

**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

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 2003 through June 2004.

### **Changes to the Board**

In February 2004, former State Bar president Kent A. Gernander of Winona was appointed Chair of the Lawyers Professional Responsibility Board to replace Charles E. Lundberg. Kent had previously served as a Lawyers Board member from 1992 to 1999.

In addition, the Court appointed Detroit Lakes lawyer Lynn J. Hummel to replace Rochester lawyer Mary Alice Richardson. The Court also appointed public member Mary L. Medved of Shoreview to replace outgoing Board member Christopher Lake-Smith.

The Lawyers Board Executive Committee was also reconstituted. The current Executive Committee members are: Chair, Kent A. Gernander; Vice-Chair, attorney Charles B. Bateman of Duluth; attorney Thomas J. LaVelle of Worthington; and public members Patty Murto of Duluth and Timothy J. Gephart of Minneapolis. A short biographical sketch of current Board members is attached at A. 1.

### **Complaint Statistics**

The number of complaints received against lawyers in calendar year 2003 remain virtually unchanged from 2002.<sup>1</sup> At the same time, the number of advisory opinions requested continued to rise.<sup>2</sup> Although the relationship between

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<sup>1</sup> 1,168 in 2003 and 1,165 in 2002.

<sup>2</sup> 1,889 opinions were requested in 2003 and 1,825 were requested in 2002.

complaints and advisory opinions is difficult to correlate, statistics over the past few years suggest that the increase in opinion requests may very well be responsible for lower complaint totals despite the fact that the Minnesota lawyer population continues to increase (A. 2). One troubling statistic is the number of disciplined lawyers who were also criminally charged and convicted for misconduct related to law practice. *See* Section II, page 4.

In addition to providing advisory opinions, members of the office continue to educate the bar by speaking at numerous CLE presentations. *See* list at A. 3.

#### **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). The Lawyers Board supported and advocated all of the changes recommended by the MSBA with the exception of the proposed change to Rule 3.8(e) governing subpoenas directed to criminal defense lawyers. There was considerable opposition at the Supreme Court hearing to proposed Rule 7.4 governing advertising of specialist certifications. Those opposed to the proposed specialization rule included specialist certifying organizations, lawyers who are certified specialists, and the State Board of Legal Certification. The petition to amend the Rules of Professional Conduct is currently under consideration by the Supreme Court.

#### **Conditional Admission Process for New Admittees**

On May 18, 2004, the Court also considered the petition of the Lawyers Board and the Board of Law Examiners to amend the Rules on Lawyers Professional Responsibility and Rules for Admission to the Bar to create a 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 would be handled by the Office of Lawyers Professional Responsibility and Lawyers Board through the existing lawyer discipline process. These petitions are also under consideration by the Court.

### **Pending Litigation Over the Code of Judicial Conduct**

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. 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 a federal lawsuit challenging the enforcement of Canon 5 of the Code of Judicial Conduct. *Republican Party of Minnesota, et al. v. White et. al.*, 536 U.S. 765 (2002).

In June 2002 the United States Supreme Court held that the Minnesota Judicial Code provision restricting candidates from announcing their views on issues likely to come before the court was unconstitutional. The case was remanded to the Eighth Circuit Court of Appeals and the plaintiffs sought further review from the Eighth Circuit of other judicial code provisions governing judicial campaign conduct.

On March 16, 2004, a three judge panel of the Eighth Circuit remanded to the Federal District Court the issue of whether the judicial campaign restrictions on partisan activities were consistent with the holding in *Republican Party of Minnesota, et al. v. White et. al.* The three judge panel upheld provisions prohibiting personal solicitation of campaign funds and publicly stated support by judges. The plaintiffs

again appealed by seeking Eighth Circuit *en banc* review. On May 18, 2004, the three judge panel's decision was vacated. The Eighth Circuit has agreed to review the case *en banc* and the matter is scheduled to be heard in October 2004.

### **Proposed Changes to the Minnesota Judicial Code**

The Board Chair and Director both served on a Supreme Court Advisory Committee to study and recommend changes to the Judicial Code provisions relating to campaign conduct. In April 2004 the Committee submitted its report recommending repeal of some of the provisions restricting partisan activities in judicial campaigns. On May 26, 2004, a hearing was held before the Supreme Court on the Advisory Committee's proposed changes. Opposition to the changes relating to partisan activities was registered by the Minnesota State Bar Association, the District Judges Association and the Minnesota Trial Lawyers. The Supreme Court is expected to act on the proposed changes before the judicial election filing period begins in early July 2004.

## **II. MINNESOTA SUPREME COURT DISCIPLINARY CASES<sup>3</sup>**

Attached at A. 4 is a list of the public lawyer discipline decisions decided by the Supreme Court during calendar year 2003. Six attorneys were disbarred in 2003; four more attorneys were disbarred in the first six months of 2004:

<u>2003</u>	<u>2004</u>
Michael E. Keller (2/18/03)	Robert J. Schaefer (1/12/04)
Murray R. Klane (4/15/03)	Thomas J. White (4/9/04)
John V. Norton (6/19/03)	Louis B. Oberhauser, Jr. (5/11/04)
Debra D. Campbell (9/29/03)	John A. Nelson (6/16/04)
Stephen J. Rondestvedt (10/14/03)	
Bruce E. Kiernat (12/8/03)	

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<sup>3</sup> For caseload and statistics, see A. 5 – A. 7.

Among the public disciplinary cases decided in the last half of 2003 and during the first six months of 2004 are:

**Stephen J. Rondestvedt** of Minneapolis was disbarred for misappropriating more than \$700,000 from over 20 workers' compensation and personal injury clients. Most of these clients have been reimbursed by the Client Security Fund for their losses. Rondestvedt subsequently pled guilty to two counts of mail fraud and his federal sentencing is pending.

**Bruce E. Kiernat** of Minneapolis was disbarred for misappropriating \$53,000 of funds from a trust that he administered and filing an inaccurate account with the district court to conceal his theft. Kiernat was also charged with mail fraud and was sentenced to six months in a federal correctional institution, followed by three years supervised release. He was also ordered to make restitution to the trust and pay a \$25,000 fine.

**John A. Nelson** of Willmar agreed to disbarment after soliciting and obtaining over \$4 million in investments from clients in businesses in which Nelson owned an interest. Nelson failed to disclose the true financial status of the businesses and did not obtain client consent to the conflicts of interest nor did he advise clients to seek independent counsel. The businesses in which the clients invested eventually ceased doing business. At the time of Nelson's disbarment over \$2 million remained unpaid to 12 different Nelson clients.

**John V. Norton** of Minneapolis was disbarred for misappropriating over \$60,000 from his client trust account and failing to repay approximately \$28,000 to a former client. Norton subsequently pled guilty to one federal count of mail fraud and was sentenced to five months incarceration, five months home monitoring and three years supervised release.

**Louis B. Oberhauser, Jr.** of Wayzata was disbarred after being convicted of two counts of felony money-laundering through his law firm trust account. Prior to the money-laundering conviction, Oberhauser had been disciplined on five previous occasions including a 90-day suspension for misrepresentations to tax authorities, backdating a federal tax return, and failing to timely file tax returns.

**Thomas J. White** of Edina was disbarred for misappropriating client funds, making misrepresentations to conceal the misappropriations, other trust account shortages and issuing insufficient funds trust account checks. White also commingled personal funds with client funds, made misrepresentations to a client, failed to cooperate and failed to file individual and employer withholding income tax returns.

**Robert J. Schaefer** of Moorhead was disbarred after misappropriating approximately \$34,000 of client funds and making misrepresentations during the disciplinary investigation to conceal his misappropriation.

**Debra D. Campbell** of Stillwater was disbarred for misappropriating funds from several conservatorships and guardianships over which she had financial control as a non-lawyer. Although Campbell's misappropriations occurred prior to becoming a lawyer, they were not discovered until after her admission to the bar. Campbell was disbarred for these misappropriations as well as her failure to disclose her misconduct on her bar application. After being admitted, Campbell also made misrepresentations about whether she had misappropriated guardianship funds.

**William C. Flynn** of Victoria was suspended for five years after entering an Alford plea to one count of possession of pornographic work involving minors that was found on his law office computer. Flynn's criminal sentence involved five years probation, 45 days in jail, 45 days home monitoring and payment of a fine.



**David J. Gherity** of Burnsville was indefinitely suspended with no right to apply for reinstatement for a period of five years. Gherity's indefinite suspension was the fourth time in 15 years that he had been disciplined by the Supreme Court for conduct involving personal violence unrelated to the practice of law.

**Dale C. Nathan** of Eagan was indefinitely suspended after engaging in a pattern of harassing and frivolous litigation, assisting his client in violating court orders, violating confidentiality statutes and rules, and making statements with reckless disregard for the truth about district court judges before whom he had appeared. Nathan was indefinitely suspended with no right to apply for reinstatement for at least six months.

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

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

##### 1. FY'04 and FY'05 Budgets.

Expenditures for the fiscal year ending June 30, 2004, are projected to be \$2,102,206. The FY'05 budget includes anticipated expenditures of \$2,551,910. The payroll budget when prepared, included a 1.5% across the board increase and a 3% merit increase for those eligible. The FY'04 – FY'05 salary plan issued after budget preparations did not allow for across the board increases. The salary plan allows for up to a 3% merit increase or a stability payment for those eligible. The FY'05 budget includes a vacant Senior Assistant Director position and no additional staffing.

The Office currently receives the following portion of the attorney registration fees:

\$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 launched a new website in March 2004. The new website contains a search engine enabling users to search *Bench & Bar* and *Minnesota Lawyer* articles using keywords or phrases. Also added was: (1) a new subject index allowing users to locate Minnesota ethics articles and authorities by subject matter; (2) manuals to assist lawyers with trust accounting; and (3) information and forms relating to Professional Firm filing and reporting requirements. The website is maintained and updated regularly by the Director's Office. The address is [www.courts.state.mn.us/lprb](http://www.courts.state.mn.us/lprb). Attached at A. 8 is the title page showing the current contents of the website's homepage.

**C. Personnel.**

In May 2003, the Office contracted with Thomas Ascher to serve in a Special Counsel capacity to fill a vacant attorney position. In December 2003, Tom was hired permanently as an Assistant Director to fill the position.

In March 2004, Senior Assistant Director Candice M. Hojan submitted her retirement resignation. We are in the process of hiring an Assistant Director to fill the vacant position.

The Director's Office currently employs 8 attorneys including 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 March 2003, the Director's Office was appointed trustee to audit the trust account of deceased attorney William L. Thomas. The Office determined ownership of remaining trust account funds and petitioned the Court for an order directing disbursement of the funds in accordance with the audit.

The Director's Office is still in possession of eight files from the Norman P. Friederichs, Jr. Trusteeship that was initiated in 2002. Pursuant to Court order, these files are scheduled for expungement 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 2003, the Director's Office received 182 complainant appeals, compared to 238 such appeals in 2002. There were 190 complainant appeal determinations made by Board members in 2003 as follows:

		<u>%</u>
Approve Director's disposition	181	95
Direct further investigation	9	5

A total of 33 clerical hours were spent in 2003 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 2003 only two probations (both public) were extended due to non-compliance issues compared to seven extensions in both 2001 and 2002. Public probation extensions occur when the Court orders an additional term of probation. Private probations are extended by stipulation. In 2003 both probation extensions

involved mental health or chemical dependency issues. The following is a brief summary:

While on public supervised probation the attorney committed additional misconduct including neglect of a client matter, inadequate communication with that client, failing to pay a law-related debt, and failing to cooperate with his probation supervisor and the Director. The attorney stipulated to a stayed six-month suspension and a two-year extension of his supervised probation subject to satisfaction of the two judgments against him and certification by his treating psychologist that probation is no longer necessary or helpful.

On November 14, 2003, the Supreme Court extended for six months an attorney's prior public probation because the attorney repeatedly failed to comply with the random urinalysis program call-in procedures. If the attorney fails to call-in, he is subject to an additional six months of probation and testing from the date of the call-in violation. If he provides a diluted sample or has a confirmed positive test for alcohol or other non-prescription mood-altering chemicals, his probation shall continue for one year from the date of the positive test.

In 2003 the Director revoked three probations. This is down from four revocations in 2002. Probation revocations occur where additional misconduct results in suspension or respondents transfer to disability status. David J. Gherity and Alan J. Albrecht were suspended when their public probations were revoked. Also in 2003, a private probation was terminated when the attorney was transferred to disability inactive status due to his disabling medical conditions.

The majority of probations last for two years. On occasion the Court will impose a longer or indefinite period of probation. During 2003 the Director closed two long-standing indefinite public probations: Steve Heikens, whose probation

was successful and David J. Gherity whose probation was resolved when he was indefinitely suspended.

**Steve Heikens** – In March 1990 Mr. Heikens stipulated to transfer to disability inactive status when his manic depression rendered him incapable of representing clients. Discipline proceedings pending at that time were held in abeyance until Mr. Heikens returned from disability status. The Director subsequently filed a petition for disciplinary action alleging professional misconduct. After a hearing, a referee recommended that Mr. Heikens be suspended for not less than three years and that the three-year period be retroactive to his placement on disability status.

On January 25, 1994, the court reinstated Mr. Heikens to the practice of law and placed him on supervised probation until further order of the Court.

Mr. Heikens complied with the requirements of his probation and rebuilt his law career. In 2003 the Director moved to have Mr. Heikens' probation terminated in light of his compliance with the probationary conditions. The Supreme Court terminated Heikens' probation on December 23, 2003.

**David J. Gherity** – After being initially placed on probation in 1988, David Gherity remained on public probation until he was suspended on March 13, 2003. Mr. Gherity was admitted to the practice of law in 1982 and had an extensive discipline history:

- 1988 public two-year probation for harassing and assaulting former girlfriend, violating court order and being in contempt of court and acting with indifference to legal obligation;
- 1989 public reprimand and three-year extension of public probation for violating the terms of prior probation when he failed to comply with the conditions of his prior probation, failed to appear in court as ordered by a trial judge and for practicing law while fee suspended.

- 1991 modification of prior public probation to an indefinite term of probation until he could provide clear and convincing evidence that he was psychologically fit to represent clients without supervision for, among other things, failing to appear at pretrial hearing on behalf of his client, failing to return the unearned portion of a retainer and involvement in an altercation that resulted in minor injuries to two women.

While on probation, Gherity was admonished in 1992 for filing an appeal without attaching a copy of the order and failing to correct the deficiency when requested by the clerk of appellate courts. He received a second admonition in 1996 for threatening to reveal an alleged affair between an opposing party and her employer at a hearing.

On June 20, 2001, Gherity was convicted of fifth degree assault and disorderly conduct as a result of an October 29, 2000, assault on his neighbor. Following a February 2003 hearing, the referee recommended that Gherity be disbarred. On January 15, 2004, the Court indefinitely suspended Gherity from the practice of law with no right to apply for reinstatement for five years.

**PROBATION STATISTICS**

**TOTAL PROBATION FILES OPEN DURING 2003**

Public Supervised Probation Files (32.5%)	27	
Public Unsupervised Probation Files (9.6%)	<u>8</u>	
Total Public Probation Files (42.1%)		35
Private Supervised Probation Files (22.9%)	19	
Private Unsupervised Probation Files (34.9%)	<u>29</u>	
Total Private Probation Files (57.8%)		<u>48</u>
<b>Total Probation Files Open During 2003</b>		<b>83</b>

**TOTAL PROBATION FILES**

Total probation files as of 1/1/03	62
Probation files opened during 2003	25
Private probations extended during 2003	2
Probation files closed during 2003	<u>(30)</u>
<b>Total Open Probation files as of 12/31/03</b>	<b>59</b>

**PROBATIONS OPENED IN 2003**

**Public Probation Files**

Court-ordered Probation Files

Supervised 1

Unsupervised 3

4

**Reinstatements**

Supervised 6

Unsupervised 1

7

Total Public Probation Files 11

**Private Probation Files**

Supervised 3

Unsupervised 13

Total Private Probation Files 16

**Total New Probation Files Opened in 2003** 27

**PROBATIONS OPENED IN 2003 INVOLVING:**

Client Related Violations 6

Non-Client Related Violations 10

Both Client & Non-Client Violations 11

**Total Probation Files Opened** 27

**PROBATION FILES CLOSED IN 2003**

Probations Successfully Completed 25

Probation Revocations 3

Probations Extensions 2

**Total Probation Files Closed in 2003** 30

## AREAS OF MISCONDUCT

As reflected in 83 files opened during 2003<sup>4</sup>

Competence (Violation of Rules 1.1 and 1.2, MRPC)	8
Neglect & Non-Communication (Violation of Rules 1.3 and 1.4, MRPC)	63
Conflict of Interest	5
Fees & Opinion 15 Violations	21
Trust Account Books and Records (Violation of Rule 1.15, MRPC, and LPRB Opinion 9)	35
Termination of Representation	15
Unauthorized Practice of Law (Violation of Rule 5.5, MRPC)	5
Taxes	6
Supervision on Non-Lawyer Assts. (Violation of Rule 5.3, MRPC)	3
Non-Cooperation (Violation of Rule 8.1, MRPC)	22
Breach of Confidentiality (Violation of Rule 1.6, MRPC)	1
Criminal Conduct (Violation of Rule 8.4(b), MRPC)	7
Misrepresentations (Violation of Rule 8.4(c), MRPC)	17
Conduct Prejudicial to the Administration of Justice (Violation of Rule 8.4(d), MRPC)	38
Misappropriation	0

### DISABILITY RELATED PROBATIONS

Chemical Dependency – existing files on 1/1/03	2	
New files opened during 2003	<u>3</u>	
Total Chemical Dependency Related Probation Files		5
Psychological Disorders – existing files on 1/1/03	9	
New files opened during 2003	<u>9</u>	
Total Psychological Disorder Related Probation Files		<u>18</u>
<b>Total Disability Related Probations</b>		<b>23</b>

Probation statistics, as shown below, continue to show a gradual increase in probations with a psychological component from 1992 through 2003:

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<sup>4</sup> A file may involve more than one area of misconduct.



YEAR	TOTAL PROBATIONS OPEN DURING YEAR	NUMBER OF NEW PROBATIONS OPENED REQUIRING:			TOTAL*
		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

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

The total number of probations increased slightly from 81 in 2002 to 83 in 2003. The number of probations with impairment conditions also continued to increase in 2003. As a percentage of the probation group as a whole (total probations open any part of 2003), the number of probations related, at least in part, to psychological disorders, increased from 1% in 1998 to 4% in 2000 to 7% in 2002 to almost 10% in 2003.

Probations having a chemical dependency component have remained constant over the same period of time. Just one new private probation requiring Alcohol Anonymous (AA) attendance and random urinalysis (UA) was opened in 2003. While two existing public probations requiring AA attendance and random UA testing were extended a second time for failing to comply with probation requirements.

**Probation Supervisors.** In 2001 the Probation Department started compiling feedback from volunteer probation supervisors using a survey form. This feedback reflects that probation supervisors have an average of over 25 years experience in the practice of law. Most supervisors volunteer between 2 and 4 hours per month monitoring their probationer. Supervisors spend time reviewing and discussing client files either over the phone or in probationers' offices, monitoring client inventories provided by probationers and drafting quarterly reports to the Director. All eight supervisors surveyed believed their probations were successful.

**PROBATION DEPARTMENT**

The Director has committed additional staff to the Probation Department. Two Senior Assistant Directors monitor the majority of the probation program. A second paralegal was assigned in 2002 to assist with the probation program and continued to increase her involvement in 2003.

<b>TIME BY PROBATION DEPT. STAFF (hrs./wk.)</b>	
Attorney 1	8
Attorney 2	8
Paralegal 1	8
Paralegal 2	<u>2.5</u>
<b>TOTAL PROBATION STAFF TIME PER WEEK</b>	<b>26.5</b>

**G. Advisory Opinions.**

The number of advisory opinions requested by Minnesota lawyers and judges continued to rise in 2003. In 2003 the Director's Office received 1,889 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. 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 2003:

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	1585 (90%)	28 (2%)	1613 (92%)	142 (8%)	1755
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 (6.5%)	1889

In 2003 the Director's Office expended 351 assistant director hours in issuing advisory opinions. This compares with 371 hours in 2002. Conflict (former clients generally) was the most frequent area of inquiry.

#### **H. Judgments and Collections.**

In 2003 judgments were entered in 23 disciplinary matters totaling \$24,899.05. The Director's Office collected a total of \$21,439.83 from judgments

entered during or prior to 2003; of this amount, \$19,539.83 (or 91% of the total) resulted from judgments entered in 2003. Seventy-eight percent of the amount of the judgments entered in 2003 has been collected. The total amount of all outstanding judgments as of January 1, 2004, was \$225,339.83.

A summary of the 2003 statistics and how they compare to 2002 is presented below:

	2003	2002
Number of judgments entered:	23	23
Dollar value of judgments entered:	\$24,899.05	\$23,519.83
Total amount collected:	\$21,439.83	\$15,971.75
Portion attributable to current year's judgment:	\$19,539.83	\$10,388.20
Portion attributable to judgments of prior years:	\$1,900.00	\$5,583.55

Although the same number of judgments were received in 2003 and 2002, the Director collected 34 percent more in 2003 (\$21,439.83) than in 2002 (\$15,971.75).

#### **I. Professional Firms.**

Under the Minnesota Professional Firms Act, Minn. Stat. § 319B.01 to 319B.12, a professional firm engaged in the practice of law must file with the Board an initial report and annual reports thereafter, accompanied by a filing fee. The Professional Firms Act contains limitations on the structure and operation of professional firms and sets forth the information to be contained in the reports.

The Director's Office has monitored the reporting requirements of the 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 our website, and an article reminding the bar of the requirements was published in the April 30, 2001, *Minnesota Lawyer*.

Fees are \$100 for the first report and \$25 per year thereafter. The following are statistics for income collected as filing fees by the professional firms department as of March 1, 2004:

1393	@	\$25.00	\$34,825.00
67	@	\$100.00	<u>\$ 6,700.00</u>
			\$41,525.00
49*	for	\$7,075.00	<u>\$ 7,075.00</u>
			<u>\$48,600.00</u>

\*Funds collected for fees owed for 2002 and prior years.

Total Attorney Hours:	18
Total Non-attorney Hours:	159

An Assistant Director, paralegal, and file clerk staff the professional firms department.

**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

2002	116
2003	99

Closed Inquiries During 2003

• Closed Without Need for Disciplinary Investigation	96
• Inquiry Converted to Disciplinary Investigation	<u>8</u>
<b>Total Trust Account Inquiries Closed</b>	<b><u>104</u></b>

Discipline Related to Trust Account Overdraft Inquiry

Public Discipline:

- *In Re Basiago*, 660 N.W.2d 124 (Minn. 2003)  
(suspension)
- *In Re Norton*, 662 N.W.2d 892 (Minn. 2003)  
(disbarment)

Private Discipline:

- 4 Private Probations.

In 43 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 2003 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>
Bank error	28
Mathematical/clerical error	10
Late deposit	19
Third party check bounced	3
Service or check charges	9
Deposit to wrong account	8
Check written in error on TA	2
Bank hold on funds drawn	4
Improper/lacking endorsements	4
Reporting error	6
Other	3

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 2003, overdraft inquiries were converted into disciplinary investigations for the following reasons:

Reason for Investigation

No response or inadequate explanation	4
Shortages	2
Commingling	<u>2</u>
<b>Total</b>	<b>8</b>

Time Requirements

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

	<u>1/02-12/02</u>	<u>1/03-12/03</u>
Attorney	126.00 hrs	168.75 hrs
Paralegal and other staff	<u>197.00 hrs</u>	<u>270.75 hrs</u>
<b>Total</b>	<b>323.00 hrs</b>	<b>439.50 hrs</b>

There were two causes for the fairly significant increase in the Director's Office's time requirements from 2002 to 2003: (1) during 2003, the Director's Office wrote at least once to each Minnesota bank appearing on its list of approved institutions to request updated reporting agreements; and (2) in mid- to late-2003, the Director's Office observed that the number of reported overdrafts, especially from the three largest banks, had fallen off dramatically from 2002, and the Director's Office had several contacts with the banks to ensure that their reporting systems were properly operational.

**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 2003.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	91	91	6	0
B. Individual Attorneys	9	9	3	0
C. Local Referral Services				
1. MSBA	13	23	0	0
2. RCBA	19	71	0	0
3. Hennepin County	3	242	8	0
D. Governor's Office	7	26	2	1
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	289	328	24	2
F. F.B.I.	17	18	0	0
G. MSBA: Specialist Certification Program	23	36	4	3
H. Miscellaneous Requests	63	248	28	0
<b>TOTAL</b>	<b>534</b>	<b>1092</b>	<b>75</b>	<b>6</b>
(2002 Totals)	(417)	(806)	(42)	(5)



#### IV. DISTRICT ETHICS COMMITTEES.

Minnesota is one of only a handful of jurisdictions that have succeeded in making effective use of the local district ethics committees (DECs) to investigate complaints of lawyer misconduct. The system in Minnesota continues to work well.

Initial peer review of complaints by practitioners in their own area is exceedingly valuable in reinforcing confidence in the system for lawyers. Input and participation by non-lawyer members instills confidence in the public that the system is not protectionist. The quantity and quality of the DEC investigative reports remain high. For calendar year 2003, the Director's Office followed the recommendations of the DECs in 91 percent of the matters investigated. The Court, the legal profession, and the public at large, are indebted to those who volunteer significant time to the disciplinary system.

In 2003 the overall monthly average volume of files under consideration by the DECs was 159, fluctuating between a low of 134 and a high of 184. This is higher than the 2002 overall average of 129. The year-to-date average volume for 2004 through April 30 is 138.

Rule 7(c), RLPR, provides a 90-day goal for completing investigations. The average file age for pending matters in all DECs for April 2004 was 2 months, with the Hennepin (Fourth District) Ethics Committee at 2 months and the Ramsey (Second District) Ethics Committee at 1.4 months. For *completed* DEC investigations in April 2004, the overall average for the prior 12 months was 3.9 months, with the Hennepin DEC at 3.8 months and the Ramsey DEC at 3.8 months.

For the calendar year 2003, the DECs completed 465 investigations, taking an average of 3.6 months to complete each investigation. The Hennepin DEC was assigned 202 of these investigations, taking an average of 3.6 months per investigation (*see* A. 10, DEC Investigation Summary).

Because the Hennepin DEC uses a two tiered complaint review process not used by the other DEC's, their statistics are separately monitored and broken down to reflect file aging at the various decision points in the process. In the Hennepin DEC, investigators first make their presentation to a screening committee which meets every other Wednesday. If that committee recommends dismissal, the complaint is referred back to the Director's Office for disposition. Should the committee conclude there may have been a rule violation or that additional investigation is warranted, the matter is heard by an Investigative Review Committee (IRC), made up of one of three Hennepin DEC panels. Both the complainant and the respondent are invited to attend and tell their story. In calendar year 2003, 134 matters were referred back to the Director's Office after screening without an IRC hearing; it took an average of 3.1 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 4.9 months to complete. There were 14 matters withdrawn from the DEC prior to the completion of the investigation. Most often, the reason for withdrawal was delay in completing the investigation. In these cases the investigation was completed by the Director's Office.

For calendar year 2003, of the completed DEC investigations there resulted the following dispositions:

Determination discipline not warranted	312
Admonition	46
Private probation	4

A statewide professional responsibility seminar for DEC members, hosted by the Office and the Board, will be held on Friday, September 24, 2004. 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 DEC's through the liaisons assigned to each district.

## **V. FY'05 GOALS AND OBJECTIVES**

A recent courthouse shooting has caused the Office and the Board to focus more carefully on security issues. The increasing number of irate and sometimes abusive visitors to the Director's Office has increased anxiety about employee safety in the reception area. Funds have been budgeted for physical changes to upgrade security in the reception area. Construction is scheduled to begin in July 2004.

The vacancy created by a Senior Assistant Director's retirement will be filled and new lawyer training and mentoring implemented.

If the conditional admission procedure is approved, administrative procedures between the Director's Office and Law Examiners Board need to be confirmed. Staff will also need training and internal procedures revised to integrate conditional admission investigation files and records into existing systems.

Within the next few months, the Court will act on the petition to amend the Rules of Professional Conduct. Once that occurs, the Director's Office and the Board will need to take the lead in educating the bar about the ethics rule changes. Arrangements have already been made with existing continuing legal education providers to sponsor several seminars, not only in the Twin Cities but also in greater Minnesota, to keep lawyers abreast of the modifications to the professional standards.

With the revision of the substantive rules nearly completed, lawyer discipline procedures and procedural rules should also be reviewed. The Lawyers Board Panel Manual is in need of revision and updating. On a much larger scale, a

comprehensive Supreme Court Committee review of the lawyer discipline process should also be undertaken. The last such review occurred in 1993 and periodic examinations of policies and procedures are not only prudent, but also healthy for the system.

Dated: July 12, 2004.

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 the 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; Vice-President, Credit Manager for Wells Fargo Bank; served on 21<sup>st</sup> DEC for five years.

**Charles B. Bateman, Duluth** – Attorney member; current LPRB Vice-Chair; term expires 1/31/05; serves on LPRB Executive Committee; partner with Halverson, Watters, Downs, Reyelts & Bateman; served on the Eleventh DEC for 11 years, including 5 years as Chair. Areas of expertise: professional malpractice, personal injury and civil/commercial litigation.

**Richard A. Beens, Mpls.** – Attorney member; term expires 1/31/05; 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.

**Kenneth E. Broin, Robbinsdale** – Public member; term expires 1/31/05; retired after 57 years with U.S. Bank; served on Fourth DEC for 12 years. Areas of expertise: banking, trusts and estate planning.

**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.

**Timothy J. Gephart, Mpls.** – Public member; term expires 1/31/05; serves on LPRB Executive Committee; serves as Chair of the LPRB Rules Committee; works in the area of legal malpractice claims for Minnesota Lawyers Mutual; served on Fourth DEC from 1991-1998. Areas of expertise: insurance, as well as legal malpractice.

**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.

**Thomas J. LaVelle, Worthington** – Attorney member; serves on LPRB Executive Committee; also serves on the LPRB Opinion Committee; term expires 1/31/05; solo practitioner; served as Chair of the Thirteenth DEC for 5 years. Areas of expertise: family law, municipal law, real estate and probate.

**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 1/31/05; 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; Served 2 terms (6 years) on the Second DEC; Vice President, Human Resources, WAM!NET Government Services, Inc.; Bureau of National Affairs' Human Resources Policy & Practice Forum. 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 1/31/05; 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; 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 1/31/07; serves on 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 1/31/05; 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; Assistant Dean of Students and Adjunct Professor of Law, Hamline University School of Law.

**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 1/31/05; solo practitioner in the areas of appellate practice and civil litigation. Areas of expertise: appellate practice, personal injury and litigation.

**Advisory Opinion Requests Received  
and  
Number of Complaints Opened  
from 1986 to 2003**

	<b>Advisory Opinions</b>	<b>Complaints</b>
<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	1755	1362
2001	1824	1246
2002	1825	1165
2003	1889	1168

**Office of Lawyers Professional Responsibility**  
**Speaking Engagements and Seminars July 2003 – June 2004**

<b>Date</b>	<b>Topic</b>	<b>Location</b>	<b>Organization</b>
7/17/03	Review of MSBA Task Force Proposals	Bloomington	MILE
7/21/03	Pine Island: The Aftermath	Bloomington	All District CLE
8/26/03	Criminal Justice Institute Ethics	Bloomington	MNCLE
8/27/03	Current Ethical Issues	Lake Elmo	Jardine Law Firm
9/16/03	Paralegal Ethics	Brooklyn Park	NHCC
9/24/03	Family Law Division	St. Paul	RCBA
9/30/03	Office Sharing Ethics	Eden Prairie	Legal Aid Society
10/1/03	Ethics For Public Lawyers	St. Paul	Office of the Revisor
10/2/03	Protecting Clients & Attorney Impairment	Eagan	All District CLE
10/16/03	Paralegal Ethics	St. Paul	Hamline U.
10/17/03	4 <sup>th</sup> DEC Orientation	Minneapolis	HCBA
10/20/03	Child Support Seminar	St. Cloud	MSFRC
10/24/03	Ethics Issues Involving Neutrals	Minneapolis	MNCLE ADR Inst.
10/27/03	Ethics & Equal Justice	Minneapolis	MNCLE
11/6/03	Corporate Counsel Symposium	Minneapolis	Dorsey Law Firm
11/11/03	Teaching Ethics to Law Students	Minneapolis	Wm. Mitchell Bd. of Trustees
11/12/03	Ethics of Investigations	Minneapolis	Arthur Chapman Law Firm
11/17/03	4 <sup>th</sup> DEC Orientation	Minneapolis	HCBA
11/19/03	Ethical Issues for Public Attorneys	St. Paul	Ramsey Cty. Atty.
12/4/03	Nuts and Bolts	Minneapolis	HCBA
12/12/03	Professionalism Committee	Minneapolis	HCBA
12/15/03	Estate Planning	Minneapolis	HCBA
1/14/04	Proposed Changes to MRPC	Minneapolis	Council of School Atty.
1/21/04	Ethics and Elimination of Bias	Red Wing & Apple Valley	First District Bar Assn.
1/23/04	MNCLE Legislative Process Seminar	Minneapolis	MNCLE
1/26/04	Mentoring Program	St. Paul	RCBA
1/28/04	Avoiding Ethics Complaints: What to Do If You Get a Complaint	Rochester	New Lawyers



**Office of Lawyers Professional Responsibility**  
**Speaking Engagements and Seminars July 2003 – June 2004**

Date	Topic	Location	Organization
1/29/04	Ethics & Real Estate Practice	Minneapolis	MNCLE
2/11/04	Judicial Conduct	Minneapolis	U of M
2/19/04	Selected Proposed Changes to MRPC	Mankato	6 <sup>th</sup> Dist. Bar
2/20/04	Misdemeanor Defense Project	Minneapolis	HCBA
2/26/04	Solo Practice Issues	St. Paul	RCBA
2/26/04	Ethics	St. Paul	MN Dept. Labor & Industry
2/27/04	Update on Changes to MRPC	Inver Gr. Hgts.	MNSCU
2/28/04	Public Defenders Assoc.	Hinckley	Public Defenders Assoc.
3/18/04	New Lawyers Section	Minneapolis	MSBA
3/18/04	Ethical Issues in Non-Traditional Practices	Minneapolis	MN Women Lawyers
3/19/04	Workman's Comp. Institute	Minneapolis	MSBA
3/29/04	Planning for Practice Interruption	Bloomington	Family Law MNCLE
4/8/04	Pro Bono Ethics	Minneapolis	VLN
4/19/04	Trust Account Seminar	Minneapolis	MNCLE
4/30/04	Purpose & Function of DEC's	Long Prairie	7 <sup>th</sup> DEC
5/5/04	8 <sup>th</sup> DEC Orientation	Chaska	8 <sup>th</sup> DEC
5/12/04	Corporate Counsel Seminar	Minneapolis	Gray, Plant Law Firm
5/18/04	Bias at the Country Club	Hastings	1 <sup>st</sup> Dist. Bar Assn.
5/19/04	Hot Ethics Topics	St. Paul	RCBA
5/19/04	Proposed Changes in MRPC	Minneapolis	HCBA
5/21/04	Ethics and Bias	St. Paul	Co. Atty. Assn.
5/26/04	New Rules	Minneapolis	Dorsey Law Firm
5/27/04	Practical Legal Ethics	Bloomington	NBI
6/4/04	Pre-Settlement Funding Agreements	Minneapolis	MTLA
6/8/04	Substance Abuse Awareness	Minneapolis	NBI
6/16/04	Medical Malpractice	Minneapolis	MTLA
6/16/04	Probate: Ethics & Professional Responsibility	Minneapolis	MNCLE

## OLPR 2003 Summary of Public Matters Decided

### 43 Decisions Involving 74 Files

<b>Disbarment</b>	<b>9 files</b>	<b>6 attorneys</b>	<b>Disability Inactive Status</b>	<b>6 files</b>	<b>3 attorneys</b>
CAMPBELL , DEBRA DILLAN	A03-1278	1	BANG , JAMES J	C9-91-445	3
KELLER , MICHAEL E	C0-01-1051	1	COLLINS , CAROL A	CX-01-1798	2
KIERNAT , BRUCE E	A03-1792	1	FOSAAEN , ERIC KARL	C2-02-2082	1
KLANE , MURRAY R	C3-03-190	2	<b>Reinstatement</b>	<b>5 files</b>	<b>5 attorneys</b>
NORTON , JOHN V	C2-03-102	1	ESKOLA , RICHARD S	A03-404	1
RONDESTVEDT , STEPHEN JON	A03-1420	3	LEWIS , JONATHAN C	CO-02-2081	1
<b>Suspension &amp; Probation</b>	<b>4 files</b>	<b>2 attorneys</b>	MCFARLAND , DYLAN J	C5-02-553	1
ALBRECHT , ALAN J	C3-97-356	3	SCOTT , JOHN DOV	C9-03-260	1
BOYD , JAMES J	A03-676	1	WENTZELL , JOSEPH ANTHONY	C5-01-1871	1
<b>Suspension</b>	<b>34 files</b>	<b>13 attorneys</b>	<b>Reinstated to Retired Status</b>	<b>1 files</b>	<b>1 attorneys</b>
BASIAGO , SUZANNE KAYE	A03-241	1	SMITH , RONALD P	C5-02-987	1
BURSETH , JAMES M	CX-00-2004	1	<b>Reinstatement &amp; Probation</b>	<b>9 files</b>	<b>8 attorneys</b>
CHINQUIST , C CHARLES	A03-1693	1	ALBRECHT , ALAN J	C3-97-356	1
CUTTING , ERNEST E	AO3-926	1	BOYD , JAMES J	A03-676	1
ESKOLA , RICHARD S	A03-404	1	DAUB , MICHAEL H	A03-40	1
JELLINGER , RICHARD T	C3-00-1681	6	GANT , JESSE III	C8-99-2060	1
KADINGER , GEORGE M	C7-03-354	4	HANVIK , JAMES T	C3-99-815	1
LEWIS , JONATHAN C	C0-02-2081	1	PETERSON , BRIAN J	CX-03-221	1
MARTINEZ , MICHAEL LEE	C3-00-451	9	PETERSON , BRIAN J	CX-00-2049	2
MONROE , JEREMY MARTIN	C6-01-1782	1	WINGERD , HAROLD R	C2-03-35	1
NATHAN , DALE C	C5-02-519	6	<b>Reinstatement Denied</b>	<b>1 files</b>	<b>1 attorneys</b>
SCOTT , JOHN DOV	C9-03-260	1	DAUB , MICHAEL H	C2-01-578	1
WENTZELL , JOSEPH ANTHONY	C5-01-1871	1			
<b>Reprimand &amp; Probation</b>	<b>1 files</b>	<b>1 attorneys</b>			
SEE , EDITH MARCOS	A03-1209	1			
<b>Probation</b>	<b>4 files</b>	<b>3 attorneys</b>			
BYE , DON L	C7-01-1225	1			
RIGGS , GEORGE C	A03-664	1			
SCHUMACK , BARRIE S	C6-99-1781	2			

**TABLE I**  
**Supreme Court Dispositions and Reinstatements 1990-2003**  
**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

\* 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>4/30/04</u>
Total Open Files	500	557	525	463	487	460
Cases at Least One Year Old	100	123	146	106	97	100
Complaints Received YTD		1,362	1,246	1,165	1,168	370
Files Closed YTD		1,289	1,278	1,226	1,143	397

**TABLE III**

	Percentage of Files Closed						
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
<b>1. <u>Total Dismissals</u></b>	<b>78%</b>	<b>77%</b>	<b>82%</b>	<b>80%</b>	<b>77%</b>	<b>76%</b>	<b>79%</b>
a. Summary Dismissals	41%	40%	45%	43%	43%	45%	43.5%
b. DNW/DEC	31%	31%	31%	31%	26%	25%	30%
c. DNW/DIR	6%	6%	5%	6%	8%	6%	5.5%
<b>2. <u>Admonitions</u></b>	<b>8%</b>	<b>10%</b>	<b>9%</b>	<b>7%</b>	<b>10%</b>	<b>7%</b>	<b>9.5%</b>
<b>3. <u>Private Probation</u></b>	<b>1.5%</b>	<b>1%</b>	<b>3%</b>	<b>3%</b>	<b>3%</b>	<b>2%</b>	<b>3%</b>
<b>4. <u>Supreme Court Dispositions</u></b>	<b>7.5%</b>	<b>9%</b>	<b>6%</b>	<b>7%</b>	<b>8%</b>	<b>11%</b>	<b>5%</b>
a. Supreme Court Dismissal	-	-	--	--	--	--	--
b. Supreme Court Reprimand	-	-	--	--	--	--	--
c. Supreme Court Probation	1%	2%	.5%	1%	1%	.5%	.5%
d. Supreme Court Suspension	4%	3%	2%	5%	5%	7%	3.5%
e. Supreme Court Disbarment	2.5%	4%	1%	1%	2%	4%	1%

**TABLE IV**

Number of Months File Was Open at Disposition

	1997**	1998	1999	2000	2001	2002	2003
Discipline Not Warranted/ District Ethics Committee	--	--	--	5	5	5	6
Discipline Not Warranted/ Director	--	--	--	8	8	10	10
Discipline Not Warranted*	6	6	5	--	--	--	--
Admonition	8	9	10	9	9	10	9
Private Probation	16	14	14	14	13	10	20
Supreme Court Reprimand	11	19	--	16	21	10	--
Supreme Court Reprimand and Probation					14	12	20
Supreme Court Probation	19	14	16	20	12	--	11
Supreme Court Suspension and Probation					20	27	21
Supreme Court Suspension	24	18	13	20	16	18	22
Supreme Court Disbarment	17	27	8	26	30	21	16

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

\*\*After discovering calculation errors in ADRS reports, ADRS was re-programmed, therefore the numbers for 1997 have been revised.

**TABLE V**

**Average Time Cases Under Advisement by Supreme Court – 2003**

<u>Disposition</u>	<u>No. of Matters</u>	<u>Average Months</u>
Supreme Court Probation (Stipulated)	3	0.9
Supreme Court Reprimand & Probation (Stipulated)	1	1.1
Supreme Court Suspension & Probation (Stipulated)	1	1.3
Supreme Court Suspension & Probation	1	4
Supreme Court Suspension (Stipulated)	8	0.9
Supreme Court Suspension	5	1.6
Supreme Court Disability (Stipulated)	2	0.9
Supreme Court Disability	1	0.6
Supreme Court Disbarment (Stipulated)	5	0.6
Supreme Court Disbarment	1	1.1



## Recent Minnesota Ethics Articles

### **Reliance on Nonlawyers**

A recent Ninth Circuit decision shows how excessive delegation to nonlawyers can harm the client, and maybe the lawyer. [more](#)

Reprinted from *Minnesota Lawyer* (May 24, 2004).

[Index to Minnesota Lawyer Professional Responsibility Articles](#)

### **Presettlement Funding Agreements: Benefit or Burden?**

The safest course for lawyers is to refrain from referring clients to organizations offering PSFAs and to discourage clients who inquire about them. [more](#)

Reprinted from *Bench & Bar* (May/June 2004).

[Index to Bench & Bar Professional Responsibility Articles](#)

### **Lawyer Ethics Articles by Subject**

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

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## What's New

### **"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.

### **8th Circuit Issues Opinion in Judicial Elections Lawsuit**

On March 16, 2004, the 8th Circuit issued its decision ruling that the restrictions upon judicial candidates personally soliciting campaign funds is constitutional and remanding the issue of the constitutionality of the partisan political activity restrictions back to the federal district court. [more](#)

### **Supreme Court Committee To Hear Public Comment on Proposed Changes to Judicial Election Rules**

A public hearing has been set for April 2, 2004, in Room 230 of the Minnesota Judicial Center on the proposed changes to the Minnesota Code of Judicial Standards relating to judicial elections and campaign conduct.

Click here to view the Report. [more](#)

### **Proposed Amendments to Minnesota Rules of Professional Conduct**

The Minnesota Supreme Court has scheduled a public hearing for May 18, 2004, on the proposed amendments to the Minnesota Rules of Professional Conduct.

Click here to see the amendments. [more](#)

### **Proposed Procedure to Conditionally Admit New Lawyers**

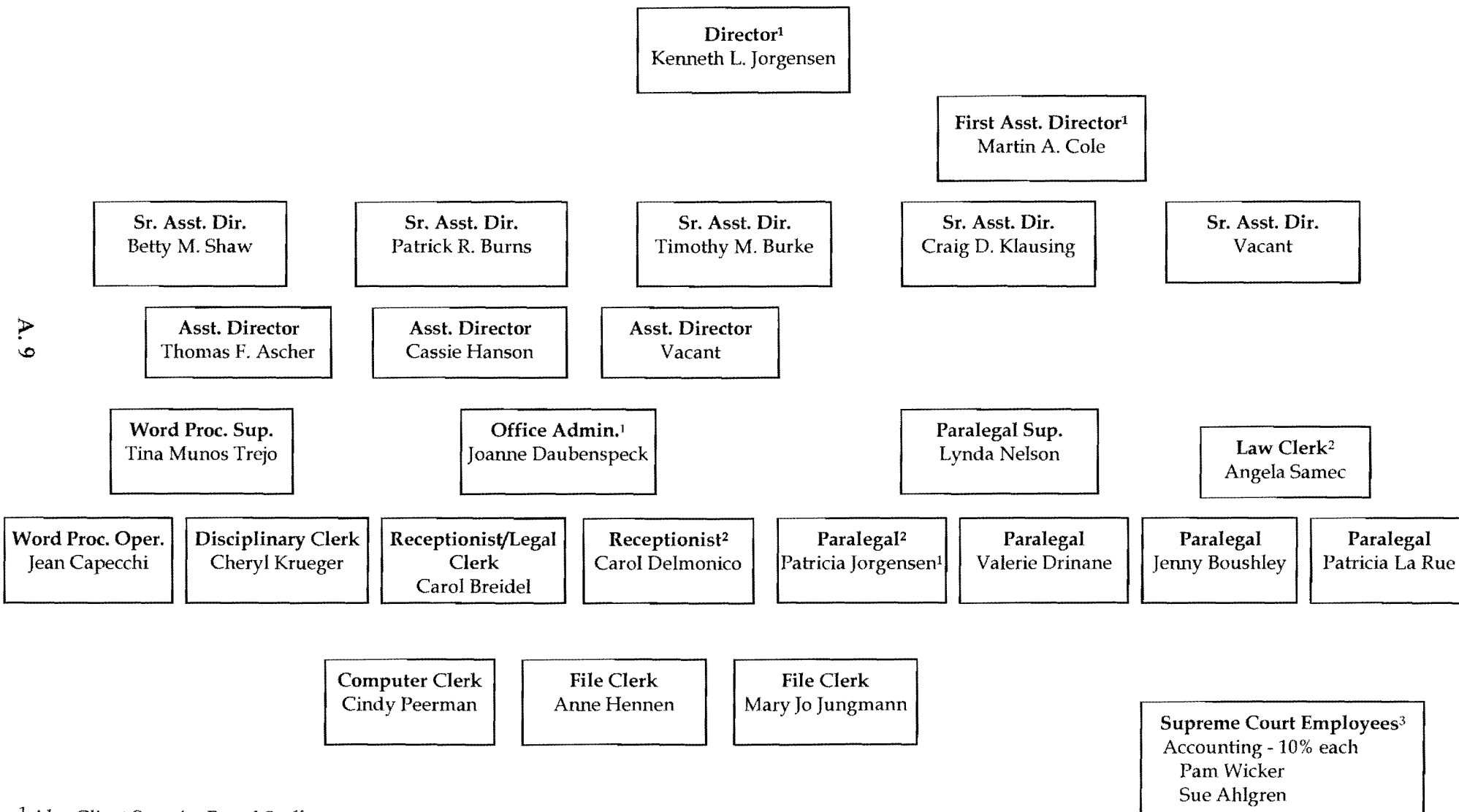
On May 18, 2004, the Supreme Court will also hear comments on a proposal by the MN Board of Law Examiners to adopt a procedure for conditionally

admitting bar applicants. Click here to view petition. [more](#)

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# Office of Lawyers Professional Responsibility

## FY'04 Organizational Chart



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

<sup>2</sup> Part-time position

<sup>3</sup> Not administratively subject to Director's Office.

Office pays percentage of their salary



**DEC INVESTIGATION SUMMARY  
2003**

<b>DEC</b>	<b>Number of Files</b>	<b>Average Investigation Duration (Months)</b>
1	24	4.9
2	77	3.6
3	8	2.0
4	202	3.6
5	9	3.1
6	3	3.0
7	29	2.9
8	13	5.2
9	4	0.8
10	3	10.0
11	16	4.1
12	5	2.6
13	2	3.5
14	9	4.1
15	14	2.9
16	2	3.0
17	3	3.7
18	9	3.8
19	14	4.0
20	6	2.7
21	13	3.2
<b>Totals</b>	<b>465</b>	<b>3.6</b>
<b>(non 4<sup>th</sup>)</b>	<b>(263)</b>	<b>(3.7)</b>