters in which the recommendation was not followed involved situations in which the Director's Office sought greater discipline than recommended, usually attorneys with substantial prior relevant discipline that was not considered by the DEC in making its recommendation.

In 2009 the monthly average number of files under DEC consideration was 147, fluctuating between a low of 119 and a high of 170. The year-to-date average for 2010 is 167 as of April 30.

Rule 7(c), RLPR, provides a 90-day goal for completing the DEC portion of investigations. For the calendar year 2009, the DEC's completed 414 investigations, taking an average of 4.2 months to complete each investigation. The Hennepin DEC was assigned 156 of these investigations, taking an average of 4.1 months per investigation. (See Table IV at A. 13.)

The Hennepin DEC, the state's largest district, uses a two-tiered complaint review process not employed by other DEC's. 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 personally and address the committee at the IRC hearing.

In calendar year 2009, 113 matters were referred back to the Director's Office after screening without an IRC hearing; it took an average of 3.7 months to complete the DEC investigation of these matters. There were 31 matters referred to an IRC panel before being sent back to the Director's Office, which took an average of 5.9 months to complete. 12 matters were withdrawn.

For calendar year 2009, of the completed DEC investigations, there resulted the following dispositions:

Determination discipline not warranted	275
Admonition	52
Private probation	4

The annual seminar for DEC members, hosted by the Office and the Board, will be held this coming year on Friday, September 24, 2010. All DEC members, plus select members of the bench and bar with some connection to the discipline system, are invited. The seminar again will be held at the Ramada Plaza Minneapolis.

The Board and the Office remain committed to the support and training of ethics committee volunteers, both lawyer members and public members. In addition, the Hennepin DEC holds training/orientation seminars at least twice a year for its new members. The Director's Office continues to provide support to all of the DEC's through liaisons assigned to each district.

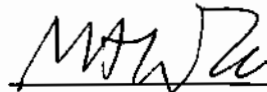
The Office continues to integrate the SharePoint project to facilitate communication between DEC members and make it easier for the DEC's to share reports and proposed recommendations. This project permits DEC members to post reports and recommendations on a secure Web site available only to the Office and the DEC members. DEC members are able to discuss the report and vote on the proposed recommendation via the Web site. Additionally, DEC members have access to a variety of resources through the Web site.

**V. FY2011 GOALS AND OBJECTIVES.**

Keeping up with the increase in complaints and demands for services is a major goal for the next year. There should be no issues related to the transition to a new Board Chair. Oversight by the new Executive Committee of the recommendations for timely case handling will remain important. Maintaining requests for advisory opinions and handling as many Continuing Legal Education requests as possible will require effort and commitment from many individuals. Growing familiarity with the procedural changes for probable cause determinations should increase panel efficiency in the coming year.

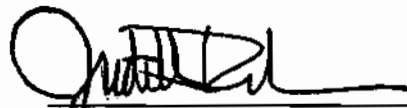
Dated: July 6, 2010.

Respectfully submitted,



MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY

and



JUDITH M. RUSH  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD

## **Lawyers Professional Responsibility Board Members**

**Judith M. Rush, St. Paul.** – Attorney member; current LPRB Chair; term expires January 31, 2016. Solo practitioner; served 6 years as member of the Lawyers Board and served 6 years on the Ramsey County District Ethics Committee. Areas of expertise: appellate and family law and ethics and professional liability advisory work.

**Joseph V. Ferguson III, Duluth.** – Attorney member; current LPRB Vice-Chair; term expires 1/31/11; serves on both the LPRB Executive Committee and Rules Committee. Served on Eleventh DEC for 12 years, including 6 years as Chair. Partner in the firm of Johnson, Killen & Seiler, P.A. Areas of expertise: business law/bankruptcy/admiralty.

**Robert B. Bauer, Apple Valley** – Attorney member; term expires 1/31/13; serves on the LPRB Opinion Committee; served on First DEC for 3 years. Attorney and shareholder in the Apple Valley law firm of Severson, Sheldon, Dougherty & Molenda, P.A. Areas of expertise: Civil litigation, real estate (a MSBA certified real property specialist), municipal and estate planning.

**Nancy Zalusky Berg, Mpls.** – Attorney member; MSBA nominee; term expires 1/31/12; serves on the LPRB Rules Committee. Served 18 years on the Hennepin County District Ethics Committee. Founder of Walling, Berg & Debele, P.A. Areas of expertise: Family and juvenile.

**Steve Bolluyt, Eagan.** – Public member; term expires 1/31/13. Sergeant with Eagan Police Department, Investigative Division. Areas of expertise: criminal investigation, white collar/financial crime, and complex investigations.

**Cassandra K. Ward Brown, Mpls.** – Attorney member; term expires 1/31/12; serves on the LPRB Rules Committee. Served on the Hennepin County District Ethics Committee for 6 years. Assistant General Counsel Minneapolis Public Schools. Areas of expertise: Civil litigation (employment; insurance; school).

**Christopher D. Cain, Mankato.** – Attorney member; MSBA nominee; term expires 1/31/13. Assistant City Attorney for the City of Mankato. Served 5 years on the Sixth District Ethics Committee. Adjunct Professor Minnesota State University – Mankato. Areas of expertise: Criminal law and forfeitures.

**Carol E. Cummins, Golden Valley.** – Public member; term expires 1/31/12. Served on the Hennepin County District Ethics Committee for 6 years. Consultant/Principal at Brookridge Consulting, LLC. Areas of expertise: Law firm management; ethics in intellectual property law practice, human resources and employee benefits.

**William P. Donohue, Mpls.** – Attorney member; term expires 1/31/11; Chair of the LPRB Rules Committee. Served on Second DEC for 7 years. Deputy General Counsel and instructor at the University of Minnesota.

**Kenneth S. Engel, Mpls.** – Attorney member; term expires 1/31/13. Served on Hennepin County District Ethics Committee for 4 years. Attorney in the firm of Engel Professional Association. Areas of expertise: Real estate, corporate, merger/acquisition/disposition, finance, and business/family business succession planning law, and strategic advisory counsel. Experience also in construction, entrepreneurial private placement/PPM, entity formation and governance, franchising and employment law.

**Susan C. Goldstein, Wayzata** – Public member; term expires 1/31/13; serves on both the LPRB Rules Committee and Opinion Committee. Areas of expertise: Class action and complex litigation.

**Sheridan Hawley, Mpls.** – Attorney member; term expires 1/31/13; serves on the LPRB Opinion Committee. Solo practitioner. Areas of expertise: Juvenile law, family law, and appeals.

**Marne Gibbs Hicke, Mpls.** – Public member; term expires 1/31/11. Served on 21st DEC for 7 years. Currently a Senior Paralegal at Barna, Guzy & Steffen, Ltd. in Coon Rapids.. Areas of expertise: Criminal law/prosecution.

**Geri L. Krueger, Glenwood** – Public member; term expires 1/31/12. Sole proprietor of Geri's Paralegal Service. Areas of expertise: Civil and family mediation, guardianship, conservatorship and probate.

**Richard H. Kyle, Jr., Mpls** – Attorney member; MSBA nominee; term expires 1/31/11; serves on the LPRB Opinion Committee. Served on Second DEC for 9 years. Shareholder in the law firm of Fredrikson & Byron in Minneapolis. Areas of expertise: White collar criminal defense.

**Richard Lareau, Mpls.** – Attorney member; MSBA nominee; term expires 1/31/12; serves on the LPRB Rules Committee. Served on the Hennepin County and Ramsey County District Ethics Committees for many years. Partner in the law firm of Oppenheimer, Wolff & Donnelly.

**Ann E. Maas, Brooklyn Park** - Public member; term expires 1/31/11; serves on both the LPRB Executive Committee and Rules Committee. 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.

**Daniel Malmgren, Marine on St. Croix.** – Public member; term expires 1/31/12. Peace Officer, Lecturer and Adjunct Faculty member for several colleges. Areas of expertise: Data Practices, complaint investigation, employment law, criminal law.

**Debbie Toberman, Plymouth** - Public member; term expires 1/31/11; serves on the LPRB Opinion Committee; served on the Fourth DEC for 12 years. Claim supervisor for Minnesota Lawyers Mutual Ins. Co. Area of expertise: Legal malpractice.

**Michael W. Unger, Mpls** – Attorney member; MSBA nominee; term expires 1/31/11; serves on the LPRB Opinion Committee. Served on Fourth DEC for 6 years. Solo practitioner at Unger Law Office Minneapolis. Areas of expertise: Civil litigation (a MSBA certified civil trial specialist), mainly plaintiff personal injury and medical malpractice. Experience in employment, labor, and class action (consumer fraud, antitrust ad ERISA).

**Daniel R. Wexler, Maple Grove** – Public member; term expires 1/31/11. Currently employed as Project Coordinator at Ameriprise Financial in Minneapolis. Background in domestic and international casino marketing, customer service training, communications and event planning.

**Stuart T. Williams, Mpls.** – Attorney member; MSBA nominee; term expires 1/31/13; Chair of the LPRB Opinion Committee; served on the Fourth DEC for 7 years. Attorney and shareholder with the firm of Henson and Efron in Minneapolis. Areas of expertise: Commercial litigation, environmental law, and toxic torts.

**Jan M. Zender, St. James** – Attorney member; term expires 1/31/11; serves on the LPRB Rules Committee; served on the Sixth DEC for 6 years. Partner in law firm of Sunder, Olson, Bircher and Zender. Areas of expertise: Real estate and estate planning.

## LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

### OPINION NO. 21

#### **A Lawyer's Duty to Consult with a Client About the Lawyer's Own Malpractice**

A lawyer who knows that the lawyer's conduct could reasonably be the basis for a non-frivolous malpractice claim by a current client that materially affects the client's interests has one or more duties to act under the Minnesota Rules of Professional Conduct. The requirements of Rules 1.4 and 1.7 are implicated in such a circumstance and the lawyer must determine what actions may be required under the Rules, with particular attention to Rules 1.4 and 1.7.

Since the possibility of a malpractice claim that arises during representation may cause a lawyer to be concerned with the prospect of legal liability for the malpractice, the provisions of Rule 1.7 dealing with a "concurrent conflict of interest" must be considered to determine whether the personal interest of the lawyer poses a significant risk that the continued representation of the client will be materially limited.<sup>1</sup> Under Rule 1.7 the lawyer must withdraw from continued representation unless circumstances giving rise to an exception are present.<sup>2</sup> Assuming continued representation is not otherwise prohibited, to continue the representation the lawyer must reasonably believe he or she may continue to provide competent and diligent representation.<sup>3</sup> If so, the lawyer must obtain the client's "informed consent," confirmed in writing, to the continued representation.<sup>4</sup> Whenever the rules require a client to provide "informed consent," the lawyer is under a duty to promptly disclose to the client the circumstances giving rise to the need for informed consent.<sup>5</sup> In this circumstance, "informed consent" requires that the lawyer communicate adequate information and explanation about the material risks of and reasonably available alternatives to the continued representation.<sup>6</sup>

Regardless of whether the possibility of a malpractice claim creates a conflict of interest under Rule 1.7, the lawyer also has duties of communication with the client under Rule 1.4 that may apply. When the lawyer knows the lawyer's conduct may reasonably be the basis for a non-frivolous malpractice claim by a current client that

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<sup>1</sup> Rule 1.7(a)(2).

<sup>2</sup> Rule 1.7(a).

<sup>3</sup> Rule 1.7(b)(1) and (2).

<sup>4</sup> Rule 1.7(b)(4).

<sup>5</sup> Rule 1.4(a)(1).

<sup>6</sup> Rule 1.0(f).

materially affects the client's interests, the lawyer shall inform the client about that conduct to the extent necessary to achieve each of the following objectives:

- 1) keeping the client reasonably informed about the status of the representation,<sup>7</sup>
- 2) permitting the client to make informed decisions regarding the representation,<sup>8</sup>
- 3) assuring reasonable consultation with the client about the means by which the client's objectives are to be accomplished.<sup>9</sup>

### Comment

The issue of when and what to say to a client when a lawyer knows that the lawyer's conduct described in Opinion 21 could reasonably be expected to be the basis for a malpractice claim is difficult and may create inherent conflicts. The Board is issuing Opinion No. 21 to apprise the Bar of the Board's position on the matter and to provide guidance to lawyers who may confront the issue.

In consulting with the current client about the possible malpractice claim, the lawyer should bear in mind Comment 5 to Rule 1.4, which provides that "[t]he guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation."

Other jurisdictions have recognized a lawyer's ethical duty to disclose to the client conduct which may constitute malpractice. See, e.g., *Tallon v. Comm. on Prof'l Standards*, 447 N.Y.S.2d 50, 51 (App. Div. 1982) ("An attorney has a professional duty to promptly notify his client of his failure to act and of the possible claim his client may thus have against him."); Colo. B. Ass'n Ethics Comm., Formal Op. 113 (2005) ("When, by act or omission, a lawyer has made an error, and that error is likely to result in prejudice to a client's right or claim, the lawyer must promptly disclose the error to the client."); Wis. St. B. Prof'l Ethics Comm., Formal Op. E-82-12 ("[A]n attorney is obligated to inform his or her client that an omission has occurred which may constitute malpractice and that the client may have a claim against him or her for such an omission."); N.Y. St. B. Ass'n Comm. on Prof'l Ethics, Op. 734 (2000), 2000 WL 33347720 (Generally, an attorney "has an obligation to report to the client that [he or she] has made a significant error or omission that may give rise to a possible malpractice

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<sup>7</sup> Rule 1.4 (a)(3).

<sup>8</sup> Rule 1.4 (b).

<sup>9</sup> Rule 1.4 (a)(2).

claim.”); N.J. Sup. Ct. Advisory Comm. on Prof'l Ethics, Op. 684 (“The Rules of Professional Conduct still require an attorney to notify the client that he or she may have a legal malpractice claim even if notification is against the attorney’s own interest.”).

*In re SRC Holding Corp.*, 352 B.R. 103 (Bankr. D. Minn. 2006), aff’d in part and rev’d in part *In re SRC Holding Corp.*, 364 B.R. 1 (D. Minn. 2007), reversed *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609 (8th Cir. 2009) discuss certain matters addressed in Opinion 21. In *Leonard*, the Eighth Circuit held that the bankruptcy court had relied too heavily on ethics rules in determining whether the law firm had violated a legal duty to consult with its client about the law firm’s possible malpractice. The Eighth Circuit said “[d]emonstrating that an ethics rule has been violated, by itself, does not give rise to a cause of action against the lawyer and does not give rise to a presumption that a legal duty has been breached.” 553 F.3d 628. In predicting how the Minnesota Supreme Court would rule on an attorney’s legal duty to consult with a client about the law firm’s possible malpractice, the Eighth Circuit did not opine on a law firm’s ethical duties to consult about such a claim. Recognizing the distinction, this Opinion does not opine on a law firm’s legal duties to consult about such a claim.

A lawyer’s obligation to report a possible malpractice claim to the lawyer’s client also is discussed in a local article written by Charles E. Lundberg, entitled *Self-Reporting Malpractice or Ethics Problems*, 60 Bench & B. of Minn. 8, Sept. 2003, and more recently and extensively in Benjamin P. Cooper’s article, *The Lawyer’s Duty to Inform His Client of His Own Malpractice*, 61 Baylor L. Rev. 174 (2009) and Brian Pollock’s article, *Surviving a Screwup*, 34 ABA Litig. Mag. 2, Winter 2008.

Adopted: October 2, 2009.

## LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

### OPINION NO. 22

#### A Lawyer's Ethical Obligations Regarding Metadata

A lawyer has a duty under the Minnesota Rules of Professional Conduct (MRPC), not to knowingly reveal information relating to the representation of a client, except as otherwise provided by the Rules, and a duty to act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure. *See* Rules 1.1, 1.6, MRPC. The lawyer's duties with respect to such information extends to and includes metadata in electronic documents. Accordingly, a lawyer is ethically required to act competently to avoid improper disclosure of confidential and privileged information in metadata in electronic documents.

If a lawyer receives a document which the lawyer knows or reasonably should know inadvertently contains confidential or privileged metadata, the lawyer shall promptly notify the document's sender as required by Rule 4.4(b), MRPC.

#### Comment

##### Metadata Generally

Metadata, sometimes defined as data within data, is used in this Opinion to refer to information generated and embedded in electronically created documents. Metadata is generated automatically by software when an electronic document is created, accessed and modified and typically may include such information as the date the document was created, the author, and the date changes were made to the document. Other times metadata may be purposely created, such as when the author adds comments or other information visible in the document's electronic format but which may not be visible in its printed version. When electronic documents are transmitted electronically – for example, as a Word document attached to an e-mail – the metadata is transmitted with the document.

Metadata can be "scrubbed" or removed from an electronic document by various means, including the use of special software programs or by scanning a printed copy of the document and sending it in a PDF format. Transmission of metadata can also be avoided by transmitting hard copies of the document rather than electronic copies or by faxing the document.

Metadata embedded in an electronic document can be “mined” or viewed by a recipient of the document. Some metadata can be accessed simply by right-clicking a mouse or selecting “properties” or “show markup” on a Word document. Other metadata can be accessed by the use of special software programs.

There are many types of metadata, many ways of creating metadata, and many means for removing and accessing metadata, all of which will undoubtedly continue to expand and evolve with technological innovation.

Most metadata is not confidential, and the disclosure of metadata may often be intentional and for the mutual benefit of clients with adverse interests. Other metadata may contain confidential information the disclosure of which can have serious adverse consequences to a client. For example, a lawyer may use a template for pleadings, discovery and affidavits which contain metadata within the document with names and other important information about a particular matter which should not be disclosed to another party in another action. Also as an example, a lawyer may circulate within the lawyer’s firm a draft pleading or legal memorandum on which other lawyers may add comments about the strengths and weaknesses of a client’s position which are embedded in the document but not apparent in the document’s printed form. Similarly, documents used in negotiating a price to pay in a transaction or in the settlement of a lawsuit may contain metadata about how much or how little one side or the other may be willing to pay or to accept.

Due to the hidden, or not readily visible, nature of metadata and the ease with which electronic documents can be transmitted, a potential exists for the inadvertent disclosure of confidential or privileged information in the form of metadata in both a litigation and non-litigation setting, which in turn could give rise to violations of a lawyer’s ethical duties.

### **Applicable Rules**

Rule 1.1, Minnesota Rules of Professional Conduct (MRPC), states that “[a] lawyer shall provide competent representation to a client.” Comment 5 to Rule 1.1 provides that “[c]ompetent handling of a particular matter includes . . . use of methods and procedures meeting the standards of competent practitioners.”

As noted in American Bar Association Formal Opinion 06-442 (2006) at 1:

In modern legal practice, lawyers regularly receive email, sometimes with attachments such as proposed contracts, from opposing counsel and other parties. Lawyers also routinely receive electronic documents that have been made available by opponents, such as archived e-mail and other

documents relevant to potential transactions or to past events. Receipt may occur in the course of negotiations, due diligence review, litigation, investigation, and other circumstances.

Competence requires that lawyers who use electronic documents understand that metadata is created in the generation of electronic documents, that transmission of electronic documents will include transmission of metadata, that recipients of the documents can access metadata, and that actions can be taken to prevent or minimize the transmission of metadata.

Rule 1.6(a), MRPC, states that, “[e]xcept when permitted under paragraph (b), a lawyer shall not knowingly reveal information relating to the representation of a client.” Comment 2 to the rule explains that “[a] fundamental principle in the client-lawyer relationship is that, in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation.” Comment 15 provides that “[a] lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision”; and Comment 16 further provides that “when transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.”

Opinion No. 22 makes clear that the duty imposed by Rule 1.6(a), MRPC, regarding client information extends to and includes metadata in electronic documents. Thus, a lawyer must take reasonable steps to prevent the disclosure of confidential metadata. *See* ABA/BNA Lawyers’ Manual on Professional Conduct 55:401 (2008) (“When a lawyer sends, receives, or stores client information in electronic form, the lawyer’s duty to protect that information from disclosure to unauthorized individuals is the same as it is for information communicated or kept in any other form.”).

Rule 4.4(b), MRPC, states that “[a] lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.” Comment 2 to the Rule explains that lawyers sometimes receive documents that were mistakenly sent and that “[i]f a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures.” Comment 2 states that “[f]or purposes of this rule, ‘document’ includes email or other electronic modes of transmission subject to being read or put into readable form. Opinion No. 22 makes clear that the duty imposed by Rule 4.4(b) regarding documents extends to metadata in electronic documents.

“Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived.” Comment 2 to Rule 4.4, MRPC.

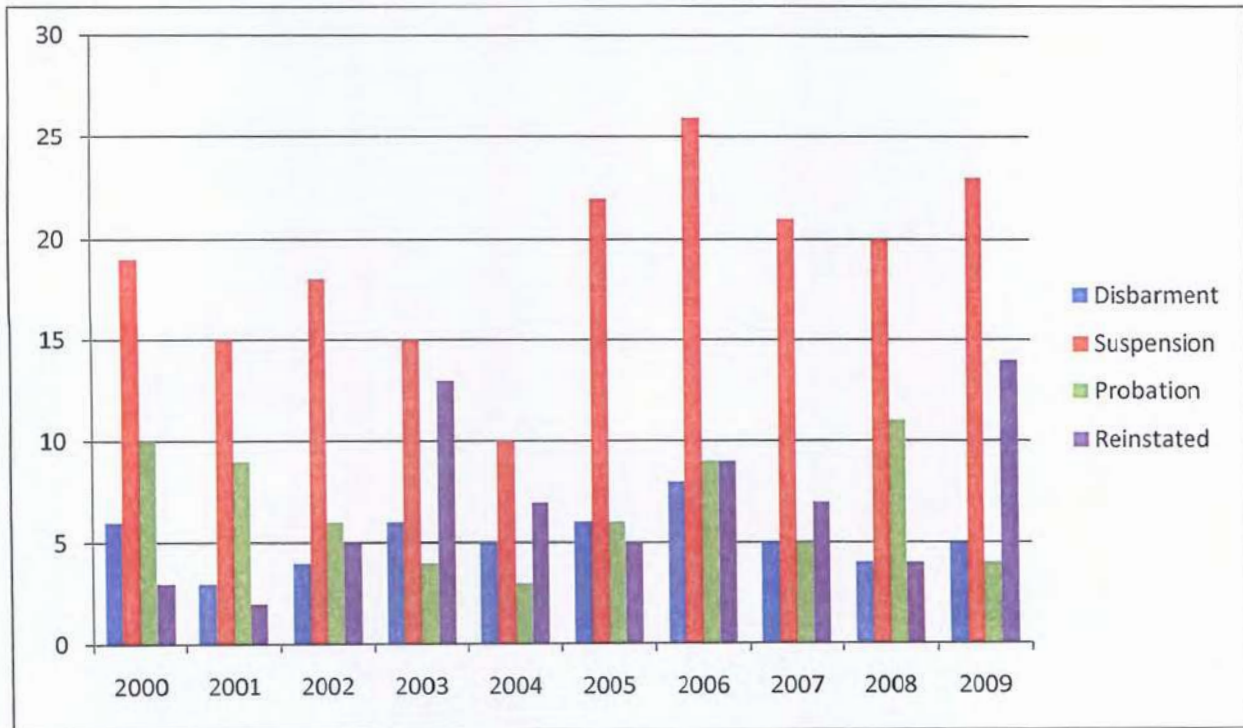
The generation, transmittal and receipt of documents containing metadata also implicates ethical obligations under Rules 5.1 and 5.3, MRPC.

Opinion 22 is not meant to suggest there is an ethical obligation on a receiving lawyer to look or not to look for metadata in an electronic document. Whether and when a lawyer may be advised to look or not to look for such metadata is a fact specific question beyond the scope of this Opinion.

A lawyer may be subject to a number of obligations other than those provided by the MRPC in connection with the transmission and receipt of metadata, including obligations under the Federal Rules of Civil Procedure and the Minnesota Rules of Civil Procedure. Removing metadata from evidentiary documents in the context of litigation or in certain other circumstances may be impermissible or illegal. Opinion No. 22 addresses only a lawyer’s ethical obligations regarding metadata under the Minnesota Rules of Professional Conduct.

Adopted: March 26, 2010.

The graph below shows the number of disbarments, suspensions, probations and reinstatements ordered by the Supreme Court over the last ten years. Clearly, these are the four largest public professional responsibility categories handled by the Director's Office and reviewed by the Court. The table below the graph indicates the variety of matters and exact number of Supreme Court dispositions and reinstatements since 2000.



**TABLE I**  
**Supreme Court Dispositions and Reinstatements 2000-2009**  
**Number of Lawyers**

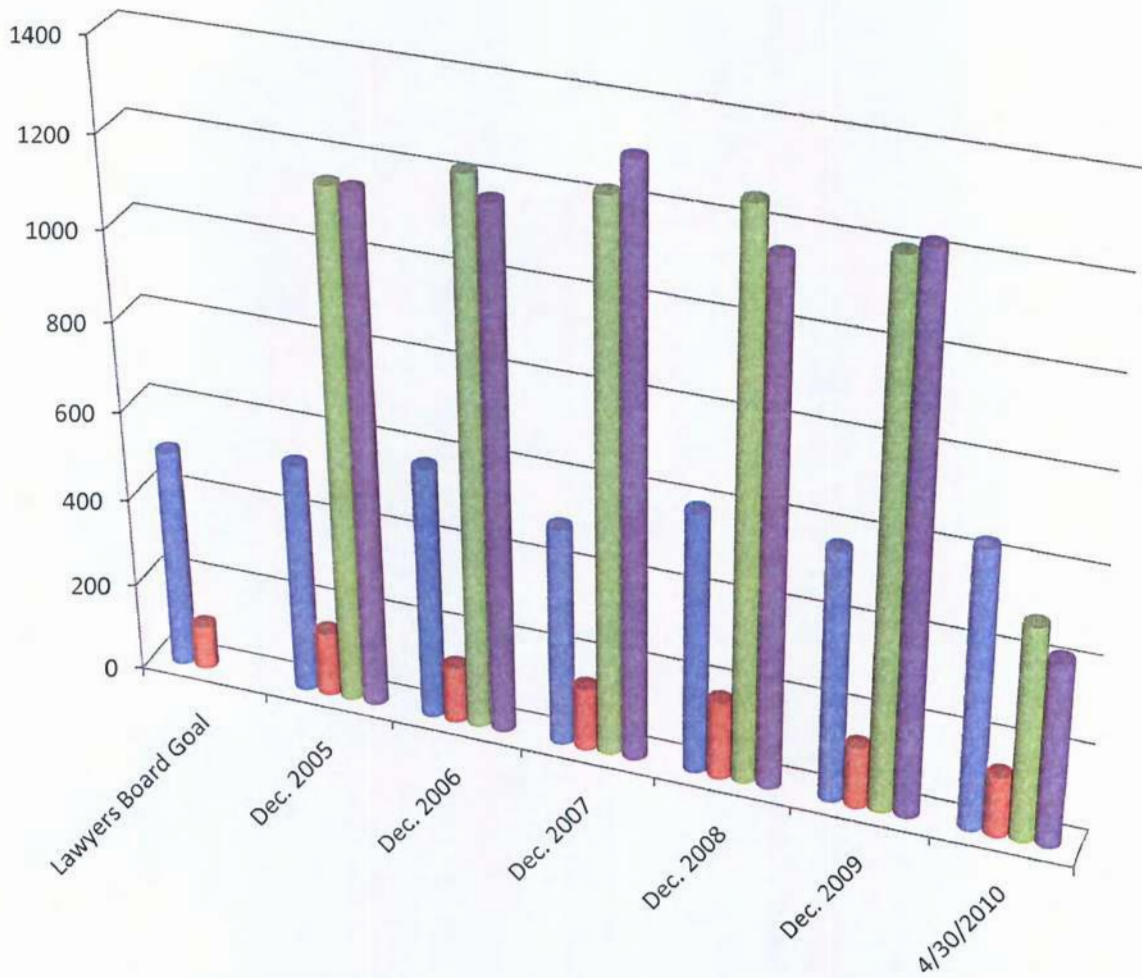
	Disbar.	Susp.	Probation	Reprimand	Dismissal	Reinstated	Reinstate Denied	Disability	SC AD/Aff	Other	Total
2000	6	19	10	2	0	3	0	2	1	0	43
2001	3	15	9	2	0	2	0	2	0	1*	34
2002	4	18	6	1	1	5	0	4	0	1**	40
2003	6	15	4	-	-	13	1	3	-	-	42
2004	5	10	3	1	-	7	1	1	-	-	28
2005	6	22	6	1	-	5	-	2	-	-	42
2006	8	26	9	5	-	9	-	2	-	7***	66
2007	5	21	5	-	-	7	2	-	-	-	40
2008	4	20	11	2	-	4	2	2	-	-	45
2009	5	23	4	6	0	14	1	1	-	-	54

\* Supreme Court admonition reversed.

\*\* Supreme Court stay.

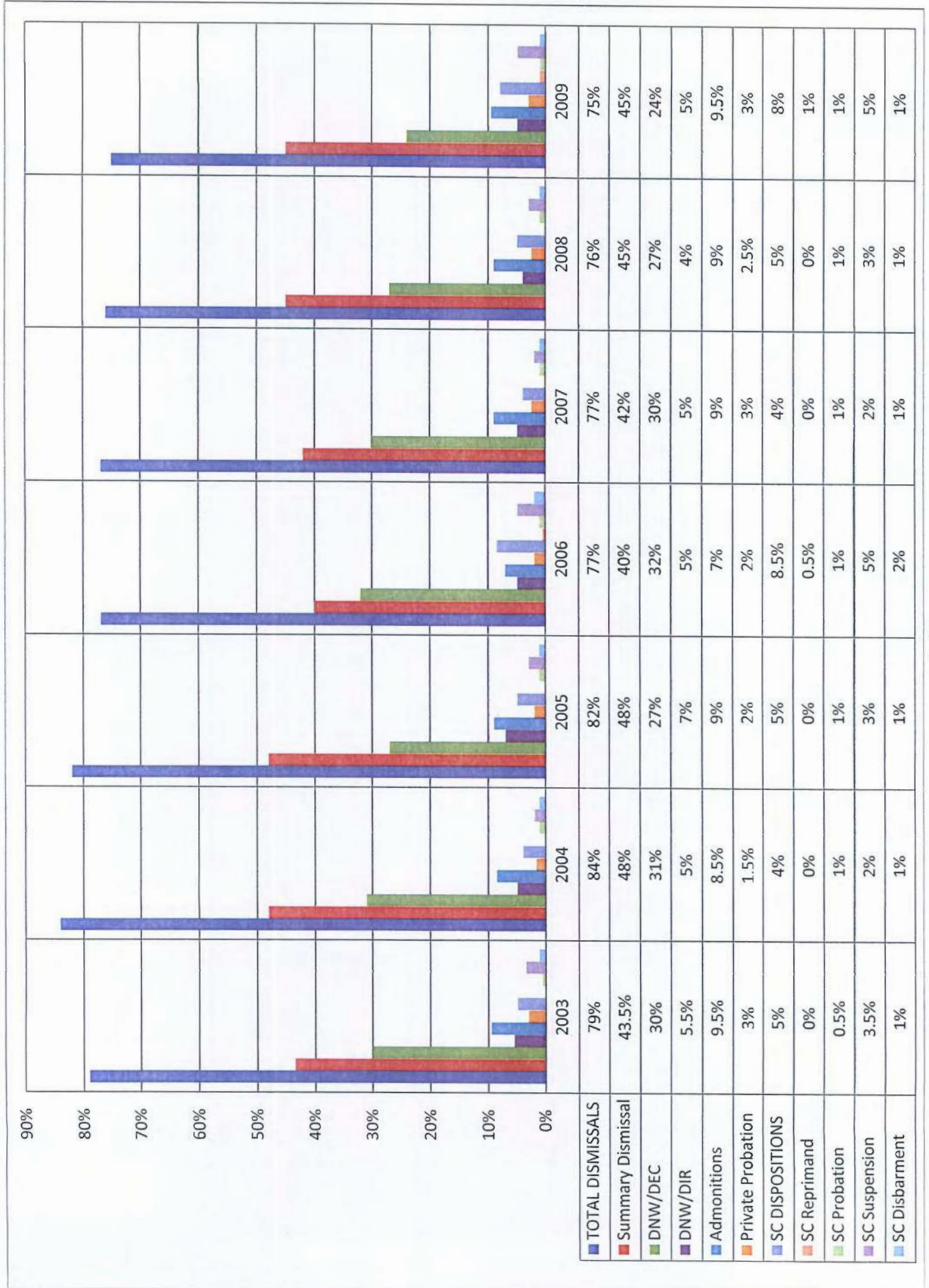
\*\*\* 4 Supreme Court stays, 2 reinstated to retired status, 1 conditional reinstatement pending.

**TABLE II**

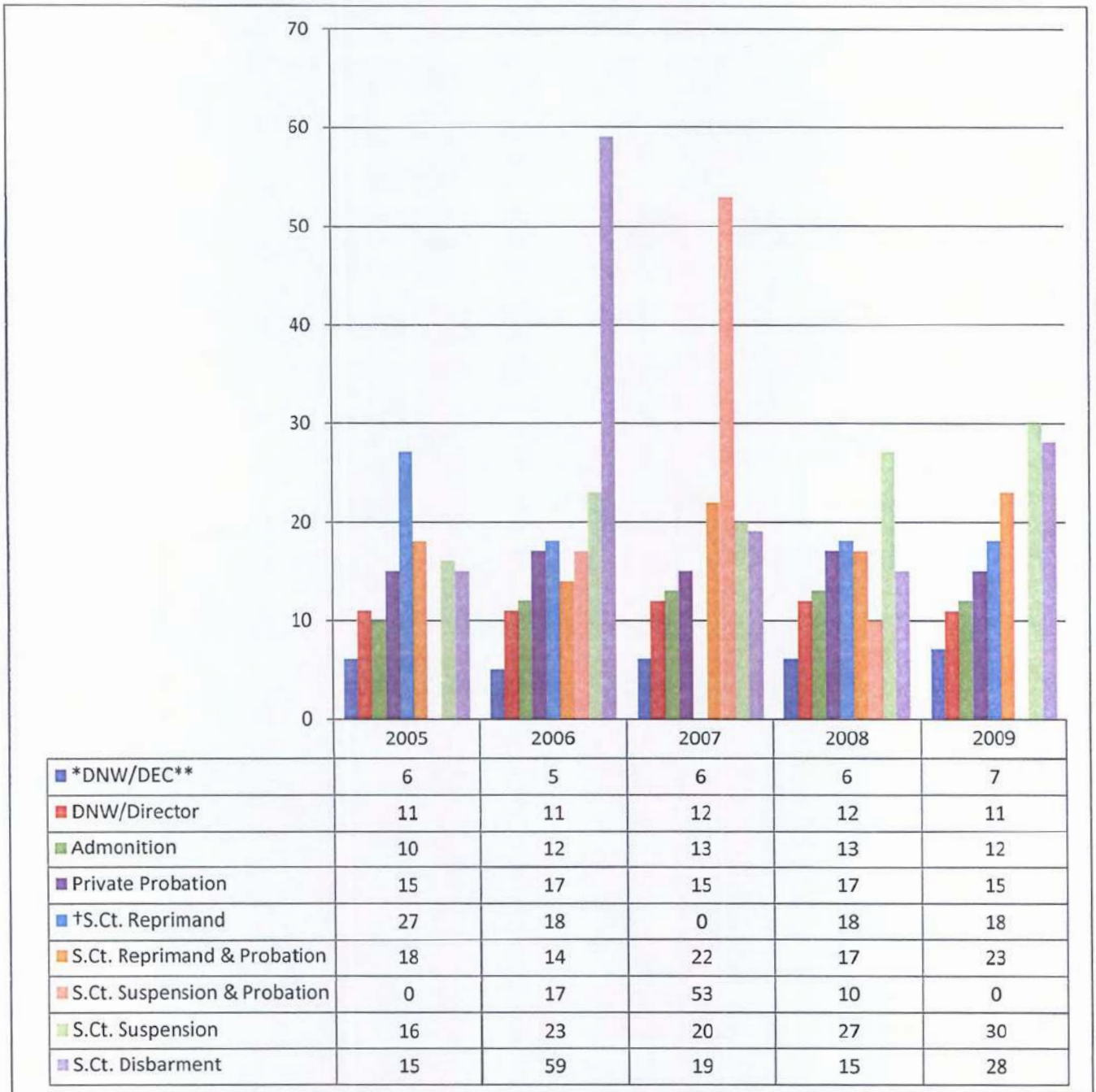


	Lawyers Board Goal	Dec. 2005	Dec. 2006	Dec. 2007	Dec. 2008	Dec. 2009	4/30/2010
■ Total Open Files	500	527	578	500	595	572	638
■ Cases at Least One Year Old	100	147	128	143	177	139	140
■ Complaints Received YTD		1,150	1,222	1,226	1,258	1,206	489
■ Files Closed YTD		1,148	1,171	1,304	1,161	1,229	421

**TABLE III**  
**Percentage of Files Closed**



**TABLE IV**  
Number of Months File was Open at Disposition



\*Discipline Not Warranted  
 \*\*District Ethics Committee  
 †Supreme Court

**2009 OLPR Summary of Public Matters Decided**  
**55 Decisions Involving 107 Files**

<b>Disbarment</b>	<b>13 files</b>	<b>5 attorneys</b>	<b>Reprimand</b>	<b>9 files</b>	<b>6 attorneys</b>
FISCHER, JASON ERIC	A09-1220	1	ARBEITER, SHARON ELIZABETH	A09-663	1
FOSTER, CAMILLE JONES	A09-774	4	BACKSTROM, JAMES C	A09-861	1
FRANTS, MICHAEL	A09-113	3	BLAKELY, TIMOTHY LEE	A08-1445	1
LIGHT, ROBERT M	A07-2128	1	CHRISTIANSON, JUDETH A	A08-843	4
RYERSON, PATRICIA JEAN	A07-1390	4	NICHOLS, LAWRENCE EDWARD	A08-1934	1
<b>Suspension</b>	<b>58 files</b>	<b>23 attorneys</b>	STARK, RONALD M JR.	A08-2188	1
ANDERSON, JOHN T JR	A07-2126	2	<b>Disability Inactive Status</b>	<b>2 files</b>	<b>1 attorneys</b>
BROST, LINDA A	A08-1012	1	POWELL, CHARLES R.	A09-17	2
BUSHAY, VANCE O	A09-1192	2	<b>Reinstatement</b>	<b>4 files</b>	<b>4 attorneys</b>
CHO, SUNGTAEK	A07-1591	1	BLOCK, TIMOTHY MICHAEL	A07-1867	1
CZARNIK, MICHAEL LAURENCE	A07-1885	1	FRALEY, DONALD J	A06-975	1
DAVISON, DONALD B	A09-1087	2	HELLERUD, MARK R	A08-2055	1
FARLEY, PATRICK JOSEPH	A08-1178	1	MONKE, JOEL C	A08-1207	1
FISHER, DENNIS DOWE	A08-1618	1	<b>Reinstatement &amp; Probation</b>	<b>10 files</b>	<b>10 attorneys</b>
GRIGSBY, STEPHEN VINCENT	A07-688	5	AAKRE, STEVEN K	A08-1467	1
HARRIS, CALANDRA FAYE	A08-1525	8	BEGESKE, MATTHEW K	A08-2013	1
HOUGE, BENJAMIN S	A07-2332	1	CZARNIK, MICHAEL LAURENCE	A07-1885	1
JONES, WILLIAM F	A08-2297	1	KAINE, J TIMOTHY	A08-2089	1
KAMMERER, JOSHUA LEE	A07-1856	3	KOPESKA, RONALD L	A07-2152	1
LEE, VANG PAO	A07-1902	4	MCCORMICK, DAVID LAWRENCE	A08-77	1
MONKE, JOEL C	A08-1207	3	NELSON, JOHN NORMAN JR.	A09-615	1
NELSON, JOHN NORMAN JR.	A09-615	1	RAMIREZ, SHARON DORELLE	A04-2499	1
PEACOCK, GREGG ALAN	A09-1158	1	STRUNK, KENT FREDERICK	A08-1064	1
SWOKOWSKI, JAY GERARD	A08-2006	4	USUMANU, ALBERT ISIAKA	A09-400	1
TABER, DANIEL P	A08-1524	1	<b>Reinstatement Denied</b>	<b>1 files</b>	<b>1 attorneys</b>
USUMANU, ALBERT ISIAKA	A09-400	1	HOLKER, KENNETH M	A06-896	1
WEISBERG, ROBERT SCOTT	A07-663	12	<b>Reinstatement Dismissed</b>	<b>1 files</b>	<b>1 attorneys</b>
WINTER, BARTON CARL	A08-1014	1	FULLER, DONALD BEDELLE	A09-338	1
ZENTNER, MELISSA ASHLEY	A08-86	1	<b>Reprimand &amp; Probation</b>	<b>9 files</b>	<b>4 attorneys</b>
<b>Reprimand &amp; Probation</b>	<b>9 files</b>	<b>4 attorneys</b>	BROEKER, JOHN M	A08-1845	3
BROEKER, JOHN M	A08-1845	3	EFFERTZ, JANA HARVIEUX	A09-1741	1
EFFERTZ, JANA HARVIEUX	A09-1741	1	EICHHORN-HICKS, TRACY R	A09-883	1
EICHHORN-HICKS, TRACY R	A09-883	1	OLSON, MARK A	A09-813	4
OLSON, MARK A	A09-813	4			

**Office of Lawyers Professional Responsibility  
Speaking Engagements and Seminars July 2009 – June 2010**

<b>Date</b>	<b>Topic</b>	<b>Location</b>	<b>Organization</b>
8/3/09	Ethics for Paralegals	Brooklyn Center	MSB
9/11/09	Professionalism	Minneapolis	HCBA
9/11/09	Ethics Overview	St. Cloud	Stearns/Benton County Bar Assn.
9/12/09	Credit Card and Fee Issues	Minneapolis	Family Law Section
9/15/09	Ethics for Paralegals	By phone	Pace Study Group
9/17/09	Ethics for Paralegals	Bloomington	IPE Seminar
9/22/09	Class Presentation	St. Paul	Wm. Mitchell
10/2/09	LPRB Seminar	Minneapolis	OLPR/LPRB
10/6/09	Ethics Issues for Solo Practitioners	St. Paul	Wm. Mitchell
10/7/09	Depositions & Obstructionist Tactics	Minneapolis	MNAJ Seminar
10/14/09	General Ethics	Shakopee	8 <sup>th</sup> Dist. Bar
10/15/09	Family Law Ethics	Rochester	Olmsted Cty Bar
10/22/09	Kyrgyzstan judges @ MJC	St. Paul	MJC
10/26/09	Ethics and Pro Bono	Minneapolis	MNCLE
10/28/09	Ethics Pro Bono Seminar	Minneapolis	HCBA
11/4/09	Common Issues/Recent Developments	St. Paul	Revisor's Office
11/13/09	Conflicts and Multiple Representation Seminar	Minneapolis	MSBA Construction Law Section
12/1/09	Common Ethical Problems for Paralegals	Webcast	IPE
12/2/09	Eminent Domain section	Minneapolis	HCBA
12/4/09	Family Law Seminar	St. Paul	AAML
12/12/09	Minnesota Society for Criminal Justice	Minneapolis	
12/14/09	Civil Litigation section	Minneapolis	HCBA
1/8/10	Speak to IHCC faculty re paralegal ethics	Inver Grove Heights	IHCC
1/12/10	Real Property	Minneapolis	MNCLE
1/13/10	MPA litigation sectional	St. Paul	MJC
1/13/10	Ethics for School Attorneys	Minneapolis	MSBA Council of School Attorneys
1/14/10	HCBA real property seminar	Minneapolis	HCBA
1/22/10	Immigration Law for MN Legal Svcs Coalition	St. Paul	Wm. Mitchell
2/9/10	New Lawyer Nuts & Bolts	Minneapolis	
2/10/10	MN Paralegal Assn.	Minneapolis	MN Paralegal Assn.

**Office of Lawyers Professional Responsibility  
Speaking Engagements and Seminars July 2009 – June 2010**

<b>Date</b>	<b>Topic</b>	<b>Location</b>	<b>Organization</b>
2/16/10	Advising the Disadvantaged	Minneapolis	MNCLE
2/18/10	Establishing Client Trust Accounts	Minneapolis	MNCLE
2/19/10	Ethics	Minneapolis	Midwest Black Law Student Assn.
2/19/10	Starting a Practice	Minneapolis	MNCLE
2/19/10	MN Assn. for Justice	Duluth	MAJ
2/24/10	Guardianship seminar	Minneapolis	MNCLE
2/27/10	Public Defender's Association	Hinckley	PD
3/6/10	Ethics	Minneapolis	WCCO Radio
3/9/10	Five Rules of Professional Responsibility	Minneapolis	Arthur Chapman Law Firm
3/18/10	Avoiding the Professional Responsibility Board	Hastings	Dakota Cty Atty
3/19/10	Candor, Business & Litigation Ethics	St. Paul	Hamline Law School
3/23/10	Family Law Institute	St. Paul	MNCLE
3/23/10	Situational Dishonesty	Minneapolis	HCBA
3/24/10	Avoiding the Professional Responsibility Board	Stillwater	Washington Cty
3/25/10	Depression	Minneapolis	HCBA
3/25/10	Ethics for Paralegals	By phone	MPA's Duluth Chapter
4/15/10	ADR Ethics	Minneapolis	MNCLE
4/15/10	Poverty Law & Ethics	St. Paul	Wm Mitchell
4/19/10	Ethics of <i>Pro Bono</i>		Corporate Counsel Breakfast Group
4/20/10	Real Estate Section	St. Paul	RCBA
4/21/10	Debtor/Creditor Seminar	Minneapolis	HCBA
4/22/10	Ethics for Solo & Small Firm Lawyers	St. Paul	RCBA
5/14/10	Public Law Ethics	St. Paul	PLS
5/14/10	Improper Trial Tactics	St. Paul	PLS
5/17/10	Ethics Issues	Minneapolis	MNCLE
5/18/10	Ethics Update	Minneapolis	HCBA
5/25/10	It Could Happen to You: Ethics, Life as a Lawyer, and the Disciplinary Process	St. Paul	
5/26/10	Ethics in ADA	Minneapolis	MN Assn. for Justice
5/27/10	Confidentiality & Candor	Ramsey	Anoka Cty Bar Assn.

**Office of Lawyers Professional Responsibility  
Speaking Engagements and Seminars July 2009 – June 2010**

<b>Date</b>	<b>Topic</b>	<b>Location</b>	<b>Organization</b>
6/3/10	Lawyers Behaving Badly – What NOT To Do	Minneapolis	MN Assn. for Justice
6/8/10	Malpractice	St. Cloud	MLM
6/9/10	Communications – Law Section	Minneapolis	MJP
6/10/10	Health Law Institute – Confidentiality & Candor	Minneapolis	MNCLE
6/16/10	Ethics	Mankato	MSBA
6/18/10	Ethical Pitfalls for Paralegals	Bloomington	MPA
6/23/10	When Bad Things Happen to Good Lawyers	Minneapolis	MNCLE
6/25/10	Impaired Driving Class	St. Paul	MN Cty Atty's Assn.
6/30/10	Recent Cases	Minneapolis	





# MINNESOTA

## Lawyers Professional Responsibility Board

### Office of Lawyers Professional Responsibility

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## Announcements

### Welcome to the new Office of Lawyers Professional Responsibility Website.

The new site was launched June 30, 2010. In addition to a more clean and better organized site, new features include the capability of filing complaints online, as well as expanded search capabilities for professional responsibility articles.

### Law Clerk Vacancy

The Office of Lawyers Professional Responsibility seeks law clerk. Click on the link for details and application form.

### Lawyers Board Adopts New Opinion

At its March 2010 meeting, the Lawyers Professional Responsibility Board adopted Opinion 22 with respect to a lawyer's ethical obligations regarding metadata.

### 2010 Professional Responsibility Seminar

This year's seminar is scheduled for September 24, 2010, at the Ramada Plaza Hotel, Minneapolis. Watch this space for more information.

### Court Amends Rule 30, RLPR.

On May 14, 2010, the Minnesota Supreme Court amended Rule 30, RLPR, to bring it in line with the correct Minnesota statute.

### Court Amends Rule 1.15, MN Rules of Prof. Conduct

On April 1, 2010, the Supreme Court amended Rule 1.15 regarding lawyer trust accounts. In its order, the Court transferred administration of the IOLTA program to the Legal Services Advisory Committee. The change takes effect July 1, 2010.

## What's New

["Update on Law Firm Departures" Bench & Bar article](#)

["Beware of those selling bridges" MN Lawyer article](#)

[Lawyers Board Elects Vice Chair](#)

## Quick Links

## Legal References

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[Proposed and Pending Rules & Opinions](#)

## Contact

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## Links

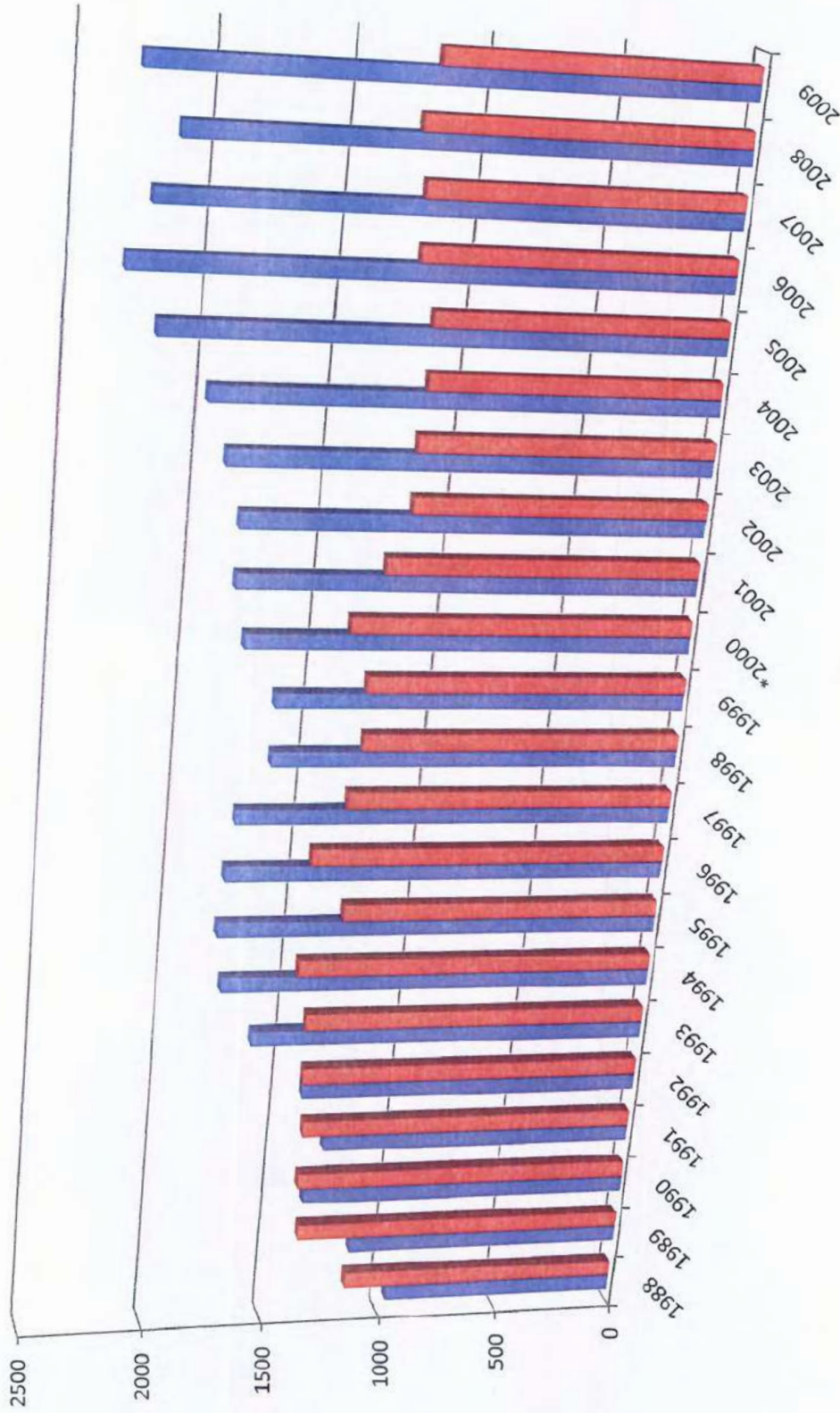
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**Advisory Opinion Requests Received  
and  
Number of Complaints Opened  
1988 - 2009**



	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	*2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Advisory Opinions Received	968	1143	1355	1292	1398	1627	1765	1795	1783	1757	1632	1635	1770	1824	1825	1889	1974	2177	2223	2135	2282	2282
Complaints Opened	1149	1365	1384	1380	1399	1405	1456	1290	1438	1314	1275	1278	1362	1246	1165	1168	1147	1150	1222	1226	1257	1206

\* 2000 total advisory opinions (AO) received was revised to reflect additional AO's not previously included.