

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

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OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY**

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## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND HIGHLIGHTS .....	1
II. RETROSPECTIVE OF THE MINNESOTA PROFESSIONAL RESPONSIBILITY SYSTEM .....	1
III. LEADERSHIP CHANGES DURING THE LAST YEAR .....	5
IV. MINNESOTA SUPREME COURT DISCIPLINARY CASES .....	11
V. DIRECTOR'S OFFICE .....	14
A. Budget .....	14
B. Administration .....	15
C. Personnel .....	15
D. Trusteeships .....	15
E. Complainant Appeals .....	16
F. Probation .....	17
G. Advisory Opinions .....	21
H. Judgments and Collections .....	23
I. Professional Firms .....	23
J. Overdraft Notification .....	24
K. Disclosure .....	26
VI. DISTRICT ETHICS COMMITTEES .....	27
VII. FY'04 GOALS AND OBJECTIVES .....	29

## **I. INTRODUCTION AND HIGHLIGHTS**

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. *See* Rules on Lawyers Professional Responsibility 4(c) and 5(b). Generally, the report tracks the highlights, developments and statistics for the past year. This year, we have included a brief retrospective of developments within Minnesota's lawyer discipline system over the past 15 years.

The retrospective is authored by Charles Lundberg, who is completing his six-year term as Lawyers Board Chair. Before being appointed Board Chair, Chuck served an additional six years as a member of the Lawyers Board. Chuck also served on the Hennepin County District Ethics Committee prior to his service on the Lawyers Board. We asked Chuck to look back on his many years' service and share his observations of the significant developments occurring during that time.

## **II. RETROSPECTIVE OF THE MINNESOTA PROFESSIONAL RESPONSIBILITY SYSTEM**

To prepare this retrospective I reviewed the annual reports of the Board/Office of Lawyers Professional Responsibility (OLPR) going back to 1989. In thinking about the historical perspective and all of the changes over the years I was struck by the many individuals who have provided leadership to the Minnesota disciplinary system over that time: Liaison Justices Glenn Kelley, John Simonett, M. Jeanne Coyne, Alan Page, and Paul Anderson; Board Chairs Charles Kennedy, Greg Bistram, and Charles Lundberg; Directors William Wernz, Marcia Johnson, Ed Cleary and Ken Jorgensen.

Back in 1989 the Office had no computers at all; however, we had recently purchased one of those amazing new "fax" machines that allowed us to send and

receive copies of documents over the phone lines. Now we are fully computerized, including a very well-developed web page, compiling legal ethics resources one could not have dreamed of in 1989.

Guidance to Minnesota lawyers on trust accounting back then consisted of a lengthy Board opinion laboriously describing various detailed bookkeeping entries required, etc. Now we have instructional brochures demonstrating trust account procedures and how to use state of the art software for trust accounting.

Back in the 1980s gender fairness and harassment had become a concern for the bar and the Court; there was no ethics rule directly on point. Now we have anti-harassment and discrimination rules (Minnesota being one of the first states to adopt such language).

In the early 1980s there was a marked increase in the number of ethics complaints, and a severe backlog of disciplinary cases. Perhaps the most striking change comparing then and now is the significant decrease in complaints recently, especially vis-à-vis the remarkable increase in advisory opinions. As noted below, although it may be difficult to directly attribute a decrease in complaints to the increased advisory opinion role, the correlation seems intuitively obvious.

I found remarkable the extent to which new processes and procedures introduced by the Board/OLPR in the late 80s and early 90s have resolved problems and made the disciplinary system run so much smoother in subsequent years. For example, the introduction of the Panel Manual revolutionized the procedural aspects of Board hearings. We went from a situation where respondents' counsel were routinely complaining about a lack of available information about Panel procedures to a point where procedural rules and processes are well understood by all Panel participants.

The trust account overdraft notification rule is another example. The overdraft notice procedures have identified potentially serious trust account problems at an early stage, while serving an important educational role for attorneys with poor trust account practices but no dishonest intent, as well as deterring trust account misconduct generally.

Other historical themes that come out of the reports include the importance of a periodic review of the professional responsibility system (searching reviews were performed in 1985 and 1992, and the time may now be ripe for another review); the continued work of the Board and the OLPR in monitoring and recommending proposed changes in the substantive and procedural rules of ethics; and the importance of issuing Board opinions to provide practical guidance to practicing lawyers. Until 1989 only twelve opinions had been issued; since then seven more opinions have been promulgated, addressing such practical issues as the proper use of new technologies to communicate confidential client information and the use of non-refundable retainers.

The role of the Board opinions, of course, changed dramatically in the late 90s when the Court held--to the surprise of some--that Board opinions were not authoritative for purposes of finding professional discipline. In the wake of this development, the Board is continuing to restructure the opinion process, has recently repealed several opinions that were no longer justified, and is working with the MSBA Task Force to incorporate the substance of other opinions into the proposed 2003 Rule amendments.

The developments in our annual Professional Responsibility seminar have also been noteworthy. From the beginning the annual seminar has focused on practical training for those involved in the disciplinary system, especially our hard-working District Ethics Committee (DEC) members from across the state. More

recently, we have started to bring in nationally recognized speakers every other year to address important issues of legal ethics, including (1) Professor Charles Wolfram, one of the deans of the legal ethics world in 1999 to discuss multi-disciplinary practice and breaking issues then being confronted by the ABA's Ethics 2000 Commission and the American Law Institute's then just finished magnum opus, the *Restatement of the Law: The Law Governing Lawyers*, and (2) the Chair and the Reporter of the ABA Ethics 2000 Commission (Chief Justice E. Norman Veasey of the Delaware Supreme Court and Professor Carl Pierce) in 2001 to discuss the then forthcoming rewrite of the Model Rules of Professional Conduct, a major revision of the ethics rules that will be presented to the Minnesota Supreme Court later this year.

As we look forward to the most substantial rewrite of the ethics rules since 1985, it is worth noting how Minnesota has continued to be a leader across the country throughout the years in the area of legal ethics. Rules that the ABA has only recently come to grips with (sex with clients, disclosure of client fraud, procedures for screening imputed conflict situations, etc.) are all areas where Minnesota has been a leader and the ABA and other states are only now coming to recognize the wisdom of positions this Court took some time ago.

To be sure, there have been challenges over the years. Having to move the entire Office, twice, first into the Judicial Center and then out of the Judicial Center to our new quarters in the Landmark Towers, was a major commitment of time and effort. In addition, this retrospective would not be complete without a mention of the *Republican Party* judicial election case that culminated in a U. S. Supreme Court opinion last summer. (The complaint was served upon me the very week I assumed the Board Chair position almost six years ago, and the case has been ever-

present since then – and will continue to affect us as post-remand proceedings continue in the lower federal courts over at least the next year or two.)

Some things, though, have not changed over the years: the extremely high level of service/experience of Board members, based in large part on a strong view of both the Board and the OLPR that Board members should be selected from people who have had substantial DEC ethics experience. The collegiality among Board members, the warm feelings expressed whenever terms are completed, and the feeling that service to the Court, the bar, and the public on this Board is a great honor. The tremendous volunteer efforts of DEC members – a part of the disciplinary system that most other states have given up on but which remains a valuable and vibrant part of Minnesota lawyer discipline. Last but not least, the annual reports from years ago repeatedly comment on the remarkable stability and quality of the OLPR attorneys and staff, qualities that have continued on to this day.

### **III. LEADERSHIP CHANGES DURING THE LAST YEAR**

#### **New Director**

In July 2002, Governor Ventura appointed Director Edward J. Cleary to the Ramsey County District Court bench. He had served as Director since his appointment in 1997. Ed left the Director's Office in August to take his position on the bench.

Senior Assistant Attorney Martin Cole was appointed interim Director while a search for a new Director was conducted by a Court-appointed search committee. The search committee membership list is attached at A. 1.

On December 2, 2002, the Court appointed Kenneth L. Jorgensen as Director. Prior to his appointment, Ken had been the First Assistant Director since 1993. Ken brings a wealth of experience to the Director position, having been with the Office for 20 years. Martin Cole was elevated to the First Assistant Director position after Ken's appointment as Director.

### **Changes to the Board**

Board Vice-Chair Regina Chu was appointed by Governor Ventura to the Hennepin County District Court bench. Vince Thomas from the Hamline University Law School was appointed to fill the remainder of her term. In February 2003, the Supreme Court filled two attorney positions and one public member position after George Widseth, Timothy O'Brien and Ann Bailly completed their terms. The two new attorney members are David Sasseville from Minneapolis and Dianne Ward from St. Paul. The new public member is Mark Anway from Wyoming, Minnesota. A short bio of current Board members is attached at A. 2.

New appointments to the Board's Executive Committee included Vice-Chair Mary Alice Richardson of Rochester; and attorney member Tom LaVelle of Worthington.

### **Ethics Complaint Numbers Continue to Fall as Advisory Opinion Requests Increase**

Last year's annual report noted that the number of ethics complaints filed in 2001 were the lowest total since 1988. In 2002, complaint numbers fell even lower (from 1,246 in 2001 to 1,165 in 2002). At the same time, the number of advisory opinion requests (1,825) nearly equaled the record number of requests received during 2001 (A. 3). While the decline in ethics complaints may not be directly attributable to the increase in advisory opinions, preventative lawyer discipline through advisory opinions appears to be paying dividends. The Office has also continued to be very active in CLE presentations (A. 4).

### **Office Move**

In August 2002, the Director's Office moved from the Judicial Center to 1500 Landmark Towers, 345 St. Peter Street in downtown St. Paul. Lawyer discipline hearings will continue to be held in the courtroom in the Minnesota



Judicial Center, but all other business will be conducted from the downtown Landmark Towers location.

### **Professional Responsibility Seminar**

The 2002-2003 Professional Responsibility Seminar was held on April 4, 2003, at the Four Points Sheraton Midway in St. Paul. The seminar had originally been set for September 6, 2002, but was rescheduled due to the August 2002 relocation of the Director's Office. This year's seminar focused on the practical aspects of District Ethics Committee investigations, reports and recommendations. The program included performances by Director's Office employees in several vignettes about how to conduct investigations and write investigative reports. William Wernz, Chair of the MSBA Rules of Professional Conduct Task Force, provided an overview of the Task Force's progress in recommending changes based upon the 2002 ABA Model Rules of Professional Conduct. Also included was a survey of lawyer discipline case law from Minnesota and other jurisdictions.

### **Volunteer of the Year Award**

The Lawyers Professional Responsibility Board Volunteer of the Year award was established in 1998 to honor and recognize the extraordinary volunteer efforts of those who assist in upholding the integrity of the legal profession by devoting their efforts to the Minnesota lawyer discipline system. The award is presented at the annual Professional Responsibility Seminar.

The 2002-2003 Volunteer of the Year is Ann Bailly. Ann is not only the first woman to receive this award, but she is also the first non-lawyer. Ann's list of volunteer efforts include:

- Hennepin County District Ethics Committee - 1985-1987 & 1990-1995.
- Lawyers Professional Responsibility Board - 1995-2001.
- 3 years on Lawyers Board Executive Committee and served as personnel liaison between the Lawyers Board and the Director's Office.

- Attended bi-monthly staff meetings in the Director's Office.
- Served on the 2002 Supreme Court Search Committee to replace former Director Edward Cleary after his judicial appointment.
- Currently serves on the Minnesota State Bar Association Task Force on the Model Rules of Professional Conduct.

Ann graduated from the University of Minnesota with a major in psychology. She was employed by the University of Minnesota in the Office of the Senior Vice President for Academic Affairs from 1966 – 1996 where she received the Professional and Academic Staff Recognition Award. Ann and her husband (now deceased) raised 6 children (two of whom are lawyers) and she currently resides in Minneapolis.

### **Pending Litigation**

Since 1998 the Director and the Chair, along with the Chair of the Board on Judicial Standards, have been defendants in a federal lawsuit challenging Canon 5 of the Code of Judicial Conduct, which regulates the conduct of candidates in judicial elections. The federal district court dismissed the action, and the Eighth Circuit Court of Appeals affirmed the lower court's ruling in April of 2001. In December of 2001, the U.S. Supreme Court granted *certiorari* on only one of the provisions challenged, namely, the constitutionality of the so-called “announce clause” (Canon 5A(3)(d)(i)).

On June 27, 2002, the U.S. Supreme Court reversed, finding that Minnesota's Canon 5, which prohibited judicial election candidates from announcing their views on disputed legal and political issues, violated the First Amendment. The case was remanded to the Eighth Circuit for proceedings consistent with the Court's opinion. *See Republican Party of Minnesota, et al. v. White et. al.*, 122 S. Ct. 2528 (2002).

The plaintiffs have now petitioned the Eighth Circuit to reconsider their challenges to other Canon 5 regulations in light of the Supreme Court's reversal in *Republican Party v. White*. These challenges include the prohibitions against

candidates: (1) attending political gatherings; (2) seeking political party endorsements; (3) identifying themselves as members of political parties; and (4) personally soliciting campaign contributions. The Eighth Circuit subsequently ordered supplemental briefing, and the remand was argued in December 2002 and is under advisement by the Eighth Circuit.

### **MSBA Task Force on the ABA Model Rules of Professional Conduct**

The MSBA Task Force has nearly completed its review of the ABA Model Rules of Professional Conduct and is recommending significant changes to the Minnesota Rules of Professional Conduct. A central theme in the Task Force's recommendations is to make the Minnesota Rules more uniform with the ABA Model Rules to accommodate the increase in multijurisdictional practice by lawyers. Board member Tim Gephart, former Director Ed Cleary and Senior Assistant Directors Patrick Burns and Betty Shaw are members of the MSBA Task Force. The Task Force Report will be on the agenda for MSBA approval at the June 20, 2003, convention.

In April the Board formed its own subcommittees to review the MSBA Task Force recommendations. Tim Gephart, Judith Rush and Wood Foster chair the subcommittees. Subcommittee reports will be submitted to the Board at its June 12, 2003, meeting. A joint petition with the MSBA to amend the Rules of Professional Conduct will likely be filed with the Court later this year.

### **Lawyers Board Opinions**

The Lawyers Board Opinion Committee chaired by Regina Chu, and after her appointment to the bench, Charles Bateman, completed a comprehensive review of the Lawyers Board opinions in light the Supreme Court's decision in *Panel File No. 99-42*, 621 N.W.2d 240 (Minn. 2001) which held that a lawyer cannot

be disciplined solely for violation of an opinion. As a result of this review the following Lawyers Board opinions were repealed:

- Opinion No. 3 -- Part-Time Judges
- Opinion No. 4 -- Withdrawal for Non-Payment of Fees
- Opinion No. 10 -- Debt Collection Procedures
- Opinion No. 14 -- Attorney Liens on Homesteads
- Opinion No. 16 -- Interest on Fees

Other opinions were recommended for incorporation into the Rules of Professional Conduct, including Opinion Nos. 2 and 6 relating to part-time city and county attorneys, Opinion No. 5 relating to fee arbitration awards, Opinion Nos. 9 and 12 concerning trust accounts, Opinion 13 relating to return of client files and Opinion No. 15 addressing non-refundable fees. These opinions in one form or another are now contained within the MSBA Task Force's recommendations for amendments to the Rules of Professional Conduct.

#### **Conditional Admission Process For New Admittees**

Since May 2002, the Director's Office has been working with the Board of Law Examiners to design a procedure for conditionally admitting new lawyers whose pre-admission conduct raises character and fitness issues potentially affecting their ability to practice law. The procedure would provide for monitoring of the new admittee during his or her initial years of practice by a committee of the Law Examiners Board.

A Lawyers Board Committee chaired by Neil Meyer has been meeting with a Board of Law Examiners Committee to review proposed changes to the Rules of Admission to the Bar and the Rules on Lawyers Professional Responsibility, which will be necessary to accommodate the conditional admission procedure. A petition

requesting the Supreme Court to adopt conditional admission is expected later this year.

#### IV. MINNESOTA SUPREME COURT DISCIPLINARY CASES

Attached at A. 5 is a list of the public lawyer discipline decisions decided by the Supreme Court during calendar year 2002. Four attorneys were disbarred in 2002;<sup>1</sup> two attorneys have been disbarred in the first five months of 2003:

##### 2002

Ragnhild A. Westby (2/21/02)  
David L. Brehmer (4/18/02)  
Roland C. Amundson (5/3/02)  
Steve C. Samborski (5/23/02)

##### 2003

Michael E. Keller (2/18/03)  
Murray R. Klane (4/15/03)

Among the public disciplinary cases decided in the last half of 2002 and during the first five months of 2003 are:

**Murray R. Klane** of Minnetonka, was disbarred after pleading guilty to felony mail fraud arising out of his representation of a trust established by Klane to preserve the settlement funds of a severely injured young adult. The mail fraud transaction related to Klane's solicitation of a \$30,000 loan from the trust to a business in which Klane possessed a substantial interest. Klane did not disclose his interest in the business to the trust's co-trustee. Klane also engaged in a number of other business investment conflicts with other clients without adequately disclosing his interest in those businesses.

**Michael E. Keller** of Larimore, North Dakota, was reciprocally disbarred from practice in Minnesota after being disbarred in North Dakota in 2002. Keller's misconduct involved misappropriation of client funds, unauthorized practice of law, and failure to communicate with clients. Keller did not respond to the

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<sup>1</sup> In addition, on December 26, 2002, Richard Jellinger was disbarred; however, the disbarment was stayed subject to a minimum suspension of at least two years.

Minnesota Supreme Court's order to show cause as to why the North Dakota disbarment sanction should not be imposed in Minnesota.

**Richard Jellinger** of Anoka was disbarred, with the disbarment stayed subject to a minimum suspension of at least two years. Jellinger misappropriated nearly \$20, 000 from an estate account, made misrepresentations to conceal his theft, neglected client matters, and failed to cooperate with the disciplinary investigation. Jellinger's claim that his misconduct was the product of untreated depression was rejected by the Court when Jellinger was unable to establish that his thefts and misrepresentation were causally related to depression. Jellinger had previously been reprimanded by the Court in 2001 and placed on probation for trust account misuse and failing to cooperate with the trust account investigation.

**Steven F. Soronow** of Minneapolis agreed to an indefinite suspension for a minimum of six months for a pattern of neglecting client immigration cases, non-communication with clients, failure to return unearned fees, failure to return client files, giving a false name and birth date to a police officer during a traffic stop, and failing to cooperate with the investigations of client complaints filed against him.

**David T. Erickson** of Minnetonka received a stayed 30-day suspension and four-year probation for failing to cooperate with an investigation by the Director's Office. The Court later imposed the stayed suspension when Erickson failed to comply with the Court's directive to provide the Director's Office with a valid address for service of process. Erickson remains suspended from the practice of law.

Erickson had been disciplined by the Court on two prior occasions: (1) a 30-day suspension in 1987 for failure to file income tax returns; and (2) a 60-day suspension in 1993 for neglecting client matters, trust account misuse and failing to cooperate with the disciplinary investigation.

**Ronald P. Smith** of St. Paul was suspended for 90 days and then reinstated to permanent retired status for preparing testamentary instruments for a client that named Smith's son, daughter and a charity in which Smith was personally interested. Smith also altered a partnership transfer document after it was executed and provided conflicting statements to others about when the alterations occurred.

**Joseph A. Wentzell** of Minneapolis received a six-month suspension for engaging in a pattern of misconduct intending to deceive the bankruptcy court and his bankruptcy clients' creditors. Specifically, Wentzell failed to disclose to the court the transfer of real estate interests from the clients to Wentzell as security for legal fees. Wentzell also made inconsistent statements during the disciplinary investigation and discipline hearings about the nature of the real estate transfers and the client's pre-petition payment of legal fees.

**In re Panel File No. 15976**, 653 N.W.2d 452 (Minn. 2002). This somewhat controversial matter involved an appeal by both the respondent lawyer and the complainant (a district court judge) of an admonition issued to the lawyer by a Lawyers Board Panel.<sup>2</sup> The admonition resulted from motions filed by the lawyer who was representing a client in a personal injury case before the district court judge. The motion attempted to exclude the judge's law clerk from participating in the injury trial because the clerk himself was profoundly disabled. Because the clerk performed his job responsibilities so admirably, the lawyer was concerned the jury might compare his client's injury to the clerk's disability and discount the client's claim for future wage loss.

The lawyer sought to have the admonition reversed, while the judge argued that the lawyer should be publicly disciplined. The Supreme Court affirmed the admonition and found that the lawyer improperly used disability as a means to

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<sup>2</sup> See Lundberg, "Making Private Discipline a Public Matter," Bench & Bar of Minnesota, Feb. 2003.

exclude the clerk from participating in the proceedings. At the same time, the Court also rejected the district court judge's request for a public discipline ruling that the lawyer's motions could be viewed "as an inappropriate attempt to address the respective rights of two disabled persons, rather than elevating the rights of one over the rights of another."

(For caseload and statistics, *see* A. 6 – A. 8)

## **V. DIRECTOR'S OFFICE**

### **A. Budget.**

#### **1. FY'03 and FY'04 Budgets.**

Expenditures for the fiscal year ending June 30, 2003, are projected to be \$2,031,687. The FY'04 budget includes anticipated expenditures of \$2,298,661. The FY'04 payroll budget projects a 1.5% across the board increase (formerly known as cost of living adjustment) and a 3% merit increase for those eligible. Whether the increases are actually implemented is dependent upon resolution of the state budget crisis and other related factors. The FY'04 budget provides for no additional staffing.

On May 28, 2002, the Court issued an order granting an increase in the attorney registration fee allocated to the Office to \$120.00 annually beginning July 1, 2003, which represents the first increase in seven years. The increase was requested due to increased rental costs associated with relocation of the Office to downtown St. Paul and implementation of a Supreme Court classification and compensation study.



**B. Administration.**

Website.

The Office of Lawyers Professional Responsibility maintains and regularly updates the website for the Office and the Board. The address is [www.courts.state.mn.us/lprb](http://www.courts.state.mn.us/lprb). Attached at A. 9 is the title page showing the current contents of the website. Enhancing the website to provide additional resources for lawyers and the public is one of the goals for FY'04.

**C. Personnel.**

In August 2002, former Director Edward J. Cleary was appointed a Ramsey County District Court Judge. The Supreme Court formed a search committee who recommended Kenneth L. Jorgensen. Ken was appointed Director in December 2002. Prior to his appointment, Ken had been with the Director's Office since 1982 and had been the First Assistant Director since 1993. In December 2002, Martin Cole was promoted to First Assistant Director. The Office has not filled the attorney position vacancy created by the promotions and is monitoring whether the existing case load is capable of being handled by fewer attorneys due to the experienced lawyer staff.

In November 2002, Assistant Director Mary Galvin went on family leave. In March 2003, Mary submitted her resignation. The Office has contracted with Special Counsel Thomas Ascher to temporarily fill this opening. 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. 10).

**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 as trustee to audit the trust account of deceased attorney William L. Thomas. The purpose of the trusteeship is to determine ownership of existing trust account funds and make disbursements accordingly.

Destruction of Trusteeship Files:

- February 2003 Theodore Abe 163 files destroyed
- April 2003 Gerald McNabb 210 files destroyed

Trusteeship Files Remaining in the Director's Office Possession:

- October 2005 Norman P. Friederichs, Jr. 8 files

**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 2002, the Director's Office received 238 complainant appeals, compared to 265 such appeals in 2001. There were 240 complainant appeal determinations made by Board members in 2002 as follows:

		<u>%</u>
Approve Director's disposition	230	96
Direct further investigation	9	4
Instruct Director to issue charges	1	-

A total of 45 clerical hours were spent in 2002 processing and routing appeal files. Additional attorney time was expended primarily in responding to complainants who continued to correspond with the Office and the Board after their appeals were decided.

## **F. Probation.**

While there was no increase in 2002 in the number of probation files opened, there continues to be a concern about the number of revoked and extended probations. Probations are revoked when additional misconduct comes to light or there is a substantial failure to comply with probationary conditions. Probations are extended when the failure to comply with probationary conditions is less serious. During 2002, the Director revoked three public and one private and extended two public and five private probations. Four of the seven probation extensions involved alcohol or mental health issues. The following is a brief summary:

### Public Probations Revoked:

- Samuel Vaught -- suspended.
- Eric De Rycke -- suspended.
- David Erickson -- suspended.

### Public Probations Extended:

- James M. Burseth -- failing to comply with the sobriety requirements of probation.
- Thornton Anderson -- failure to complete payment of a law-related judgment previously ordered by the Court.

### New Public Probations:

- Michael C. McCann -- two years for failing to cooperate with the Director's efforts to monitor a prior private probation.
- Suzette E. Johnson -- two years for client related misconduct and failing to cooperate with her prior private probation.

During 2002, the Director's Office extended three private probations for less serious compliance issues.

The following statistics reflect the operation of the probation program between January 1, 2002, and December 31, 2002:

**TOTAL PROBATION FILES OPEN DURING 2002**

Public probation files (42%)	34
Private probation files (58%)	<u>47</u>
<b>Total Probation Files Open During 2002</b>	<b>81</b>

**INVENTORY PROBATION FILES**

Total open probation files as of 1/1/02	61
Probation files opened during 2002	25
Private probations extended during 2002	7
Probation files closed during 2002	<u>(31)</u>
<b>Total Probation Files Open as of 12/31/02</b>	<b>62</b>

**PROBATIONS OPENED IN 2002**

Public probation files	9
Reinstatement probations	3
Private probation files	<u>20</u>
<b>Total New Probation Files Opened in 2002</b>	<b>32</b>

**PROBATION FILES CLOSED IN 2002**

Probations successfully completed	20
Probation revocations	4
Probations extensions	<u>7</u>
<b>Total Probation Files Closed in 2002</b>	<b>31</b>

**AREAS OF MISCONDUCT\*\***

As reflected in 81 files open during 2002

Neglect & Non-Communication (Violation of Rules 1.3 and 1.4, MRPC)	60
Trust Account Books and Records (Violation of Rule 1.15, MRPC, and LPRB Opinion 9)	33
Non-Cooperation (Violation of Rule 8.1, MRPC)	23
Misrepresentations (Violation of Rule 8.4(c), MRPC)	20
Fees & Opinion 15 Violations	18
Termination of Representation	11
Taxes	10
Criminal Conduct (Violation of Rule 8.4(b), MRPC)	9
Competence (Violation of Rules 1.1 and 1.2, MRPC)	8

\*\*A file may involve more than one area of misconduct.

### IMPAIRMENT RELATED PROBATIONS

Chemical Dependency - existing files on 1/1/02	2	
New files opened during 2002	<u>2</u>	
Total Chemical Dependency Related Probation Files		4
Psychological Disorders - existing files on 1/1/02	9	
New files opened during 2002	<u>6</u>	
Total Psychological Disorder Related Probation Files		<u>15</u>
<b>Total Disability Related Probations</b>		<b>19</b>

Our probation records, as shown below, show a gradual increase in probations with an impairment component from 1992 through 2002:

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	1	6	9

As shown above, the total number of probations has decreased while the number of probations with impairment conditions has continued to increase in 2002. As a percentage of the probation group as a whole (total probations open during the year), 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.

Over this same time period, probations having a chemical dependency component have remained constant. Since 2000 there have been three probations with chemical dependency conditions. However, during 2001 and 2002 two of these probations were extended for failing to comply with sobriety requirements.

**Probation Supervisors.** In 2001 the Probation Department started compiling feedback from volunteer probation supervisors using a survey form.

We have learned that probation supervisors have an average of almost 20 years in the practice of law. Most supervisors spend between 2 and 4 hours per month monitoring their probationer.

The following summarizes responses received from the 11 supervisors who responded to the survey:

Changes recommended by Supervisor:	<ul style="list-style-type: none"> <li>• Limit advertising to keep workload manageable.</li> <li>• Improve client communications.</li> <li>• Withdraw where unable to adequately represent.</li> <li>• Improve record keeping &amp; filing systems.</li> <li>• Network with other lawyers.</li> <li>• Avoid practice areas resulting in complaints.</li> <li>• Written engagement letter or fee agreements.</li> </ul>
Focus of Supervision:	<ul style="list-style-type: none"> <li>• Assure compliance with probationary conditions.</li> <li>• Maintaining focus on case requirements.</li> <li>• Improved client communications.</li> <li>• Avoid unproductive representations.</li> <li>• Trust account maintenance.</li> <li>• Conflicts of interest.</li> <li>• Avoid procrastination.</li> </ul>
Negative Experiences:	<ul style="list-style-type: none"> <li>• Stress related to loss of communication with probationer.</li> <li>• More time consuming than expected.</li> <li>• Too isolated.</li> </ul>

complying with the profession's ethical standards. In 2002, the Director's Office received 1,825 requests for advisory opinions, nearly the same number received in 2001.

Almost all advisory opinions are requested and given by telephone; a small number of opinions (less than 1%) are provided in writing. 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 assistant director issuing the opinion and are not binding upon the Lawyers Board or the Supreme Court.

Set forth below is a statistical summary of advisory opinions for the period 1990 through 2002:

<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	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

In 2002, the Director's Office expended 371 assistant director hours in issuing advisory opinions. This compares with 376 hours in 2001. Conflict (former clients generally) was the most frequent area of inquiry.

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

In 2002 judgments were entered in 23 disciplinary matters totaling \$23,519.83. The Director's Office collected a total of \$15,971.75 from judgments entered during or prior to 2002; of this amount, \$10,388.20 (or 65% of the total) resulted from judgments entered in 2002. Forty-four percent of the amount of the judgments entered in 2002 has been collected. The total amount of all outstanding judgments as of January 1, 2003, was \$222,949.58.

A summary of the 2002 statistics and how they compare to 2001 is presented below:

	<b>2002</b>	<b>2001</b>
Number of judgments entered:	23	27
Dollar value of judgments entered:	\$23,519.83	\$28,139.81
Total amount collected:	\$15,971.75	\$13,337.07
Portion attributable to current year's judgment:	\$10,388.20	\$8,521.78
Portion attributable to judgments of prior years:	\$5,583.55	\$4,815.29

Although 15% fewer judgments were received in 2002 than in 2001, the Director collected 20% more in 2002 (\$15,971.75) than in 2001 (\$13,337.07).

## **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 includes 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*, and also appears on the website.

Fees are \$100 for the first annual report and \$25 per year thereafter. The following are statistics for income collected as filing fees by the professional firms department as of April 9, 2003:

1352	@	\$25.00	\$33,800.00
67	@	100.00	<u>\$ 6,700.00</u>
			\$40,500.00
33*	for	5,800.00	<u>\$ 5,800.00</u>
			<u>\$46,300.00</u>

\*Funds collected for fees owed for 2001 and prior years.

Total Attorney Hours:	11
Total Non-attorney Hours:	380

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

#### **J. Overdraft Notification.**

Since 1990, banks, in order to be approved to maintain lawyer trust accounts, have been required to report overdrafts on those accounts to the Director's Office. Upon receipt of such an overdraft, the Director makes inquiry of the lawyer regarding the cause of the overdraft and the adequacy of the lawyer's trust account books and records.

#### Overdrafts Reported by Banks

2002	116
2001	98

### Closed Inquiries During 2002

• Closed Without Need for Disciplinary Investigation	99
• Inquiry Converted to Disciplinary Investigation	<u>9</u>
<b>Total Trust Account Inquiries Closed</b>	<b><u>108</u></b>

### Discipline Related to Trust Account Overdraft Inquiry

#### Public Discipline:

- *In re Hoover*, 645 N.W.2d 85 (Minn. 2002)  
(public reprimand and probation).

#### Private Discipline:

- 3 Admonitions.
- 3 Private Probations.

In 54 of the inquiries terminated without a disciplinary investigation, the Director recommended changes or improvements to the lawyer or the law firm. 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.

The causes of the trust account overdrafts reported that were closed without a disciplinary investigation in 2002 are as follows:

<b>Overdraft Cause</b>	<b>No. of Closings</b>
Bank error	34
Mathematical/clerical error	17
Late deposit	13
Third party check bounced	9
Service or check charges	6
Deposit to wrong account	5
Check written in error on TA	4
Bank hold on funds drawn	4
Improper/lacking endorsements	3
Reporting error	1
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 2002, overdraft inquiries resulted in disciplinary file openings for the following reasons:

#### Reason for Investigation

No response or inadequate explanation	7
Shortages	1
Using trust account as personal/business account	<u>1</u>
<b>Total</b>	<b>9</b>

### Time Requirements

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

	<u>1/01-12/01</u>	<u>1/02-12/02</u>
Attorney	151.00 hrs	126.00 hrs
Paralegal and other staff	<u>220.75 hrs</u>	<u>197.00 hrs</u>
<b>Total</b>	<b>371.75 hrs</b>	<b>323.00 hrs</b>

### **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 2002.

	<u># of Requests</u>	<u># of Attorneys</u>	<u>Discipline Imposed</u>	<u>Open Files</u>
A. National Conference of Bar Examiners	63	63	0	0
B. Individual Attorneys	2	2	0	0
C. Local Referral Services				
1. MSBA	23	136	0	0
2. RCBA	18	90	0	1
D. Governor's Office	16	63	5	0
E. Other State Discipline Counsels/State Bars or Federal Jurisdiction	207	207	18	1
F. F.B.I.	28	38	1	0
G. MSBA: Specialist Certification Program	20	104	14	3
H. Miscellaneous Requests	40	103	4	0
<b>TOTAL</b>	<b>417</b>	<b>806</b>	<b>42</b>	<b>5</b>
(2001 Totals)	(438)	(890)	(43)	(5)

**VI. 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 2002, the Director's Office followed the recommendations of the DEC's in 89 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 2002, the overall monthly average volume of files under consideration by the DEC's was 129, fluctuating between a low of 111 and a high of 139. This is lower than the 2001 overall average of 134. The year-to-date average volume for 2003 through April 30 is 146.

Rule 7(c), RLPR, provides a 90-day goal for completing investigations. The average file age for pending matters in all DEC's for April 2003 was 2.7 months, with the Hennepin (Fourth District) Ethics Committee at 2.4 months and the Ramsey (Second District) Ethics Committee at 2.5 months. For *completed* DEC investigations in April 2003, the overall average for the prior 12 months was 3.5 months, with the Hennepin DEC at 3.5 months and the Ramsey DEC at 3.7 months.

For the calendar year 2002, the DEC's completed 390 investigations, taking an average of 3.6 months to complete each investigation. The Hennepin DEC was assigned 175 of these investigations, taking an average of 3.3 months per investigation (*see* A. 11, 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 2002, 125 matters were referred back to the Director's Office after screening without an IRC hearing; it took an average of 2.8 months to complete the DEC investigation of these matters. There were 44 matters

referred to an IRC panel before being sent back to the Director's Office, which took an average of 4.5 months to complete. There were 6 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 2002, 390 completed DEC investigations resulted in the following dispositions:<sup>3</sup>

Determination discipline not warranted	279
Admonition	31
Private probation	6

A statewide professional responsibility seminar for DEC members, hosted by the Office and the Board, was held on Friday, April 4, 2003. 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.

## **VII. FY'04 GOALS AND OBJECTIVES**

With the reduction in the lawyer staff, an important objective for the next year will be to maintain existing caseload numbers while continuing to serve the bar through advisory opinions and CLE presentations. Despite reduced staffing, this goal appears attainable because of the extremely experienced staff in the Director's Office.

The Board will be completing its review of the ABA Model Rules of Professional Conduct in June and joining with the MSBA in petitioning the Court for the most significant changes to the Rules of Professional Conduct in Minnesota since they were adopted in 1985. After the Court takes action on the petition, the

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<sup>3</sup> 74 files received back from the DEC's in 2002 remained open as of 1/1/03.

Office and Board will need to educate the bar about the changes. In addition, further review of the remaining Lawyers Board Opinions will be required to determine their role in lawyer regulation and education.


The Office and Board will be completing its work with the Board of Law Examiners on the proposed conditional admission process. This will likely culminate in a joint petition to the Supreme Court for changes in the law admission rules and the procedural Rules on Lawyers Professional Responsibility.

The continuing litigation over judicial election regulations must be monitored. Any further changes effected by the litigation need to be addressed both in terms of regulation enforcement policy and education. The Office and the Board will need to take the lead in communicating these changes to the bar.

Finally, we will be exploring new ways to expand our professional responsibility resources without unnecessarily increasing lawyer discipline resources and costs. Already the Office is considering changes to enhance its website to offer search capabilities, other self-help tools and expanded content in available professional responsibility resources. Through these efforts we hope to continue our mission to protect the public, not only through lawyer discipline, but also by assisting lawyers in complying with the profession's standards.

Dated: June 10, 2003.

Respectfully submitted,

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

and

  
CHARLES E. LUNDBERG  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD

## Supreme Court Search Committee For a OLPR Director

Justice Paul H. Anderson, Supreme Court Liaison Justice to LPRB

Ann Bailly, Former Public Member, LPRB

Gregory M. Bistram, Former Board Member and Former Board Chair, LPRB

Honorable Regina Chu, District Court Judge and Former Board Member, LPRB

Richard Diamond, Client Security Board Chair

Wood R. Foster, Jr., Member, LPRB

Kent Gernander, MSBA Representative and Former Member, LPRB

Justice James H. Gilbert, Supreme Court Liaison Justice to CSB

Christopher J. Lake-Smith, Public Member, LPRB

Charles E. Lundberg, Lawyers Professional Responsibility Board Chair

Cindy K. Telstad, Member, LPRB



## **Lawyers Professional Responsibility Board Members**

**Charles E. Lundberg, Mpls.** – Attorney member; current LPRB Board Chair; term expires 1/31/04; partner in the firm of Bassford, Lockhart, Truesdell & Briggs, P.A.; served 6 years as LPRB Board member, and over 8 years on the Fourth District DEC.

**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.

**Larry M. Anderson, Mpls.** – Public member; term expires 1/31/04; Arbitration Coordinator/Settlement Conference Administrator for Hennepin County District Court; served 4 years on the Fourth DEC.

**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 R. Bateman, Duluth** – Attorney member; term expires 1/31/05; serves on the LPRB Opinion Committee; partner with Halverson, Watters, Downs, Reyelts & Bateman; served on the Eleventh DEC for 11 years, including 5 years as Chair.

**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.

**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.

**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.

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

**Christopher Lake-Smith, St. Paul** – Public member; serves on LPRB Executive Committee; serves on the LPRB Opinion Committee; term expires 1/31/04; Director of Information Services for Knotts Camp Snoopy. Served on Second DEC.

**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.

**Patrick J. McGuigan, St. Paul** – Attorney member; term expires 1/31/04; serves on LPRB Opinion Committee; partner in the firm of McGuigan & Holly; served a total of 9 years on Second DEC, 6 years as Chair.

**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.

**Neil M. Meyer, Mpls.** – Attorney member; serves on LPRB Opinion Committee; term expires 1/31/04; 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.

**Wallace Neal, Bloomington** – Public member; term expires 1/31/05; self-employed as a consultant; served 12 years on the Fourth DEC.

**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.

**Mary Alice Richardson, Rochester** – Attorney member; current LPRB Vice-Chair, serves on the LPRB Rules Committee; term expires 1/31/04; solo practitioner in the areas of family law, probate and real estate; served over 6 years on the Third DEC and former probation supervisor.

**Judith M. Rush, Roseville** – Attorney member; MSBA nominee; serves on LPRB Rules Committee; term expires 1/31/04; solo practitioner in the areas of family and appellate law; served 6 years as member of the Second DEC.

**David L. Sasseville - Mpls.** – Attorney member; MSBA nominee; term expires 1/31/06; partner in the firm of Lindquist & Vennum; served on Fourth DEC for 6 years.

**Vincent A. Thomas, St. Paul** – Attorney member; MSBA nominee; term expires 1/31/04; Assistant Dean of Students and Adjunct Professor of Law, Hamline University School of Law.

**Cindy K. Telstad - Winona** – Attorney member; MSBA nominee; term expires 1/31/05; partner in the firm of Streater & Murphy; served on the Third DEC for 6 years, including 2 years as Chair.

**Dianne A. Ward, St. Paul** – Attorney member; term expires 1/31/06; Assistant Director in the Office of the Ramsey County Attorney; served on the Second DEC for 3 years.

**Kenneth R. White, Mankato** – Attorney member; MSBA nominee; term expires 1/31/05; solo practitioner in the areas of appellate practice and civil litigation.

**Advisory Opinion Requests Received  
and  
Number of Complaints Opened  
from 1986 to 2002**

	<i>Advisory Opinions</i>	<i>Complaints</i>
<b><u>YEAR</u></b>	<b><u>Received</u></b>	<b><u>Opened</u></b>
<b>1986</b>	875	1233
<b>1987</b>	840	1091
<b>1988</b>	968	1149
<b>1989</b>	1143	1365
<b>1990</b>	1355	1384
<b>1991</b>	1292	1380
<b>1992</b>	1398	1399
<b>1993</b>	1627	1405
<b>1994</b>	1765	1456
<b>1995</b>	1795	1290
<b>1996</b>	1783	1438
<b>1997</b>	1757	1314
<b>1998</b>	1632	1275
<b>1999</b>	1635	1278
<b>2000</b>	1755	1362
<b>2001</b>	1824	1246
<b>2002</b>	1825	1165

**Office of Lawyers Professional Responsibility**  
**Speaking Engagements and Seminars July 2002 – June 2003**

7/30/02	Ramsey County Law Section	St. Paul	RCBA
8/5/02	National Conf. of Appellate Cts		
8/9/02	Ethics & Bias	St. Paul	All District Legal Ed.
8/28/02	MILE Seminar		
9/4/02	Ethics Overview	St. Paul	Murnane Law Firms
9/5/02	MN Dist. Judges Assn.		
9/6/02	DEC Training	Minneapolis	HCBA
9/14/02	Family Law Section	Minneapolis	MSBA
9/19/02	Attorney Ethics	St. Paul	Assn. Law Off. Mgrs.
9/20/02	DEC Training	Minneapolis	HCBA
9/26/02	Ramsey Bar Criminal Law Section	St. Paul	Ramsey County
10/16/02	Hamline Paralegal Class	St. Paul	Hamline Univ.
10/24/02	Common Ethical Violations	Minneapolis	MCLE
11/1/02	Workers' Comp. Seminar	Minneapolis	MSBA
11/9/02	Family Law Seminar	Minneapolis	MSBA
11/13/02	Moderator MCLE Ethics CLE	Minneapolis	MCLE
11/14/02	All Dist. Legal Ethics Seminar	St. Paul	
11/15/02	Real Estate Institute - Negotiation Ethics	St. Paul	MCLE
11/20/02	Hamline Prof. Resp. Class	St. Paul	Hamline Univ.
12/2/02	Estate Planning for NonTraditional Families	Minneapolis	MCLE
12/5/02	New Lawyers Nuts & Bolts	Minneapolis	HCBA
12/9/02	Workers' Comp. Seminar	Minneapolis	MSBA
12/10/02	Settlements	Minneapolis	MILE
12/11/02	Recent Developments in Professional Responsibility	Minneapolis	MILE
1/10/03	Lobbyist Ethics	Minneapolis	MCLE
1/15/03	School Attorneys Seminar	Minneapolis	MN School Bd. Assn.
1/22/03	Ethics & Bias	Bloomington	MILE
1/30/03	Employment Law – 4.2 Issues	Minneapolis	MILE
2/10/02	Ethics of Referrals	Minneapolis	MCLE
2/10/03	Elimination of Bias/Disability	Minneapolis	MCLE
2/13/03	Task Force Mtg.	Minneapolis	MSBA
2/14/03	DWI	Bloomington	MILE
2/21/03	CLE “What you can say . . .”	St. Paul	RCBA
2/25/03	Policy & Serving the Profession	Minneapolis	HCBA
2/28/03	Government Lawyer Ethics	St. Paul	Atty. General's Off.
2/28/02	Ethics Overview		NALS
3/1/03	Current Ethics Issues	Hinckley	Public Defender's Assn.
3/7/03	Ethics & Workers' Comp. Practice	Minneapolis	MTLA
3/10/03	Hennepin County Bar Professionalism Committee	Minneapolis	HCBA

**Office of Lawyers Professional Responsibility**  
**Speaking Engagements and Seminars July 2000 - June 2003**

3/11/03	Expert Witness Exam	Bloomington	NBI
3/20/03	District Bar Mtg. Mankato	Mankato	Mankato
3/26/03	Common Ethical Problems	Minneapolis	MCLE
3/31/03	Family Law Institute	Bloomington	MCLE
4/1/03	Family Law Institute	Bloomington	MCLE
4/2/03	Hamline Paralegal Class	St. Paul	Hamline Univ.
4/4/03	OLPR Professional Responsibility Seminar	St. Paul	
4/18/03	DEC Training	Minneapolis	HCBA
4/28/03	New Rule Changes	Minneapolis	MCLE
4/29/03	MILE Ethics Seminar	Minneapolis	MILE
5/2/03	Mentor at Getting Answers to Ethical Dilemmas Video Reply	Minneapolis	MCBA
5/9/03	Mental Illness	Brooklyn Ctr.	MILE
5/9/03	Trial Tactics	Minneapolis	MTLA
5/16/03	MTLA Ethics	Minneapolis	MTLA
5/19/03	Trust Account Ethics	Minneapolis	MCLE
5/20/03	DWI Handbook Seminar	Minneapolis	MCLE
5/22/03	County Atty. Assn. Seminar	St. Paul	MN Co. Atty. Assn.
5/22/03	Ethics for Solo/Small Firm Lawyer	St. Paul	RCBA
5/28/03	Employment Institute	St. Paul	MCLE
5/29/03	Elimination of Bias E/mt Inst panel	St. Paul	MCLE
5/30/03	Ethics, Life as a Lawyer	St. Paul	Henn. & Ramsey Bars
6/3/03	Investigation Ethics	Minneapolis	MILE
6/3/03	Mentor at Getting Answers to Ethical Dilemmas Video Reply	Minneapolis	MCBA
6/4/03	Handling Insurance Issues	Minneapolis	MSBA
6/5/03	Advisory Opinions	Minneapolis	Bassford Firm
6/6/03	AG Seminar	St. Paul	Atty. General's Off.
6/9/03	Protecting Client Confidences	Minneapolis	MNCLE
6/10/03	10 Ways to Draw Discipline Complaint	Brooklyn Park	All District CLE
6/11/03	Professionals at Risk	Minneapolis	MILE
6/19/03	Family Law Ethics	Minneapolis	VLN
6/20/03	Drunk Driving	Bloomington	MILE
6/24/03	Ethics & Bias		MILE
6/24/03	Mentor at Getting Answers to Ethical Dilemmas Video Reply	Minneapolis	HCBA

# OLPR 2002 Summary of Public Matters Decided

## 40 DECISIONS

<b>Disbarment</b>	<b>45 files</b>	<b>4 attorneys</b>	<b>Reprimand</b>	<b>2 files</b>	<b>1 attorneys</b>
AMUNDSON , ROLAND C	C2-02-655	1	VARRIANO , RICHARD D	C9-02-1947	2
BREHMER , DAVID L	C3-00-529	16	<b>Reprimand &amp; Probation</b>	<b>6 files</b>	<b>6 attorneys</b>
SAMBORSKI , STEVE C	C0-00-1380	24	BURSETH , JAMES M	CX-00-2004	1
WESTBY , RAGNHILD A	CX-96-1459	4	DUFRESNE , CHARLES W	CX-01-1977	1
<b>Suspension &amp; Probation</b>	<b>7 files</b>	<b>2 attorneys</b>	HOOVER , MICHAEL J	C7-02-439	1
ALBRIGHT , DAVID E	C3-02-101	3	JOHNSON , SUZETTE ELAINE	C1-02-1103	1
CLOUTIER , CORTLEN G	C0-02-1092	4	MADSEN , STEPHEN LOUIS	C0-02-1741	1
<b>Suspension</b>	<b>83 files</b>	<b>16 attorneys</b>	MCCANN , MICHAEL C	C1-02-128	1
BAILEY , SCOTT K	C4-02-1113	1	<b>Dismissal</b>	<b>1 files</b>	<b>1 attorneys</b>
BRUDVIG , THOMAS M	C1-93-1092	14	RIMAS , VYTAS M	C8-01-1976	1
CRISSEY , HEIDI H	C1-01-1799	1	<b>Disability Inactive Status</b>	<b>9 files</b>	<b>4 attorneys</b>
DERYCKE , ERIC A L	C1-98-589	1	ARCAND , WENDY L	C0-02-55	1
EK , CHARLES NORMAN	C3-00-2006	2	BARTA , LOREN M	C5-89-149	2
ERICKSON , DAVID T	C1-87-1357	2	MCCORMICK , MARY ELIZABET	C1-02-2025	5
KADINGER , GEORGE M	C7-01-768	7	RUSTAD , DIANNE E	C6-02-819	1
KOPESKA , RONALD L	C2-01-1472	1	<b>Stay</b>	<b>1 files</b>	<b>1 attorneys</b>
LEINO , STANLEY JAMES	C4-99-1827	15	BERGSTROM , PETER D	C2-96-886	1
LETT , BRIAN ANDREW	C1-02-78	9	<b>Reinstatement &amp; Probation</b>	<b>2 files</b>	<b>2 attorneys</b>
MCFARLAND , DYLAN J	C5-02-553	1	EICHHORN-HICKS , TRACY R	C9-00-373	1
SMITH , RONALD P	C5-02-987	1	PRIBBLE , WILLIAM C JR	C4-94-2134	1
SORONOW , STEVEN FRED	C6-01-972	23	<b>Reinstatement</b>	<b>3 files</b>	<b>3 attorneys</b>
UGGEN , STEVEN JOHN	C5-01-1434	2	ALBRIGHT , DAVID E	C3-02-101	1
VAUGHT , SAMUEL M	C9-98-1330	1	DVORAK , SHIRLEY A	C7-95-1179	1
WINGERD , HAROLD R	C3-87-1683	2	KOPESKA , RONALD L	C2-01-1472	1

**TABLE I**  
**Supreme Court Dispositions and Reinstatements 1990-2002**  
**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

\* Supreme Court admonition reversed.

\*\* Supreme Court stay.

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

<b>TABLE II</b>						
	Lawyers Board Goal	<u>12/99</u>	<u>12/00</u>	<u>12/01</u>	<u>12/02</u>	<u>4/30/03</u>
Total Open Files	500	484	557	525	463	451
Cases at Least One Year Old	100	128	123	146	106	100
Complaints Received YTD		1,278	1,362	1,246	1,165	378
Files Closed YTD		1,287	1,289	1,278	1,226	389

<b>TABLE III</b>							
Percentage of Files Closed							
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
<b>1. <u>Total Dismissals</u></b>	78%	78%	77%	82%	80%	77%	76%
a. Summary Dismissals	39%	41%	40%	45%	43%	43%	45%
b. DNW/DEC	32%	31%	31%	31%	31%	26%	25%
c. DNW/DIR	6%	6%	6%	5%	6%	8%	6%
<b>2. <u>Admonitions</u></b>	10%	8%	10%	9%	7%	10%	7%
<b>3. <u>Private Probation</u></b>	1%	1.5%	1%	3%	3%	3%	2%
<b>4. <u>Supreme Court Dispositions</u></b>	6%	7.5%	9%	6%	7%	8%	11%
a. Supreme Court Dismissal	-	-	-	--	--	--	--
b. Supreme Court Reprimand	-	-	-	--	--	--	--
c. Supreme Court Probation	1%	1%	2%	.5%	1%	1%	.5%
d. Supreme Court Suspension	4%	4%	3%	2%	5%	5%	7%
e. Supreme Court Disbarment	1%	2.5%	4%	1%	1%	2%	4%



**TABLE IV**

Number of Months File Was Open at Disposition

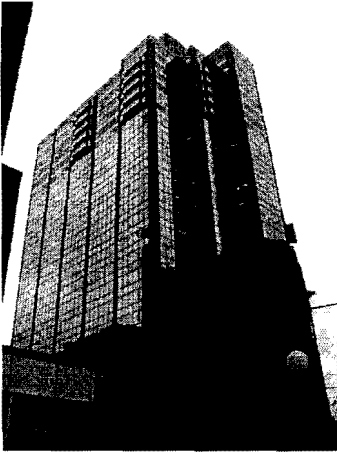
	1995	1996	1997**	1998	1999	2000	2001	2002
Discipline Not Warranted/ District Ethics Committee	5	5	--	--	--	5	5	5
Discipline Not Warranted/ Director	7	7	--	--	--	8	8	10
Discipline Not Warranted*			6	6	5	--	--	--
Admonition	10	9	8	9	10	9	9	10
Private Probation	14	17	16	14	14	14	13	10
Supreme Court Reprimand	31	--	11	19	--	16	21	10
Supreme Court Reprimand and Probation							14	12
Supreme Court Probation	20	13	19	14	16	20	12	--
Supreme Court Suspension and Probation							20	27
Supreme Court Suspension	20	20	24	18	13	20	16	18
Supreme Court Disbarment	14	17	17	27	8	26	30	21

\*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 - 2002**

<u>Disposition</u>	<u>No. of Matters</u>	<u>Average Months</u>
Supreme Court Reprimand (Stipulated)	1	1.5
Supreme Court Reprimand and Probation (Stipulated)	6	2
Supreme Court Suspension and Probation	2	1.5
Supreme Court Suspension (Stipulated)	13	1.6
Supreme Court Suspension	3	1.9
Supreme Court Disability	4	1.2
Supreme Court Disbarment (Stipulated)	1	.5
Supreme Court Disbarment	3	3.8



## **Minnesota Lawyers Professional Responsibility Board & Office of Lawyers Professional Responsibility**

### **What's New?**

- [Board Repeals Opinion on Homestead Liens](#)
- [2002-2003 Volunteer of the Year](#)
- [Most Recent Ethics Articles from Minnesota Lawyer](#)
- [Most Recent Bench & Bar Professional Responsibility Columns](#)

### **The Lawyers Professional Responsibility Board**

- [About the Lawyers Professional Responsibility Board](#)
- [Board Member Directory](#)

### **The Office of Lawyers Professional Responsibility**

- [About the Office of Lawyers Professional Responsibility](#)
- [Hours and Staff Directory](#)
- [Directions to Office of Lawyers Professional Responsibility](#)

### **Filing a Complaint Against a Lawyer**

- [Complaints and Investigations Procedures Brochure](#)
- [Directions for Filing a Complaint](#)
- [Complaint Form for Filing a Complaint](#)
- [Ethics Complaint Flow Chart](#)

### **Rules Governing Minnesota Lawyer Discipline System**

- [Minnesota Rules of Professional Conduct \(including amendments through 7/1/00\)](#)
- [Minnesota Rules on Lawyers Professional Responsibility \(Procedure Rules\)](#)
- [Lawyers Professional Responsibility Board Opinions \(1 through 19\)](#)

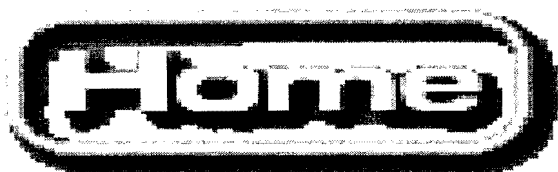
### **Related Links**

- [Minnesota State Bar Association \(MSBA\)](#)

- ABA Center for Professional Responsibility
- MSBA Task Force Subcommittee Reports on the ABA Model Rules of Professional Conduct
- Minnesota Board of Continuing Legal Education
- Minnesota Board of Law Examiners
- Minnesota Attorney Registration System – Public Inquiry
- Minnesota Client Security Board

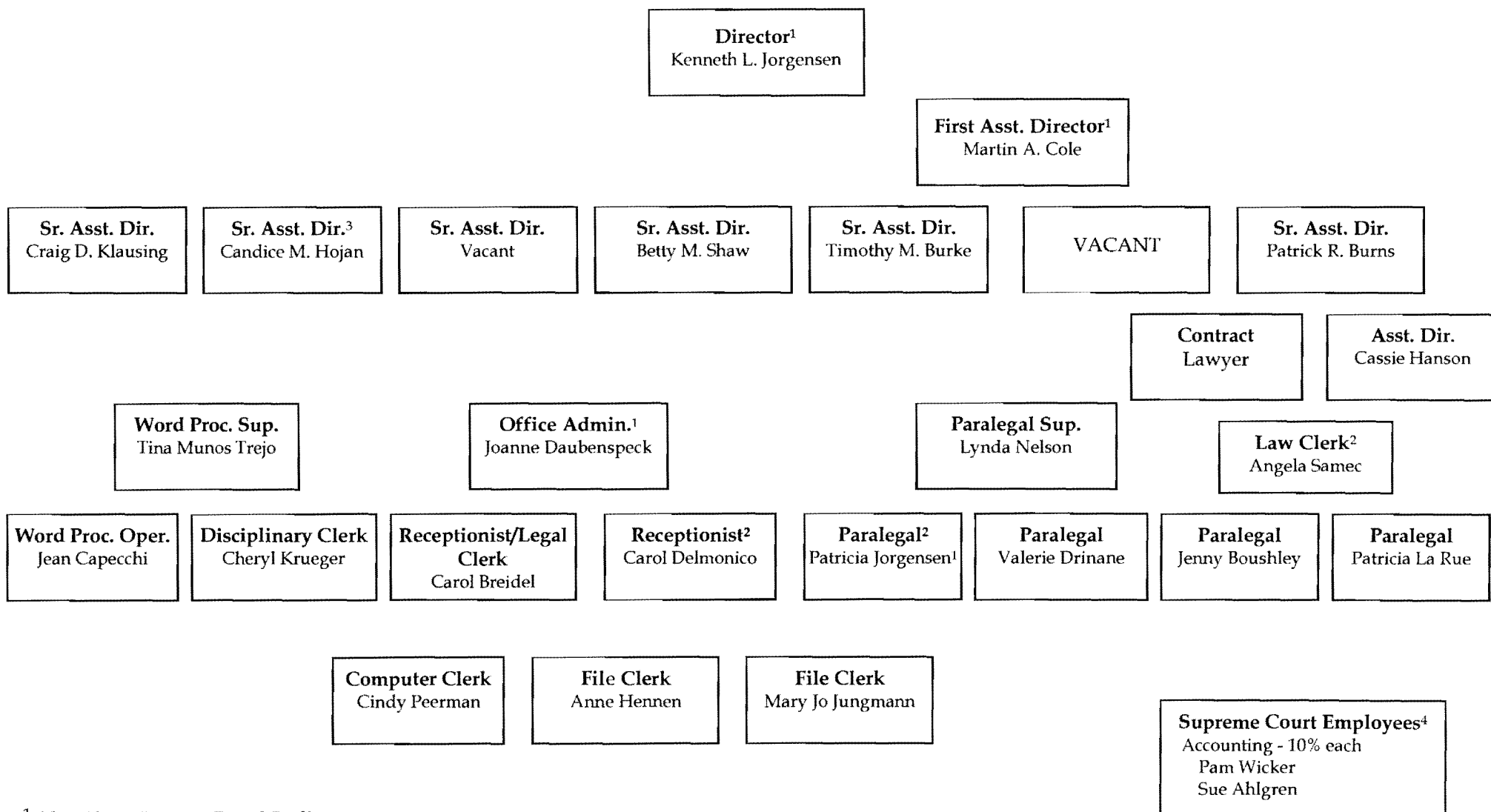
## Other Resources

- Index of *Bench & Bar* articles concerning Minnesota Professional Responsibility Issues
  - List of Disbarred and Currently Suspended Lawyers
  - Frequently Asked Trust Account Questions
  - List of Approved Financial Institutions for MN Lawyer Trust Accounts
  - Professional Firms
  - Annual Report and Statistics
  - Professionalism Aspirations
- 



# Office of Lawyers Professional Responsibility

## FY'03 Organizational Chart



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

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

<sup>3</sup> Currently works 60 hrs. per pay period

<sup>4</sup> Not administratively subject to Director's Office.

Office pays percentage of their salary

# DEC INVESTIGATION SUMMARY

2002

DEC	Number of Files	Average Investigation Duration (Months)
1	22	5.1
2	62	3.7
3	9	2.6
4	175	3.3
5	6	3.5
6	7	3.1
7	21	3.3
8	6	5.0
9	2	1.0
10	8	7.9
11	8	2.1
12	4	2.8
13	0	0
14	2	4.0
15	17	3.9
16	5	3.0
17	0	0
18	6	3.3
19	14	3.4
20	6	2.5
21	10	3.2
<b>Totals</b>	<b>390</b>	<b>3.6</b>
<b>(non 4<sup>th</sup>)</b>	<b>(215)</b>	<b>(3.7)</b>