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# The Louisiana Disciplinary Review

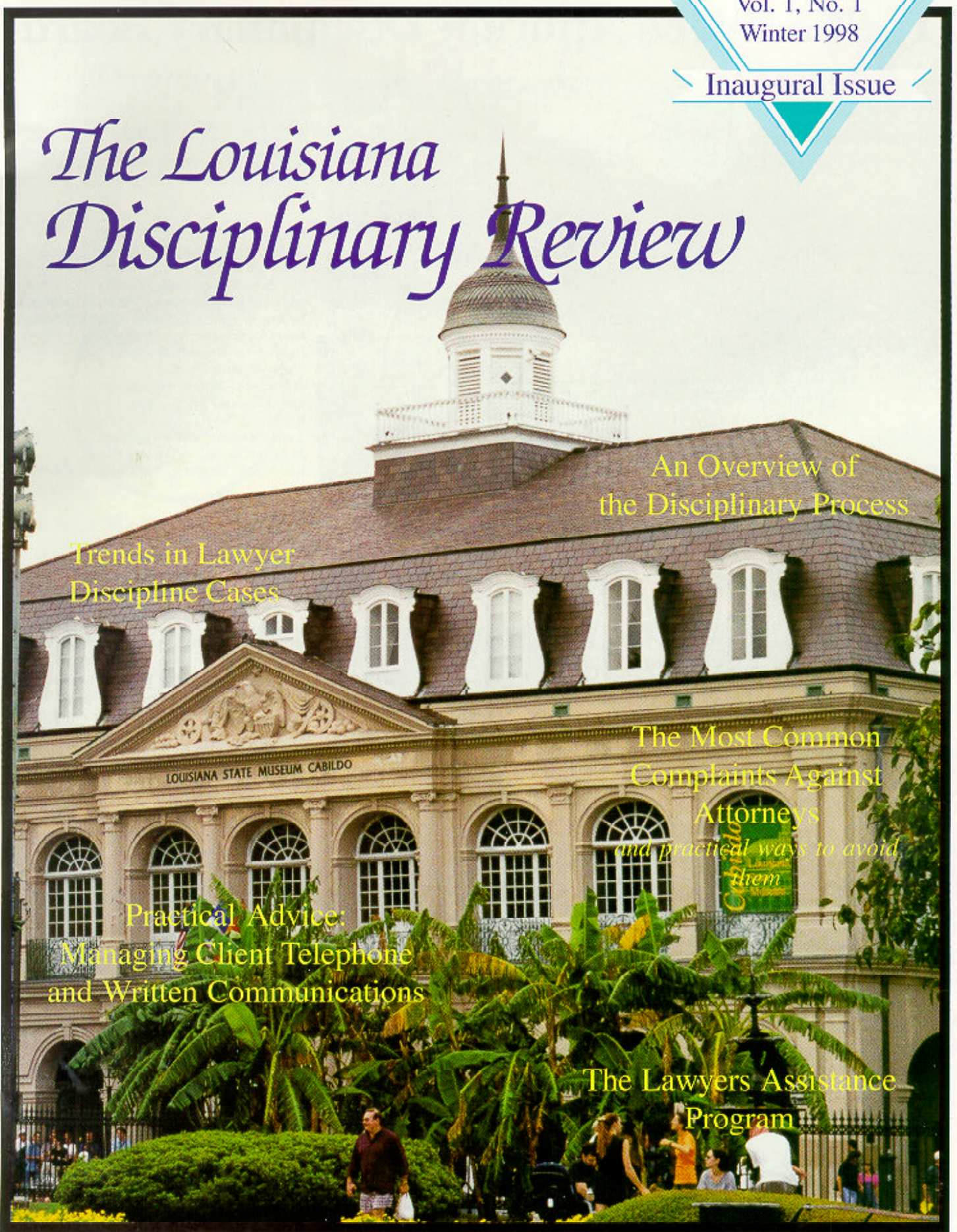
Trends in Lawyer  
Discipline Cases

An Overview of  
the Disciplinary Process

The Most Common  
Complaints Against  
Attorneys  
*and practical ways to avoid  
them*

Practical Advice:  
Managing Client Telephone  
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# The Louisiana Disciplinary Review

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## About the Cover



*Photo by Rodney B. Hastings*

The Cabildo was the site of the 1803 transfer of the Louisiana Purchase from France to the United States. It was the first home of the Louisiana Supreme Court. Today, it is a National Historic Landmark and part of the Louisiana State Museum system.

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# As I See It: The Chair's Perspective

## *A View From the Trenches*

I love being a lawyer. I appreciate the privilege of practicing law. I enjoy the camaraderie with other attorneys and the repartee with judges. But, most of all I love my clients. I enjoy their crazy, mixed-up stories. I laugh with them, cry with them, and get angry with them. I love my profession, but it's hard, very hard, being a lawyer today.

I'm in the trenches, negotiating and fighting for my clients daily, and I still have to figure out how to make payroll every Friday. My husband and I have a "mom-and-pop" operation and we struggle, and we have been struggling since we opened our doors 16 years ago. And you know, we are no different than most of the 55 percent of the lawyers in this state who are solo- or small-firm practitioners.

I would not advise anyone to hang out a shingle these days unless he or she is independently wealthy. Why? The pressures of making a living are so demanding. You have to take on more and more clients in order to meet the overhead. More clients leads to the need to have more staff to handle the workload. More staff leads to the need for more money, which leads back to the need for more clients. Yet, every year, more and more lawyers hang out shingles.

And, over and over, we, on the Louisiana Attorney Disciplinary Board see cases which show the struggles of lawyers trying to make a living in our profession. Out of the 18,000 lawyers in Louisiana, one in 10 faces a disciplinary complaint each year. Even good lawyers sometimes neglect cases, fail to communicate, fail to establish fee agreements, billing systems, or ticklers and duplicate calendars. Some law-

yers don't yet even realize the need for client trust accounts.

We see good lawyers who are so shocked by a complaint that they put their heads in the sand and don't answer the allegations. This denial of reality leads to additional charges of failure to cooperate with the disciplinary agency. We see good attorneys who are knowledgeable in many areas of the law but have no idea how the disciplinary system works or how to defend themselves when a complaint or formal charges are filed.

Over the past six years that I have served on the Board, I kept thinking, "There but for the grace of God go I." As I leave this Board, the question keeps coming to my mind: what can I do, what can we do, to prevent lawyer misconduct? What can we do to stop misconduct before it happens? The Disciplinary Board is not just about catching lawyers who break the rules. It's also about protecting the public and the legal profession. Louisiana Supreme Court Rule XIX charges us with the responsibility of informing the public of our lawyer disciplinary system. And the public includes lawyers.

In order to inform the bar, our Board is publishing this journal on a regular basis dedicated to lawyer discipline issues. This publication is being sent to all the lawyers of this state. The Board wants the bar to know what we see on a daily basis. The bar needs to know what kind of cases are being processed and the decisions being made by the Board and the Louisiana Supreme Court.

The journal will discuss our procedural rules under Louisiana Supreme Court Rule XIX and our Rules of Professional Conduct.

But more importantly, the Board wants the lawyers to have practical information about how to avoid misconduct. Our goal is to produce a journal for the practicing lawyer with concise information about law office practice, how to stay out of the disciplinary system, and what to do if you find yourself in it. This publication is the first step in a dialogue that will help us in the trenches become more aware of the most common pitfalls that lead to discipline.

We all must be involved in reclaiming our profession -- an honorable profession that serves people. In order to achieve this goal, we must work together to reduce complaints against lawyers, by eliminating the causes of complaints. We must take pride in our profession and reawaken the spirit of what it means to be a lawyer.

On a personal note, I want to thank the Supreme Court for giving me the opportunity to serve our profession, and the 99 volunteer hearing committee members (including 33 non-lawyers) and the 13 other volunteer board members who make this system work. I also want to thank the many attorneys in Louisiana who have been so courteous and responsive on those occasions when I have spoken to bar associations and other groups about the disciplinary system. I pray that I have served you well and that I have given the Board and the Court the perspective of the small firm lawyer struggling to honorably represent clients while supporting my family -- a role that most of you live each day.

*Lila Tritico Hogan,  
Chair,*

*Louisiana Attorney Disciplinary Board*

# Lawyer Discipline in Louisiana

by Sue Tart

Board Staff Attorney

The lawyer discipline and disability system in Louisiana is administered by the Louisiana Attorney Disciplinary Board (LADB) through Supreme Court Rule XIX, which became effective on April 1, 1990. *Section 2A*. The agency consists of a statewide board, hearing committees, disciplinary counsel and administrative staff. While the LADB performs both adjudicative and prosecutorial functions, these functions are separated as much as practicable to avoid unfairness to the participants. As part of the inaugural issue of *The Louisiana Disciplinary Review*, this article provides an overview of the various components of the LADB and their function within the system of lawyer discipline in this state.

## THE DISCIPLINARY BOARD

The disciplinary board is composed of 14 members who are appointed by the Supreme Court. One member is nominated by the Louisiana State Bar Association each year and must have prior lawyer discipline experience. Of the 14 members, four are members of the general public with diverse backgrounds: lobbyist, former mayor, educator and businessman. Women comprise 25 percent of the Board and one-third are minorities. The terms of office for all board members is three years and no board member may serve more than two consecutive terms. *Section 2B*. None of the members of the Board receive any compensation for their services. *Section 2E*.

The Board itself is divided into two committees: a nine-member adjudicative committee and a five-member administrative committee. Three of the public members serve on the adjudicative committee and the remaining public member sits on the administrative committee. Each committee has separate duties and powers, although both committees have joint responsibility for some Board functions. *Section 2G(1)*.

The adjudicative committee functions as an appellate court in the disciplinary system. Specifically, the committee reviews findings of fact, conclusions of law and recommendations of the hearing committees with respect to formal charges, petitions for transfer to and from disability inactive status, and petitions for reinstatement, and prepares its own findings and recommendations for proposed discipline, which are filed with the Supreme Court. In addition, the adjudicative committee has the power to administer reprimands, issue admonishments, impose probation, and rule on procedural matters. *Section 2G(2)(a)-(f)*.

The administrative committee is charged with appointing hearing committees, with the overall management of the system, including financial, facilities and human resources. The members of the administrative committee do not participate in or vote on matters involving appellate review functions of the adjudicative committee. The administrative committee also researches various trends in lawyer discipline and makes initial proposals for Rule XIX amendments to the remainder of the Board for consideration. Such issues include prescription for ethical complaints

and changes to the probation system. In addition, the public outreach program currently underway around the state was implemented by the administrative committee. *Section 2G(3)(a)-(f)*.

## HEARING COMMITTEES

There are currently 33 hearing committees around the state. Each hearing committee consists of two lawyer members and one public member. One of the lawyer members is appointed as chair of the committee. Hearing committee members serve for three years and may not serve more than two consecutive terms. *Section 3A-B*. Like board members, the hearing committee members are not compensated for their services.

The hearing committees have assigned powers and duties. Primarily, the committees conduct hearings into formal charges of misconduct, petitions for reinstatement or readmission, and petitions for transfer to and from disability inactive status. Following the hearings, the committees submit to the board written findings of fact, conclusions of law and recommendations for proposed discipline. Hearing committees also review dismissals of complaints by the Office of Disciplinary Counsel (ODC) upon a request for review by the complainant. The chair of the hearing committee has additional duties, such as conducting pre-hearing conferences, ruling on pre-hearing motions, and reviewing admonitions proposed by disciplinary counsel and accepted by a respondent. *Section 3E(1)-(4)*.

## OFFICE OF DISCIPLINARY COUNSEL

The next component of the disciplinary system is the Office of Disciplinary Counsel, which is charged with all prosecutorial functions. ODC is responsible for screening all complaints, investigating complaints and petitions for reinstatement and readmission and making decisions as to their disposition. In this regard, ODC may dismiss or recommend probation, informal admonition, a stay, the filing of formal charges (which must first be approved by the chair of a hearing committee), or petition for transfer to and from disability inactive status. Other duties include the maintenance of permanent records of discipline and disability matters and the compiling of statistics to aid in the administration of the system. *Section 4B(1)-(13)*.

## ADMINISTRATIVE STAFF

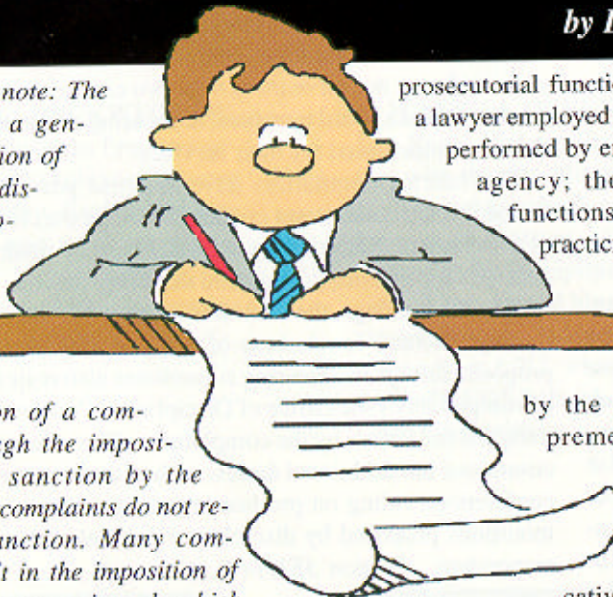
The final component of the disciplinary system is the administrative staff of the LADB which includes the Board administrator, deputy administrator, docket clerks (for filing and other clerk of court functions), staff attorneys and support personnel. The administrative staff is appointed by the Board and is responsible for administering its day-to-day operations. The administrative staff is located at 2800 Veterans Boulevard, Suite 310, Metairie, Louisiana; all activities of the board also take place at this location.

# OVERVIEW OF THE DISCIPLINARY PROCESS: FROM COMPLAINT THROUGH LOUISIANA SUPREME COURT OPINION

by Deb Henson, Disciplinary Board Staff Attorney

*(Author's note: The following is a general description of the attorney discipline process from*

*the inception of a complaint through the imposition of the sanction by the Court. Most complaints do not result in a sanction. Many complaints result in the imposition of admonitions or reprimands which are imposed by the Disciplinary Board rather than the Court. This overview, however, pertains to those complaints which travel completely through the system and result in a suspension or disbarment which can only be imposed by the Court.)*



prosecutorial functions directed by a lawyer employed by the board and performed by employees of the agency; the adjudicative functions conducted by practicing lawyers (10) and public members (4) appointed by the Louisiana Supreme Court. Rule XIX, § 2A, B. Further, the board is divided into an adjudicative committee of nine members and an administrative committee of five members. The adjudicative committee consists of three panels with two lawyer members and a public member on each board panel. Rule XIX, §2G.

otherwise, the complaint is dismissed. In some instances of minor misconduct, the subject attorney may be referred into the newly established diversion program.

If an investigation is conducted, a deputy disciplinary counsel forwards the complaint to the respondent, informs him or her that the Office of Disciplinary Counsel has received a complaint, and requests a response. The deputy disciplinary counsel then conducts its investigation and evaluates the matter. After completing the investigation, the deputy disciplinary counsel may: (1) suggest that the respondent agree to an admonition, which is a private, confidential sanction issued by the Board (although the complainant is informed that the respondent has been admonished); (2) request approval by a hearing committee to file formal charges (this approval essentially constitutes a determination of probable cause by the committee); (3) petition for the respondent's transfer to disability inactive status which, if ordered by the Court, would result in a stay of the proceedings until the disability is resolved; or (4) close the case (complainants have 30 days to appeal closures).

## Authority of the Board

The Louisiana Supreme Court has the exclusive right to regulate lawyers who practice in this state under the authority of Article V, Section 5(A) and (B) of the Louisiana Constitution of 1974 and the inherent power of the Court. The rules for lawyer discipline are set forth in Louisiana Supreme Court Rule XIX (effective April 1, 1990) wherein the Court created the statewide agency called the Attorney Disciplinary Board which consists of the board, hearing committees, disciplinary counsel and staff. Rule XIX, § 2A.

While the agency is a unitary one, the prosecutorial and adjudicative functions are separated within the agency: the

## The Screening Process

A complaint is any information which comes to the attention of the Office of Disciplinary Counsel concerning a lawyer subject to the jurisdiction of the agency (i.e., lawyers admitted to practice in the state, lawyers specially admitted by a court for a particular proceeding, lawyers not admitted but who render or offer to render any legal services in the state, and former judges who have resumed the status of lawyer).

Every complaint is screened by a special screening/intake counsel in the Office of Disciplinary Counsel to determine whether the information relates to lawyer misconduct or incapacity.

If the information alleges facts which, if true, would constitute misconduct or incapacity, the complaint is investigated. Oth-

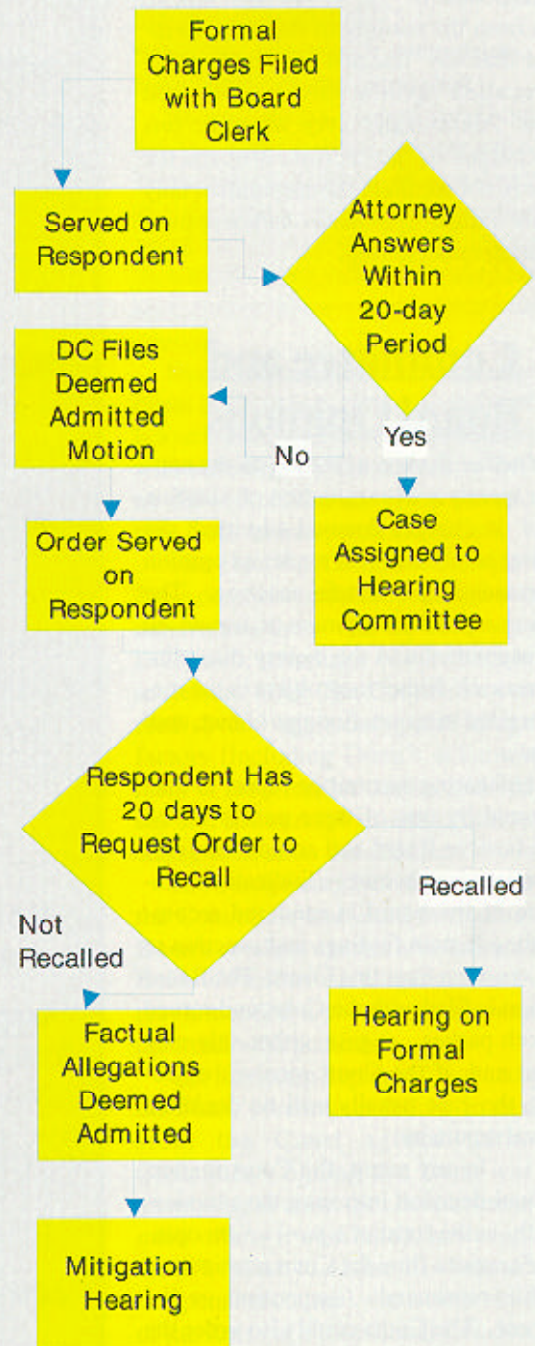
## Filing of Formal Charges

Assuming that formal charges are approved, the Office of Disciplinary Counsel will serve or attempt to serve the charges on the respondent at his or her primary registration statement address. The respondent has 20 days after service in which to respond (unless a continuance is requested and granted) with his or her answer to the formal charges. If the respondent answers, a hearing on the merits is set. If there is no answer within the

## The Screening Process



## Filing of Formal Charges



LADB Graphic by Rodney B. Hastings

prescribed period, the factual allegations contained within the formal charges are deemed admitted and proved by clear and convincing evidence. The only issue at that juncture is for the committee then to determine the appropriate sanction based on the charges deemed admitted.

The hearing committee order deeming the charges admitted shall be served on the respondent. He or she then has 20 days from the mailing of the order to request that the "deemed admitted" order be recalled upon a showing of good cause. Additionally, even when the formal charges are deemed admitted and the order is not recalled, the respondent may submit mitigating evidence and/or request a hearing in mitigation.

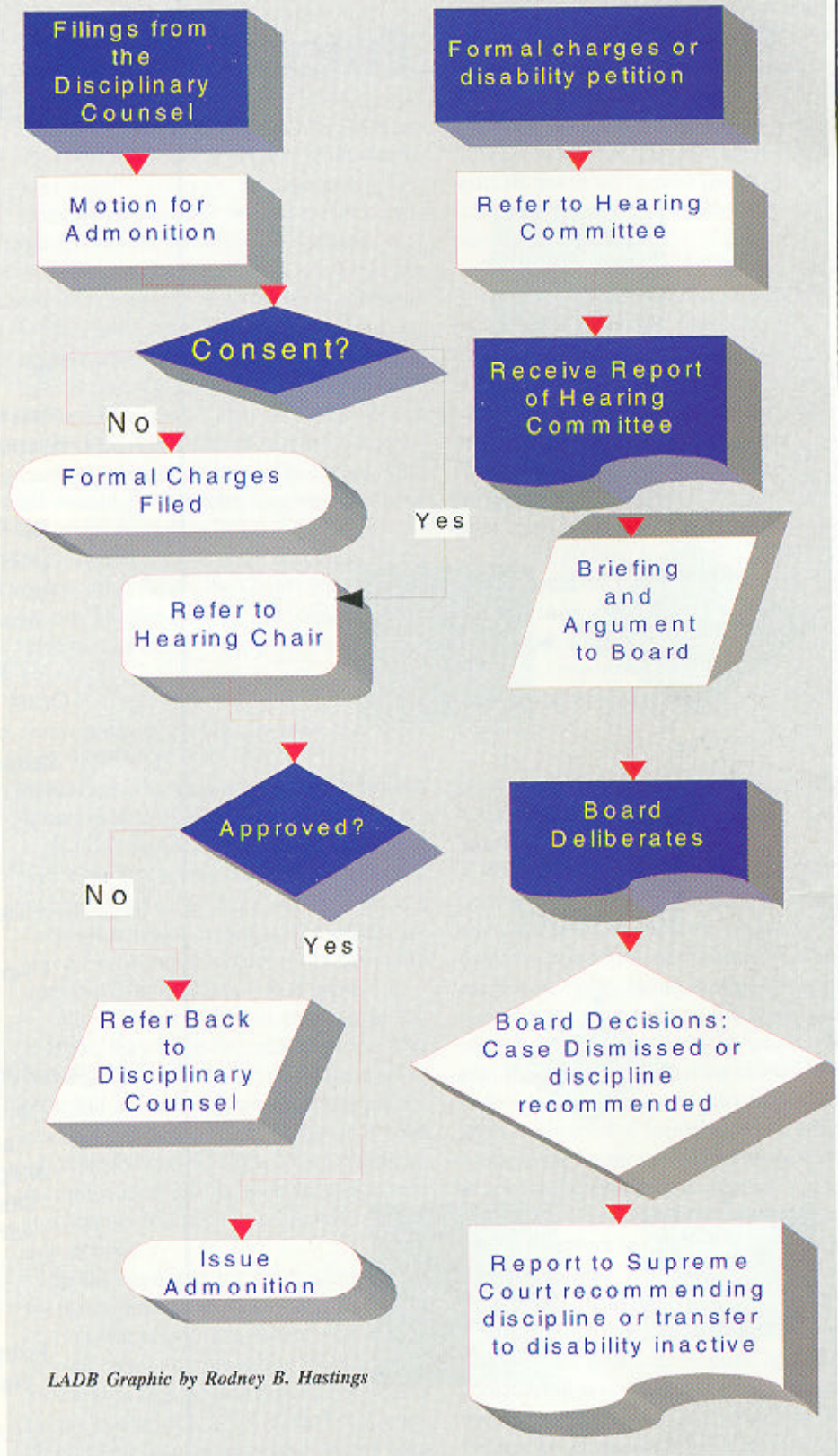
### Committee and Board Opinions

Whether there is a hearing on the merits or merely a determination of sanction based on charges deemed admitted, the hearing committee will render an opinion recommending a certain sanction. The hearing committee opinion is served on the respondent and the deputy disciplinary counsel. Either may object to the recommended sanction, findings of fact, and/or law.

The hearing committee report is then reviewed by one of three panels of the Adjudicative Board and an opinion from the entire nine-member adjudicative committee of the board is rendered recommending certain findings and sanction to the Louisiana Supreme Court. The Board opinion is filed with the Court and served on both parties. Again, either side may object and, if the Court receives objections, the case usually will be docketed for oral argument.

In any event, the Court renders the final decision imposing the sanction, usually in the form of a *per curiam* opinion. Sanctions from the Court may include a public reprimand<sup>1</sup>, suspension, or disbarment. The Court could also order the entire matter dismissed, finding that no sanction is appropriate. Probation may follow a suspension or reprimand, or be imposed in lieu of discipline in rare circumstances. After the Court has rendered its opinion, either side may file a motion for rehearing, but these are rarely granted.

## How the Disciplinary Board Works



LADB Graphic by Rodney B. Hastings

<sup>1</sup> Although the Board may order a reprimand without the case going up to the Court, if the Board has recommended a suspension or disbarment which requires filing the recommendation with the Court, the Court can always lessen the sanction to a reprimand. Respondents and the Office of Disciplinary Counsel can also object to the Board's imposition of a reprimand and seek review by the Louisiana Supreme Court.



# TRENDS IN LAWYER DISCIPLINE CASES

by Charles B. Plattmier,  
Chief Disciplinary Counsel and  
Donna L. Roberts, Board Administrator

The Louisiana Attorney Disciplinary Board was created by the Louisiana Supreme Court in 1990, making Louisiana the first state in the country to incorporate in substantial part the American Bar Association Model Rules for Disciplinary Enforcement. A hallmark of this agency is the use of laymen in the process. There are 14 members of the Disciplinary Board and four of those members are "public," or lay people, unaffiliated with the legal profession. There are 100 Hearing Committee Members across the state consisting of a combined total of 33 public members and 67 attorneys.

## HISTORICAL OVERVIEW

The following disciplinary agency statistics and information help place in appropriate perspective the functioning of the Louisiana Attorney Disciplinary Agency, as well as the results of management, rule, and resources changes implemented by the Louisiana Supreme Court over the last 2 1/2 years. Of course, a good starting point is the growth of the number of attorneys practicing within our state. In 1987 Louisiana had around 13,000 lawyers licensed to practice within the state. This year that number has grown to approximately 18,000 active lawyers.

The number of complaints received by the agency has reflected that growth. The number of complaints filed against lawyers in 1987 amounted to approximately 1,700. Today, the number of complaints filed has exceeded 3,000. Based on total complaints filed with the Office of Disciplinary Counsel from January to August of this year, we are projecting a total of 3,213 complaints will be filed against members of the legal profession in 1998.

In response, the number of employees at the agency has grown to deal with the growing number of complaints received.

## OVERALL DISCIPLINARY AGENCY STAFFING

In 1995 the disciplinary agency in Louisiana ended its year with a total of 19 employees, 13 of whom were employed by the Office of Disciplinary Counsel and six employed by the Board Administrator. As of today, with additional resources provided to the agency, we currently have 34 employees, 22 of whom are employed by the Office of Disciplinary Counsel and 12 employed by the Board Administrator.

Historically, the Office of Disciplinary Counsel staff consisted of four lawyers and the Chief Disciplinary Counsel. Prior to the fall of 1997, the average caseload per counsel was between 350 to 400 files per attorney. Additionally, each attorney was required to handle between 500 and 600 new complaints each year.

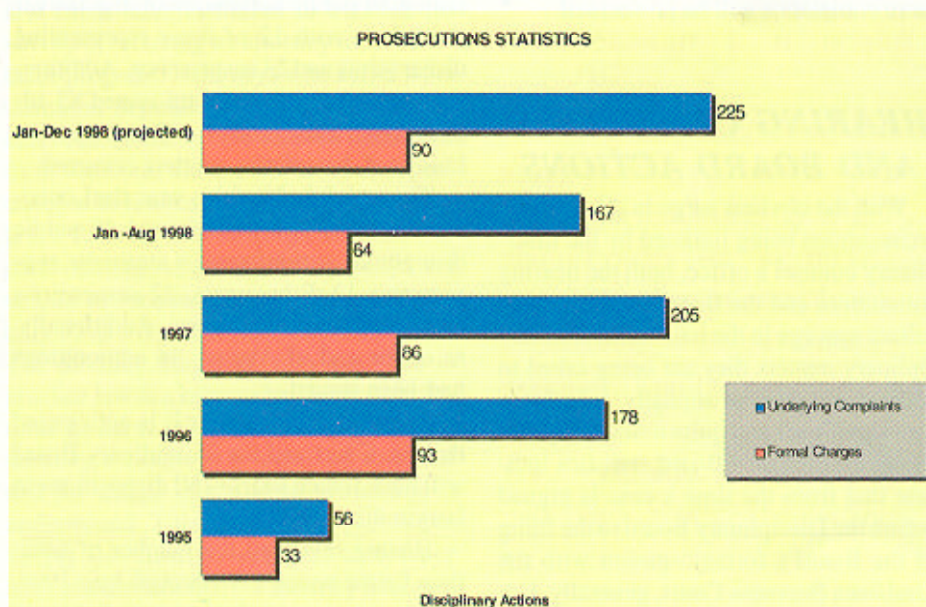
With the additional staffing provided to the Office of Disciplinary Counsel, the average caseload per counsel as of August 28 stands at 226.5 files. With the additional staffing anticipated from the additional re-

sources provided to the disciplinary agency, it is expected that the average caseload per counsel should be approaching the national target level of 150 per counsel within the next six months.

## PROCESSING TIME IMPROVEMENTS

Historically, the disciplinary agency has experienced a nearly two-year delay in the investigation and the commencement of prosecution of complaints against attorneys.

With a view toward making discipline more timely and responsive, the Court has approved measures affecting overall disciplinary management, substantive rule changes, and resources in a fashion which has generated marked processing time improvements in this area. Statistical analysis today reflects that of all the investigative files of active practicing attorneys in the state currently being handled by the ODC, 80 percent of the complaints are less than 6 months old and 92 percent are less than one year old.



## Prosecutions on the rise

LADB Graphic by Donna L. Roberts

## PROSECUTORIAL STATISTICS

In years past, the numbers of prosecutions which have been initiated by the Office of Disciplinary Counsel were severely restricted by the limited number of personnel available and the internal management practices in existence. Mindful of Court directives to alter the overall management of the disciplinary agency and as a result of improved resources for the agency, significant improvement has occurred. (See graph on preceding page).

In 1995, 33 public disciplinary actions were initiated by the ODC representing 56 underlying complaints. In 1996, 93 public disciplinary actions were initiated by the ODC representing 178 underlying complaints. In 1997, 86 public disciplinary actions were initiated representing 205 underlying complaints.

Through the end of August, 64 public disciplinary actions were initiated representing 167 underlying complaints. It should be noted that at the current rate of prosecution, the ODC is projecting in excess of 90 formal disciplinary proceedings to be initiated this year, representing more than 225 underlying complaints.

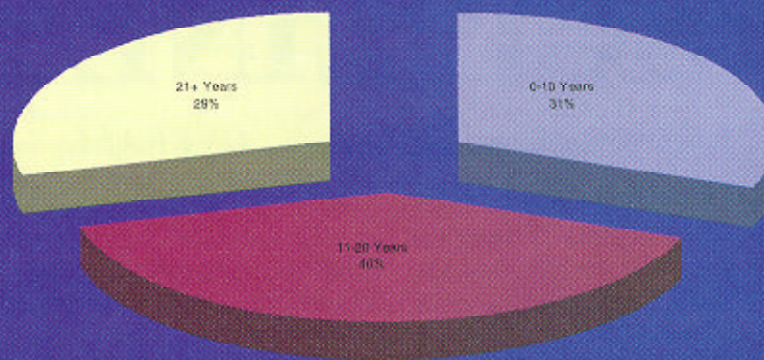
Using 1995 as a base year the following comparison can be drawn:

In 1996 nearly three times more disciplinary complaints were prosecuted as compared to 1995; in 1997 nearly 3.6 times more complaints were prosecuted; and in 1998 it is projected that nearly four times more complaints will be prosecuted.

## HEARING COMMITTEE AND BOARD ACTIONS

With the obvious surge in disciplinary prosecutions being initiated by the disciplinary counsel's office, both the hearing committees and the Board have had a resultant upsurge in the total number of disciplinary matters they are being asked to address and process annually. It is therefore significant and quite noteworthy that recent Disciplinary Board statistics indicate that from the time a case is argued before the Disciplinary Board to the filing of the Board's formal opinion with the Louisiana Supreme Court, generally, less than 30 days have elapsed.

Disciplined Cases by Number of Years in Practice



LADB Graphic by Donna L. Roberts

## LOUISIANA SUPREME COURT ACTIONS

THE end product of the disciplinary agency's increased effort and activity is an eventual substantial increase in the number of serious misconduct cases coming before the Louisiana Supreme Court.

In 1996, the Louisiana Supreme Court issued 53 public actions involving lawyer discipline — six disbarments, 22 suspensions and 4 reprimands. Additionally, in cases of lesser misconduct, the Disciplinary Board issued 79 admonitions. Hence, in 1996, 132 separate resolutions of disciplinary matters occurred.

In 1997, the Louisiana Supreme Court issued 59 public actions involving lawyer discipline, with 12 of these representing disbarments and 24 suspensions. Additionally, the Disciplinary Board issued 83 admonitions. Hence, in 1997, 142 separate resolutions of disciplinary matters occurred.

Through July 30 of this year, the Louisiana Supreme Court has issued 49 public disciplinary actions against attorneys, representing 12 disbarments, 22 suspensions and 15 interim suspensions. Additionally, as of the end of August, 44 admonitions had been issued.

By the end of the year it is anticipated that the Court and the Disciplinary Board will have issued nearly 160 dispositions in lawyer discipline cases.

Having reviewed the number of sanctions for the period 1996 through June 1998, we can now review the number of years in practice and the type of misconduct these sanctions represent.

## YEARS IN PRACTICE AND TYPES OF MISCONDUCT

Approximately 31 percent of the 1996 through June 1998 formal-charged cases involved attorneys who had been practicing law for 10 years or less. Of these 29 disciplined cases, 31 percent involved commingling/conversion misconduct. Another 38 percent were for neglect misconduct (lack of diligence, failure to cooperate, failure to return client property), 17 percent involved criminal conduct and 14 percent other types of violations, such as sexual misconduct and solicitation.

About 40 percent of these 1996 through June 1998 formal-charged cases involved attorneys who had been practicing law for from 11 to 20 years. Of the 38 disciplined cases, 32 percent involved commingling/conversion misconduct. Another 23 percent neglect (lack of diligence, failure to cooperate, failure to return fee). 32 percent involved crimes, 10 percent involved deceit/ fraud without conviction and 3 percent for meritless claims filed.

Finally, attorneys who had been practicing for 21 or more years of practice were disciplined in 29 percent of the 1996 through June 1998 formal-charged cases. Of the 28 disciplined cases, 15 percent involved commingling/conversion misconduct. 11 percent neglect misconduct (lack of diligence, failure to communicate, failure to return fees). 38 percent involved crimes, 12 percent deceit/ fraud without conviction, 14 percent other (conflict of

interest, meritless claims filed, solicitation and unauthorized practice of law).

Certainly, the conclusion can be drawn that the type of misconduct encountered during the 1-10 years of practice involves a pattern of neglect and as the years of practice increase the pattern reflects intentional harm.

### PRIVATE ADMONITIONS

As stated in Rule XIX Section 10A (5), admonitions constitute private discipline since they are imposed before the filing of formal charges. Admonitions are issued in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer.

Of the number of admonitions issued between 1996 -1998 the top 3 rule violations were for lack of diligence, failure to communicate and failure to return client property.

9 percent were for attorneys in practice 1- 5 years.

25 percent were for attorneys in practice 6-10 years

31 percent were for attorneys in practice 11-20 years

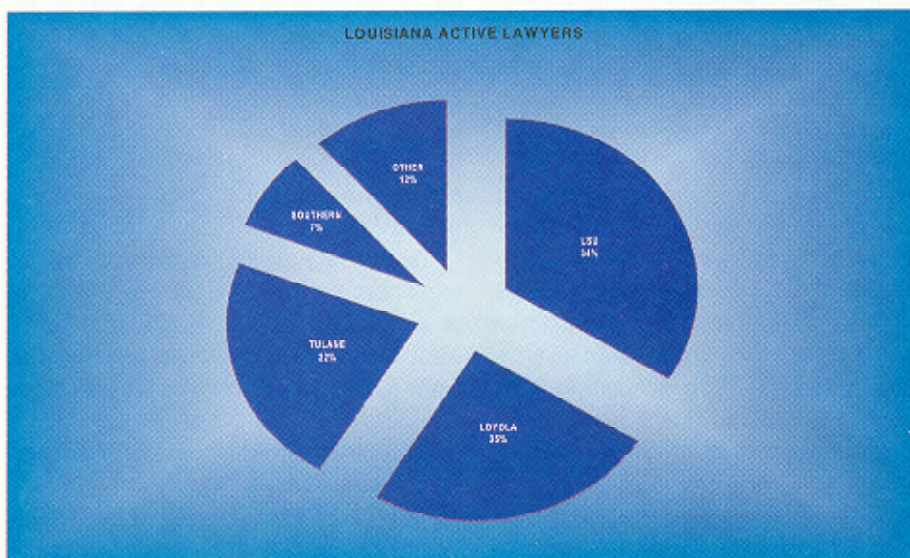
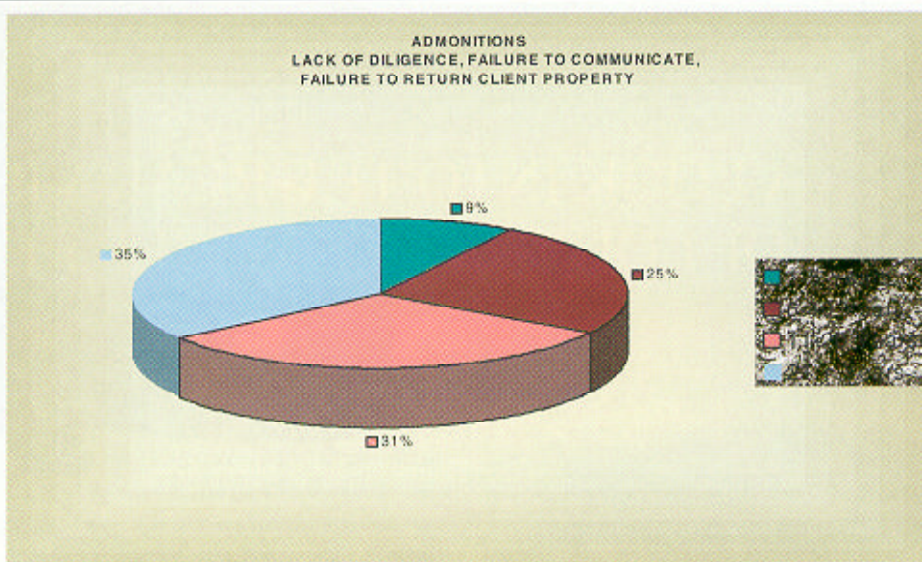
35 percent were in practice 21 plus years.

25 percent of all private admonitions issued between 1996-1998 are as a result of or include a charge of failure to cooperate with the Office of Disciplinary Counsel in its investigation of an alleged complaint.

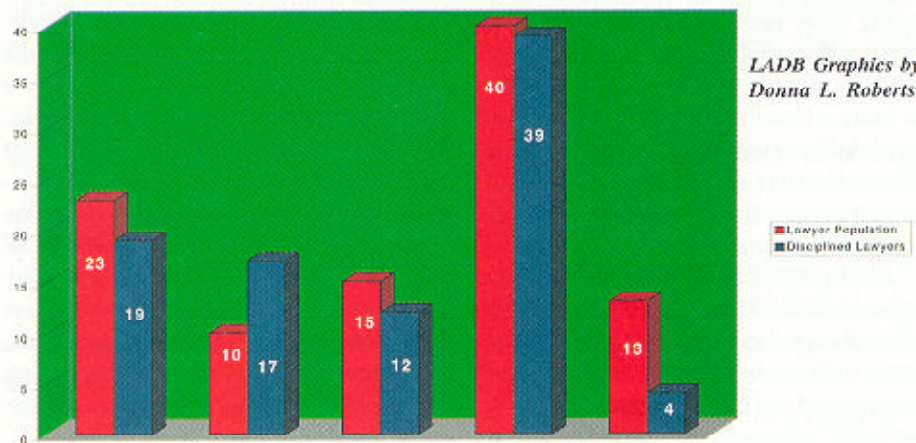
### DISCIPLINED LAWYERS PROPORTIONATE TO LAWYER POPULATION

Louisiana lawyer population has risen to approximately 18,000, 34 percent graduated from LSU Law School, 25 percent from Loyola Law School, 22 percent from Tulane Law School, 7 percent from Southern Law School and 12 percent graduated from out-of-state law schools.

Statistics show that the number of lawyers disciplined is proportionate to the lawyer population throughout the state. The 1<sup>st</sup> Circuit, with 19 percent of the disciplined lawyers for the period 1996 through June 1998, has 23 percent of the lawyer population . The 2<sup>nd</sup> Circuit has 10



Percent of Louisiana Lawyers by Appeals Court Circuits



percent of the lawyer population and 17 percent of the disciplined lawyers. The 3<sup>rd</sup> Circuit has 15 percent of the lawyer population and a 12 percent disciplined rate. The 4/5<sup>th</sup> Circuit has 40 percent of the lawyer

population and 39 percent of the disciplined lawyers.

Therefore, there is no higher incidence of lawyer misconduct in urban areas than rural areas.

## A LOOK INTO THE REAR VIEW MIRROR OF LOUISIANA LAWYER REGULATION

*by Charles B. Plattsmier,  
Chief Disciplinary Counsel*

As the saying goes, it's hard to know where you're going if you don't know where you've been. Before Louisiana's lawyer regulatory agency can continue to map out its future direction, it is helpful to know our history and the path we've taken to arrive at our current position.

Historically, the Louisiana Supreme Court has always been recognized as having the authority to "regulate" the practice of law. Lawyer regulation includes both admission to the bar as well as the regulation and discipline of those lawyers already admitted. With the incorporation of the Louisiana State Bar Association in 1940, there commenced a 50 year history of our LSBA administering both bar admissions and lawyer discipline.

For 27 of those years, the Executive Director of the Bar served also as General Counsel as well as the Chief Disciplinary Counsel. The association's membership during those years was far less than it is today and complaints against attorneys was a far more rare occurrence. In the latter years, a Committee on Professional Responsibility composed of lawyers from around the state served to both administer and participate in Louisiana's lawyer regulatory scheme.

A hallmark of the COPR was that it often wore several hats. Under the process that developed over the years, the Committee of Professional Responsibility aided and assisted staff counsel working at the bar in the investigative process, approved further investigative efforts as well as the filing of a disciplinary complaint against an attorney, often received the evidence of lawyer transgressions as a magistrate or adjudicative body, and then later served

as counsel for the disciplinary agency in the prosecution of the matter before the Louisiana Supreme Court. The multiple roles served by the committee was in keeping with similar systems around the country but nonetheless provided at least some concern over the advisability of the separation of prosecutorial and adjudicative functions.

In the 1980s a national review of lawyer regulatory systems took place at the hands of the American Bar Association. The McKay study undertook a comprehensive review of lawyer regulatory schemes throughout the nation and gave birth to a report, ultimately embraced by the ABA and incorporated into the model rules for disciplinary enforcement. The recommendations and the resulting model rules suggested a rather significant departure from lawyer regulatory schemes previously employed by many states across the country.

First, the study recommended a separation of the prosecutorial function from the other adjudicative functions of any lawyer regulatory agency. Placing the disciplinary agency directly under the authority of the highest court of each state was considered to be a preferable method of operation rather than through the traditional role of state bar affiliation. Finally, the introduction of public members, or non-lawyers, was also considered advisable to strengthen the credibility of the lawyer regulatory system and engender greater confidence by the public in the process.

In 1987, Louisiana's lawyer regulatory scheme underwent a review by the ABA at the invitation of the Louisiana Supreme Court. Recommendations which pointed out not only the positive areas of success

in Louisiana but also the potential for improvement were made. Then Chief Justice Dixon in conjunction with the Louisiana State Bar determined that a move in the direction of the ABA Model Rule for disciplinary enforcement was in the best interest of Louisiana. With certain modifications, the ABA Model Rule was adopted in Louisiana and became effective April 1, 1990. The Supreme Court repealed Article 15 of the Louisiana State Bar Association's Articles of Incorporation which granted the Bar Association authority over lawyer disciplinary matters. In its place and stead, the Louisiana Supreme Court enacted Rule XIX of the Louisiana Supreme Court Rules which gave birth not only to the Louisiana Disciplinary Board, but also created the rules of procedure by which lawyer disciplinary actions were to abide.

In the new system, the prosecution and the adjudicative aspects of lawyer regulation were completely separated. A mini-judiciary was created with Hearing Committees spread out around the state acting as trial judges. The Hearing Committees were composed of lawyers and laymen, all volunteers whose commitment was to create an unbiased, fair, and professional approach to the regulation of the practice of law in this state. The Disciplinary Board was also composed of both lawyers and laymen and served as an appellate body in review of Hearing Committee findings of fact and recommendations of law. The position of Board administrator, charged with the responsibility of not only administering this infant agency but also serving as clerk of court, was also created.

As the agency began to mature, it became apparent that additional changes and improvements could be made to enhance the efficiency and quality of lawyer regulation. Hearing Committees were separated into Tier I and Tier II committees with the former acting as trial courts and receiving evidence, and the latter as magistrates ruling on appeals of dismissal by disciplinary counsel and the approval of investigative subpoenas. In 1996 the ABA returned to Louisiana nearly a decade after their last visit. The ABA recommended a number of changes which further refined Rule XIX and promised to establish a new standard in lawyer regulation. The Disciplinary Board was separated into an Administrative Board and a separate Adjudicative Body. The agency was more clearly identified as operating as an arm of the Louisiana Supreme Court. The Louisiana State Bar Association was encouraged to initiate diversion programs and alternatives to discipline for minor misconduct as a way of servicing the needs of the membership and playing a role in the protection of the public. The ABA recommended significant enhancement and resources to the lawyer regulatory system and further pointed out substantive rule changes which could streamline the disciplinary process, make it more efficient, and produce a more just result.

The Disciplinary Board and the Louisiana Supreme Court studied the ABA recommendations and in 1997, after a thorough study, the Supreme Court enacted the majority of the recommendations and changes advanced by the ABA.

Today, the Louisiana Attorney Disciplinary Board, as an agency, receives in excess of 3,000 complaints a year against the 18,000 lawyers of our state. It is estimated that one out of every ten lawyers has a complaint filed against him each year. Greater efficiency in lawyer regulation is no longer an option, it is a critical necessity.

Lawyer self-regulation, by its very nature, survives only if both members of the public and in the profession view it as a system that is firm but fair, and one entitled to confidence and trust. Regulatory schemes across the country are scrambling to meet the challenge inherent in self-regulation. Louisiana can proudly lay claim to being a pioneer in the effort of achieving a professional system viewed by many in the country as a model for study.

## Hearing Committee Members

### FIRST CIRCUIT -- TIER I

#### *Hearing Committee # 1*

James E. Boren, Chair  
R. Thomas Brown, Public Member  
Adrienne L. Baumgartner, Lawyer Member

#### *Hearing Committee # 2*

James R. Dagate, Chair  
Joseph Stone, Public Member  
Carolyn F. Lahr-Ott, Lawyer Member

#### *Hearing Committee # 14*

Robert W. Fenet, Chair  
Major Reginald R. Brown Sr., Public Member

Peter T. Dazzio, Lawyer Member

#### *Hearing Committee # 25*

Christopher Riviere, Chair  
Joan M. Vogel, Public Member  
David Rubin, Lawyer Member

### FIRST CIRCUIT -- TIER II

#### *Hearing Committee # 26*

Helen M. Edgington, Chair  
Edgar S. Starns, Public Member  
Grayson H. Brown, Lawyer Member

#### *Hearing Committee # 27*

Edward J. Walters Jr., Chair  
Raymond J. Antoine, Public Member  
Dale P. Martin, Lawyer Member

#### *Hearing Committee # 28*

Mark D. Rhodes, Chair  
Robert Showers, Public Member  
Frank A. Fertitta, Lawyer Member

#### *Hearing Committee # 29*

Jess Waguespack, Chair  
Michael J. Poirrier, Lawyer Member

#### *Hearing Committee # 30*

Mary Coon Biggs, Lawyer Member  
Mary R. (Patsy) Taylor, Public Member  
J. Clayton Johnson, Lawyer Member

#### *Hearing Committee # 31*

Arlene D. Knighten, Chair  
Stephen W. Thompson, Public Member  
Corbett L. Ourso, Lawyer Member

### SECOND CIRCUIT -- TIER I

#### *Hearing Committee # 3*

James G. Bethard, Chair  
The Rev. Jane Alexander, Public Member  
Billy R. Pesnell, Lawyer Member

#### *Hearing Committee # 4*

James C. Crigler Jr., Chair  
Marvin Oldham, Public Member  
A. Kennon Goff III, Lawyer Member

#### *Hearing Committee # 16*

David Doughty, Chair  
William W. Watson, Public Member  
Kenneth P. Wright, Lawyer Member

### SECOND CIRCUIT -- TIER II

#### *Hearing Committee # 15*

F. John Reeks Jr., Chair  
Richard Sale, Public Member  
Donald L. Baker, Lawyer Member

#### *Hearing Committee # 17*

Allison A. Jones, Chair  
Robert E. Porter, Public Member  
John Clay Hamilton, Lawyer Member

#### *Hearing Committee # 32*

Stephen R. Yancey II, Chair  
Jeffrey L. Little, Lawyer Member

### ADDITIONAL MEMBER FOR THE SECOND CIRCUIT

Dawn Hendrix Mims, Lawyer Member

### THIRD CIRCUIT -- TIER I

#### *Hearing Committee # 5*

Charles N. Harper, Chair  
Fr. Peter J.A. Cook, Public Member  
Richard A. Bailly, Lawyer Member

#### *Hearing Committee # 6*

Catherine G. Brame, Chair  
Dr. Thomas Howell, Public Member  
Elizabeth E. Foote, Lawyer Member

#### *Hearing Committee # 7*

Rex D. Townsley, Chair  
John G. Farrar, Public Member  
Mark A. Delphin, Lawyer Member

#### *Hearing Committee # 18*

Merrick J. Norman Jr., Chair  
Jon C. McMichael, Public Member  
Lilynn A. Cutrer, Lawyer Member

### THIRD CIRCUIT -- TIER II

#### *Hearing Committee # 19*

James Pate, Chair  
Dr. Kenneth R. Boullion, Public Member

Joseph C. Giglio Jr., Lawyer Member

#### *Hearing Committee # 20*

James Brady, Chair  
Mary Leach Werner, Public Member  
Nolton J. Senegal Sr., Lawyer Member

Continued on page 29

# The Most Common Complaints Against Attorneys and Practical Ways to Avoid Them

by William King,  
Deputy Disciplinary Counsel

*It can happen to you.*

*The Office of Disciplinary Counsel screens and investigates approximately 3,000 complaints a year against attorneys licensed to practice law in the State of Louisiana. That number keeps growing as the profession, some 18,000 lawyers now, gets larger. Chances are most attorneys will have to deal with at least a few complaints in their career, no matter how carefully they conduct themselves.*

Here is a sample of some of the most common complaints:

1) **Lack of Communication.** Inadequate lawyer/client communication is the most common cause of complaints received by Disciplinary Counsel. Under Rule of Professional Conduct 1.4 lawyers must keep their clients *reasonably* informed. Ethically, that does not mean you have to return *every* phone call from the phone happy client. However, lawyers should give periodic status reports, communicate all settlement offers, and discuss all rights and alternatives under the law. Paper is your friend, so continually copy clients with the actions taken on their behalf.

2) **Procrastination, Due Diligence, and Malpractice.** Rule 1.3 imposes an affirmative duty to act with *reasonable diligence and promptness* in representing a client. A typical complaint is: The lawyer lost my case. Such complaints are routinely dismissed. However, many lawyers do engage in conduct that could be considered professional malpractice. Most malpractice, although a failure to use due diligence, does not warrant formal discipline and clients are referred to the civil courts. However, patterns of negligence are prosecuted. Unexplained delay is widely resented by clients. Many malpractice complaints are actually communication complaints and easily avoidable by a phone call.

3) **Excessive fees.** Under Rule 1.5, fees must be reasonable using a number of factors such as time and labor involved, the novelty of the question, the loss of other employment, the customary fee in that locality, the amount and result, the time limitations, the relationship with client, and the attorney's experience and reputation. Complaints about fees are usually made because the amount of the fee or the manner of determining the fee was not properly communicated to the client. To avoid complaints, always have a written fee agreement and provide an accounting to the client when the case is over. Fee disputes are generally not handled by the Office of Disciplinary Counsel. However, clearly excessive fee and unearned fee complaints are prosecuted.

4) **Return of File.** Rule 1.16(d) provides that upon termination of the representation, the lawyer must surrender papers and property to which the client is entitled. Disciplinary Counsel's position is that clients are due *their entire file* including work product upon request. Attorneys cannot hold files hostage for fees and costs, but attorneys can file an intervention to protect their fees.

5) **Ineffective Assistance of Counsel.** Disciplinary Counsel receives hundreds of complaints a year against indigent defenders and criminal defense attorneys. Most are unwarranted. The prisoner who complains against his indigent defender attorney is actually looking to the Office of Disciplinary Counsel as the court of last resort. However, Disciplinary Counsel cannot give these complainants the freedom they seek. Disciplinary Counsel will investigate complaints in such cases where a Court has already found ineffective assistance of counsel, the attorney failed to appear, committed a fraud upon the court in some manner, or failed to return an unearned fee promptly to a client.

If and when any kind of complaint is received, make sure a response is promptly sent to Disciplinary Counsel. Many attorneys believe that the aforementioned complaints are frivolous and not worthy of a response. However, all complaints require a response from the attorney under Rule XIX. The best way to have a complaint closed, is to fully and promptly respond in writing attaching all pertinent materials. Failure to cooperate serves no purpose but to delay investigations and make the Disciplinary Counsel more suspicious.

*These five kinds of complaints are, by far, the most common received by the Office of Disciplinary Counsel. The easiest way to avoid any kind of complaint is to effectively communicate with the client verbally and then follow it up in writing. Almost every complaint has a failure to communicate element to it. Be proactive with clients. The best way to resolve a complaint is not to get one in the first place.*

# Practical Advice

## **Managing Client Telephone and Written Communications to Avoid Disciplinary and Malpractice Complaints** *While Simultaneously Enhancing Your Practice*

*by Jay G. Foonberg*

There is a very high correlation between failure to communicate and non-meritorious malpractice claims and disciplinary complaints. It is tragic that most of these claims and complaints were totally unnecessary and easily avoidable.

Managing written communications is relatively easy for the attorney to do as most of the work is done by others on an automatic, systematic basis.

Good written communications is an extremely effective practice builder in addition to being a problem avoider. Good written communications creates happy clients who come back for more legal work and who refer you more clients. Good written communications is good lawyering since it keeps the client involved and informed in their legal matters. Good written communications projects effort to the client, and while the clients may not be ecstatic about paying for legal fees, they will pay their bills more readily and quickly when they have been kept up to date on the progress of their legal matter.

For most law practices, good written communications simply involves a few automatic procedures and a lot of form letters. Whether the form letters are computer generated or photocopy generated or handwritten is much less important to the client than the fact that the client has received something in writing from the lawyer.

The legal profession generates enormous amounts of paperwork. The paperwork is created because lawyers must create, communicate, and preserve their legal product. Paperwork is so significant that many non-lawyers refer to the "law industry producing product" rather than the legal profession producing legal services. Paperwork is the tangible representation and evidence of the law firm's intangible services.

While electronic mail (E-Mail) is beginning to be used for some forms of lawyer-client communication, it is a relatively small percentage of total lawyer communications. Since E-Mail is frequently turned into hard copy by the re-

ipient it is included within the scope of client written communications.

This chapter will include principles, procedures and product. The product section will contain a series of form letters which any firm can modify to become part of their system of communication. The lawyer or firm is encouraged to modify them and to add more form letters to fit their individual practices. Some written communications forms have been added which are more related to the firm's overall program of good client relations than to the specific legal services being rendered.

### Principles

1) Bombard the client with paper: There is no such thing as too much paper going to a client.

2) The client gets a copy of every piece of paper that goes into the file including both incoming and outgoing letters, pleadings, correspondence, memos to the file, documents, etc.

3) The client automatically gets a copy of the paper in all cases unless the lawyer gives instructions NOT to send the information.

4) The lawyer has the control and power to hold back copies from the client, but unless the lawyer gives specific instructions not to send information, the information is to be sent automatically without waiting for the lawyer to give instructions or approval.

5) Informational copies should be sent to the client AFTER the attorney has seen it and BEFORE the original filed in the file.

6) Memos and information which the lawyer does not want sent to the client should be coded in the word processing system or printed out on specially colored paper. A suppressible code can be

built into the word processing system coding those documents.

7) It is the responsibility of the lawyer to prevent information from going to the client in those cases where sending the information by mail or fax is deemed by the lawyer not to be in the client's best interests. (The lawyer may want to deliver the information face to face.)

8) All information going to the client must be checked by a responsible person in the mail department to be sure that the client's name is spelled correctly and that indicated enclosures either are enclosed or the notation "without enclosures" appears.

9) Code your word processing system so that whenever the word "enclosed, enclosures, attached or attachments" appear in the body of a letter, a flashing message comes onto the screen after "Very truly yours" is typed. The flashing message asks "Are all enclosures listed and present?" The word processor must answer yes or no to continue.

10) The attorney should not sign the letter unless the attorney is satisfied that are enclosures are in fact enclosed.

11) Get a supply of pressure sensitive fax labels to enable sending fax copies of information without delay.

### About the author

Jay G. Foonberg practices law in Santa Monica, Calif. He also is a licensed CPA in California. Mr. Foonberg is the author of many articles and books and has contributed to numerous publications on lawyer marketing, client relations, law office management and law office accounting. He has been honored with the

ALI-ABA Consortium's Harrison Tweed Award for lifetime achievements in teaching law office management and for books, articles and presentations. He also is a recipient of the Louis Goldberg Award as the Most Outstanding Attorney-CPA in the United States.

# Practical Advice



# Practical Advice

## Procedures

1) Adopt the mental attitude that "cc" means "client copy" rather than "courtesy copy." The client is paying for the work and the client is entitled to be kept informed as to what they are paying for and what is happening on the case.

2) If you insist on attorneys personally authorizing communications with clients on an ad hoc rather than on a systematic basis, develop a sticker or code such as "ccy" or "ccn" to mean client copy yes or client copy no. Instruct personnel responsible for filing that nothing is to be filed into the client file until the document is coded ccy or ccn. (Or whatever code or sticker system you wish to use.)

3) Send clients copies of pleadings, depositions, discovery, research, intra office memos and other items which you think clients might not want or might not understand. Leave it to the client to trash unwanted items AFTER the client has seen them rather than your deciding the client should be denied access to the information.

4) Every piece of paper you send to the client will remind the client that neither they nor their legal matter is being ne-

glected.

5) Add clients' names to the Spell Check to try to catch obvious misspellings.

6) Develop a form letter for the word processor or a form cover sheet for mail or fax transmission of information when you don't need or want a response. If necessary, get a big red rubber stamp that reads "For your information only. No reply necessary."

7) Review the communication status of every file in the office at least every sixty days. If the client has not been communicated with (preferably with a written communication) during the previous sixty days, send a form letter to the client indicating this lack of information is normal and their matter has not been overlooked or ignored.

8) Develop a calendar system to program future needs of the client that you know of now, even though the service won't be needed until some future time. Prepare form letters for this purpose.

9) If there is a secretarial or word processing bottleneck or delay in your office, consider hand written faxes on pre-printed message forms or pre-printed pressure sensitive labels.

## Product

The following represent sample form letters for keeping clients informed:

1. *Fee and engagement letter.* This is treated in the materials on fee disputes.

2. *Expectations letter.* This is treated in the materials on unrealistic client expectations.

3. *For Your Information form word processed letter.*

4. *For Your Information form cover sheet.*

5. *No Activity letter.*

6. *Recent legal development which may apply to their legal matter.*

7. *Sample Time Triggered Letters.*

8. *Non-engagement letter.* Every firm should have a form "non-engagement"

letter which it can use for two purposes:

a. To make it clear that you have not accepted the case nor any responsibility for the case.

b. To invite the person to call again at a later time when they have an appropriate case or wish to refer an appropriate case. Be careful not to give any legal advice or statute of limitations advice in the letter declining the matter. Giving the telephone of the local Bar Association Lawyer Referral Service may be helpful to the person you are turning down

9. *Disengagement letter.* The purpose of the disengagement letter is to tell the client the matter is over to start the statute of limitations on any malpractice claim the client may wish to assert at a later time.

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## LETTER TURNING DOWN REPRESENTATION

Mr. Telephone Caller  
123 Main Street  
Anytown, USA 12345

Re: Your telephone call of Jan 2nd.

Dear Mr. Caller:

Thank you for your telephone call of January 2nd. As I indicated to you by telephone, we unfortunately cannot assist you with this matter at this time.

I have suggested that you call the County Bar Association Lawyer Referral Service at 123-4567 for a referral.

[Alt]. I have recommended the following three law firms to you:

1. Attorney John Smith, Jones, Jones and Smith 234-5678
2. Attorney Mary Petersen, Norge, Svenska and Dansk 345-6789
3. Attorney Arthur Bagle, Beagle, Bagle and Bugle 456-7890

Each of these three lawyers has been alerted by my secretary to expect your call.

Although we are unable to accept your case or to accept any professional responsibility for you at this time, it is possible that we may be able to assist you in the future. We have enclosed some information about our firm and have added your name to our friends and associates mailing list. You will receive more information about us in the future.

We wish you luck in finding the right lawyer for your case.

Very Truly yours,

[Alt]

Dear Mr. Nudge:

Thank you for your telephone call of January 2nd. We regret that we cannot be of assistance to you at this time.

We have not accepted any professional responsibility nor rendered any advice to you.

Very truly yours,

## LETTER FOR PROSPECTIVE CLIENTS

Ms. Telephone Caller  
123 Main Street  
Anytown, USA 12345

Re: Appointment for interview:

Dear Ms. Caller:

Thank you for your call of Jan. 2nd, concerning your case. I am looking forward to meeting you in person at our office meeting of January 10th. Please bring with you all documents you might have concerning the matter.

I am sure you understand that at this point we have not agreed to represent you or to undertake any professional responsibility. We could only agree to representing you after we have met and gotten all the facts, made fee arrangement, etc. Additionally, we ethically could not agree to represent you until we have checked our system to be sure there are no conflicts of interest. We can only do this after an interview to get all the facts.

I am enclosing some information about the firm which you may find of interest.

Looking forward to meeting you on the 10th.

Very truly yours,

## Example Letters

# Practical Advice

# Practical Advice

### TELEPHONE CALL RECORD (use this form on colored paper)

File or Matter \_\_\_\_\_  
Date \_\_\_\_\_  
Spoke With \_\_\_\_\_

I said

They said


S  
a  
m  
p  
l  
e  
  
T  
e  
l  
e  
p  
h  
o  
n  
e  
  
L  
o  
g  
s

### TELEPHONE CALL RECORD (use this form on colored paper)

Date this memo prepared: \_\_\_\_\_  
Incoming voice mail: \_\_\_\_\_  
Outgoing voice mail: \_\_\_\_\_  
Voice Mail System: \_\_\_\_\_ Answering Machine: \_\_\_\_\_  
Spoke With: \_\_\_\_\_  
Will this call be followed up by fax or other writing? (Give reason if appropriate)  
Yes \_\_\_\_\_  
No \_\_\_\_\_

#### OUTGOING TELEPHONE OR VOICE MAIL

Person or firm called: \_\_\_\_\_  
Number called: \_\_\_\_\_  
Time and date of call: \_\_\_\_\_ Reason for call: \_\_\_\_\_  
Returning call(s) of: \_\_\_\_\_  
To inform of: \_\_\_\_\_  
Other: \_\_\_\_\_ Message left: \_\_\_\_\_  
Please Return Call: \_\_\_\_\_  
Call not successful because: \_\_\_\_\_  
Message left: \_\_\_\_\_  
Comments: \_\_\_\_\_

#### INCOMING TELEPHONE OR VOICE MAIL

Person called: \_\_\_\_\_  
Return Number or Address Left: \_\_\_\_\_  
Incoming time and date according to caller: \_\_\_\_\_  
Incoming time and date according to machine: \_\_\_\_\_  
Message left: (Prepare more detailed memo repeating or summarizing message if appropriate)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Person preparing this memo: \_\_\_\_\_  
File this memo: \_\_\_\_\_  
Route this memo to: \_\_\_\_\_  
Copy of this memo to: \_\_\_\_\_  
Client or case name: \_\_\_\_\_

# LSBA: IMPROVING OUR PROFESSION

by *Lila Tritico Hogan, Chair*  
*Louisiana Attorney Disciplinary Board*

As I spoke to different groups this year, often I was asked, "We know the Disciplinary Board is totally separate from the Bar Association, but does the Bar do anything in the area of lawyer discipline?" The answer is a resounding, "YES!"

The Louisiana State Bar Association has some tremendous programs for all of us. Some of the ones directly interface with lawyer discipline showing that the Disciplinary Board and the Bar Association work as partners in improving our legal profession.

The recently created Practice Assistance and Improvement Committee has developed a diversionary program to assist lawyers and clients in cases of minor misconduct referred from the Office of Disciplinary Counsel. More information on this program will be in the February issue of your *Louisiana Bar Journal*. Also, that committee and the LSBA staff attorney are developing an Ethics School to assist lawyers in practical skills training to avoid future misconduct.

Want to know if something's unethical? Some quick, thorough ethical advice comes from the hard-working volunteers on the LSBA's Ethics Advisory Service Committee.

The LSBA is assisting wronged clients and improving the image of lawyers with its Client Protection Fund to compensate clients who lose money due to a lawyer's dishonest conduct.

The Committee on Alcohol and Drug Abuse works with the Lawyers Assistance Program, Inc. to counsel, conduct interventions and locate treatment facilities for impaired lawyers and to monitor recovering attorneys and those referred by the state Supreme Court in disciplinary cases. (See related article, pg. 21)

When changes are needed to the lawyers' and judges' substantive rules of conduct, the LSBA's Committee on Codes of Lawyer and Judicial Conduct studies and makes recommendations to the LSBA House of Delegates and/or the Louisiana Supreme Court.

The Lawyer Advertising Advisory Service Committee provides advisory opinions on proposed advertisements and makes recommendations for amendments to the Rules of Professional Conduct governing lawyer advertising and solicitation.

The LSBA also provides staff support for the Bar Admissions Committee appointed by the state Supreme Court which evaluates candidates for admission to the bar.

## LSBA involvement includes:

- ◆ Creation of diversionary program
- ◆ Ethics Advisory Service Committee
- ◆ Client Protection Fund
- ◆ Committee on Alcohol and Drug Abuse
- ◆ Committee on Codes of Lawyer and Judicial Conduct
- ◆ Lawyer Advertising Advisory Service Committee
- ◆ Supports Bar Admissions Committee
- ◆ Continuing Legal Education Program Committee
- ◆ February 1999 *Bar Journal* to be devoted to lawyer discipline issues

Also, the LSBA Continuing Legal Education Program Committee develops and sponsors courses in ethics and professionalism.

In fact, the Bar Association is working with the Disciplinary Board, Louisiana law schools, and Louisiana Supreme Court on developing ways to prevent misconduct, rather than attacking it after it happens.

Finally, the LSBA has decided to devote its entire February *Bar Journal* to lawyer discipline. Among the articles which are planned are ones on the perspective of the prosecutor and the respondent going through a disciplinary case, how the disciplinary system is using the increased assessments from the attorneys, the new diversionary program, and how the Lawyers Assistance Program, Inc. assists in certain disciplinary cases.

The Disciplinary Board salutes the Bar Association's efforts for the lawyers in our state and looks forward to working together in the future to improve the legal profession.

If you want to get involved in the LSBA's efforts or need more information about their committees, services, or programs, please call 1-800-421-5722. The LSBA is hard at work for Louisiana lawyers, but can always use more volunteers.

# WHAT THE LAWYERS ASSISTANCE PROGRAM CAN DO FOR YOUR FIRM

by Bill Leary, Director, Lawyers Assistance Program

Since law firms represent a large portion of the legal community, law firms can contribute significantly in an effort to reach attorneys who need help. The Lawyers Assistance Program (LAP), therefore, is offering law firm management the opportunity to become educated on the issue of impairment and available assistance resources. Historically, law firms have been reluctant to acknowledge the issue of impairment among legal professionals. Attorneys, viewed by society as authority figures, often are expected to project an image of perfection and invulnerability. In spite of their abilities and training, attorneys share the same problems as people within the general population. Attorneys hesitate to admit to problems with chemical dependency. Nevertheless, these problems exist and exert a profound negative impact on the legal profession, the public and afflicted individuals. The LAP believes it is important to encourage members of firm management throughout the state to participate in the effort to identify and assist attorneys whose performance is impaired.

Members of law firm management know the productivity and work quality of attorneys within their firm. The firm managers, therefore, may be able to detect at an early stage a colleague who may be grappling with serious personal issues that affect the performance of his/her job responsibilities.

The implementation of the techniques contained in this article may protect the public, save an attorney's job, and, in some cases, save an attorney's life. Responsible firm leadership throughout the State can now act to dramatically improve the quality of legal services provided to clients, lives of law firm personnel and the professional image of the Louisiana lawyer. Our State Bar leaders have already

taken the first and most difficult step in acknowledging that the problem exists. As a profession, we are overcoming our own denial by facing this issue with honesty, sensitivity and strength. LAP can assist law firms in understanding the magnitude of the problem and in setting up policies on alcohol and drug abuse, and other addictions, such as gambling.

#### Nature and Magnitude of the Problem

According to statistics from the Na-

tional Institute on Drug Abuse, approximately 23 percent of all workers in the United States abuse alcohol and/or drugs on the job. In addition, according to testimony given before the House Labor Subcommittee on Health and Safety, drug and alcohol abuse in the workplace cost businesses approximately \$70 million annually.

#### Impairment Among Legal Professionals

Legal professionals are among those

### Do You Have A Problem with Drugs and Alcohol?

If you or a lawyer you care about has an alcohol or drug abuse problem, Louisiana Lawyers Assistance Program, Inc. can help.

#### ASK YOURSELF... HAVE YOU...

Failed to show up at the office or to appear in court because you had a hangover?

cause you were hung over?

Ever awakened to discover that you couldn't remember what happened the night before?

Regularly had more than one drink at lunch?

Frequently missed appointments with clients?

Experienced deteriorating relationships with clients, staff and friends?

Showed up drunk at court or for a deposition?

Noticed that drinking is effecting your reputation?

Drunk alcohol in the office during office hours?

Missed deadlines, filed pleadings late, allowed a statute of limitations to run, failed to pay your bar dues?

Used, misused, co-mingled or borrowed clients' trust funds?

Worried that these things are happening to you more and more frequently?

Had to have another lawyer make your court appearances for you be-

If so, confidential help is just a phone call away. For discreet, confidential assistance, call the Louisiana Lawyers Assistance Program, Inc., 1-800-354-9334.

in the workplace whose performance is impaired by chemical dependency and drug and/or alcohol abuse. Some studies indicate that the rate of attorneys who are stricken by serious problems which contribute to impaired job performance exceeds the rate for the general population. For example, a Washington State Bar Association study found that over 18 percent of attorneys in Washington experience problems with alcohol. Impaired attorneys who continue to practice law adversely affect themselves, their clients, their colleagues, their community, their families and the legal profession. The California State Bar believes that over 50 percent of the attorney misconduct cases which it investigates involve trouble with chemical dependency. The American Bar Association estimates that alcoholism and chemical dependency are a factor in 40 percent to 60 percent of professional discipline cases nationwide. The actions of an attorney whose performance is impaired often result in harm to a client's interests legally and economically, as well as injury to the reputation of the firm with which the attorney is associated. Furthermore, attorneys who perform at a substandard level create non-catastrophic losses which require attention. These losses arise from excessive absenteeism, poor productivity and increased medical claims. In addition, attorneys with serious personal problems who conduct themselves unprofessionally affect employee morale and the firm's reputation and can impact recruitment and training efforts. Law firms must face the issue of attorney impairment in the workplace. Polite avoidance of this serious condition only serves to support, delay resolution and magnify the impact of problems which arise.

The following discussion sets forth the steps management can take to address this subject in a constructive and positive manner, which both benefits and protects the firm and directs those who need assistance to providers of assistance.

### **Responsibility of Management**

#### *Firm management's responsibilities*

Firm managers (or supervising partners) are likely to become aware of an attorney whose work performance is impaired because of problems related to chemical dependency, either sooner, through direct observation of certain pat-

terns of conduct, or the reports from other personnel or clients of these patterns; or later, through evidence of significantly diminished performance, malpractice claims or other instances of substantial harm. Clearly, a firm has a vested interest in identifying impaired colleagues as soon as possible before substantial harm has occurred.

Firm managers may play a significant role in identifying these attorneys before they are able to cause substantial harm. Most managers, however, are not qualified to diagnose the reasons why an individual is no longer performing his/her job at a minimally acceptable level. Nevertheless, managers may contribute significantly to the eventual resolution of an attorney's problem by referring him or her to an assistance program.

The following section sets forth information which may be useful to a firm manager who faces the problem of an attorney in the firm who is performing at a substandard level.

#### *Role of law firm management*

##### **1. Monitor job performance levels.**

Members of law firm management are usually aware of the job performance levels of attorneys within the firm. Most firms have established as a matter of policy the acceptable and unacceptable levels of productivity for each attorney within the firm. Firm managers are usually responsible for noting whether or not an individual attorney meets these standards. If an attorney fails to do so, he/she may be practicing law in an impaired condition. Managers will therefore be better able to detect this condition if they are aware of the most common signs of impairment.

##### **2. Identify signs of impairment.**

Statistics indicate that the underlying cause for deterioration of an attorney's ability to execute his/her job responsibilities in accordance with professional standards usually involves problems with chemical dependency or emotional distress. Most individuals who are suffering these or other problems which undermine their performance will reveal their condition by a pattern of conduct characterized by changes in behavior, physical appearance and/or job performance.

##### **3. Changes in behavior and appearance.**

Managers should pay particular attention to changes in an attorney's attendance at work. The most common behavioral

change of a person in an impaired condition involves increased absenteeism, including complete absences from the office and on-the-job absences such as excessive tardiness or frequent time away from his/her work area. Another common behavioral change involves the attorney's relationship with his/her co-workers. As his/her condition worsens, the attorney becomes increasingly unable to get along with others. An attorney suffering from a serious problem may have mood swings and be irritable, argumentative, angry, depressed or unrealistically resentful. Another indication that an attorney may be impaired is the deterioration of his/her personal appearance and attention to hygiene.

##### **4. Substandard job performance.**

An attorney, whose work is impaired due to chemical dependency, will eventually exhibit deteriorating job performance. The early signs of impairment may include uneven work habits and alternating periods of high and low performance, which become worse over time. As the attorney's ability to maintain the workload diminishes, he/she will begin to receive complaints from clients and co-workers. In addition, the attorney may miss deadlines, lose files and other materials, have difficulty handling assignments or rectifying mistakes. The attorney will make more and more excuses for substandard performance or deny that there is anything wrong with his/her work.

Firm managers know the performance level of each attorney within the firm. If an attorney fails to meet the firm's standards of performance, the attorney may be experiencing problems with chemical dependency or emotional distress. Managers are not trained to diagnose these conditions, but managers can develop an understanding of the signs exhibited by an attorney who may be suffering from such problems. Based on their knowledge of the facts and understanding of these signs, managers can detect attorneys who may be practicing law in an impaired condition before they cause substantial harm to the firm, its clients, or themselves. Furthermore, firm manager's may refer attorneys who need help to appropriate sources for treatment.

##### **Benefits of Law Firm Policies**

A formal law firm policy on alcohol and

drug abuse in the workplace may serve as an official firm statement on the conditions that prevent personnel from performing their jobs effectively, the procedures for dealing with impaired personnel, the consequences of impaired work performance, and what, if any, treatment or assistance programs are available. Simply by adopting a formal firm policy on impairment issues, firm managers increase the awareness among all personnel of impairment problems in the workplace and provide clear and uniform procedures that management can use to handle personnel with such problems. A law firm with an official policy on impairment issues fosters a more open atmosphere for the discussion of these sensitive matters. Furthermore, policies establish a mechanism for firm management to take corrective action and to provide help for colleagues who need help at the earliest possible stage, rather than allowing troubled attorneys to continue in a manner which causes harm to themselves, the firm and to the public. Early detection of impaired attorneys reduces the firm's overall risk of malpractice claims.

#### Statement of Position

Most law firms value their reputations for high quality work and responsible client representation. At the same time, law firm managers recognize that workers with impairment problems can undermine the reputations they have worked to uphold. The adoption of a law firm policy concerning impairment issues restates a firm's commitment to the integrity of its work, while at the same time recognizes that impairment problems may exist within the firm and will be handled professionally. In addition, a firm may indicate its support for a drug and alcohol free workplace for all personnel by adopting a policy which reflects this position. The policy notifies all personnel that the firm is committed to maintaining the highest standards of work performance and will take appropriate action when an individual's conduct requires it. Furthermore, all personnel are usually required to read written policy documents upon hiring and are thus provided with the detailed information on the firm's guidelines and procedures concerning this matter. In the event that an attorney's condition interferes with his/her ability to work, both the manager and the involved person will have been informed regarding

how the situation will be handled.

#### Increased Awareness

A law firm policy on impairment issues increases awareness among firm members of the presence of the problem. The firm may use this increased awareness to encourage further education on the topic of chemical dependency. When people understand the characteristics of these problems and the treatment options, they are much more likely to seek assistance for themselves or for their colleagues.

#### Reduced Liability

A firm benefits from a policy which encourages managers to detect any personnel who are performing in an impaired manner because the firm can avert malpractice claims. Policies which increase management's awareness of these issues and outline steps for handling these matters permit management to address the source of the problem and the impaired employee's conduct before substantial harm has occurred to the firm's or a client's interest.

#### Provisions for Assistance

A law firm that adopts a policy on alcohol and drug abuse benefits from evaluating whether or not its policy will encourage treatment for attorneys who need assistance. A policy on this issue provides the firm with the opportunity to create formal procedures for the referral of its personnel to assistance. In the past, many law firms have hesitated to become involved in referring an attorney to an assistance program. Attorneys who suffer from chemical dependency do not recover in most cases unless they receive assistance from someone trained in chemical dependency who is not a member of the law firm. If law firms do not encourage treatment for these attorneys, and these attorneys are unable to recover without treatment, the only remaining alternative is termination. The attorney, however, may continue to practice law at a substandard level and continue to harm the public. The particular attorney's clients may continue to suffer and the image of the legal profession is undermined. This cycle of harm continues unless the attorney receives assistance from another source, the attorney becomes involved in formal disciplinary proceedings after causing substantial harm or, in the

worst case, the attorney causes significant harm to him or herself, which may result in death. A law firm that provides a formal mechanism through its firm policy for assistance has done everything in its power to stop this deadly cycle of harm. *Remember: chemical dependency is a progressive disease that will worsen unless treatment is sought.*

### The Treatable Illness

✓ Alcoholism/drug addiction is not a moral issue, but rather it is a treatable illness. The stigma is not in having this illness; the stigma is failing to seek treatment.

✓ Medical authorities have established that alcoholism/drug addiction is a disease in which there is a preoccupation with alcohol/drugs coupled with a loss of control over its consumption.

✓ Addiction may be arrested (not cured) by treatment. It is perfectly acceptable social behavior to seek treatment; it is antisocial to continue the denial.

✓ Some symptoms of addiction are:

- The inability to guarantee one's actions after starting to drink or use drugs.
- Deteriorating health accompanying a pattern of heavy drinking or drugging, impaired ability to work and concentrate.
- Disrupted personal relationships, denial that drinking or drugs is a problem when it is obvious to others.
- Defiance, impatience, intolerance, impulsiveness.
- Addiction is a progressive disease; it only gets worse, never better.

### Policy Issues

Law firms who have decided to adopt a policy on personnel impairment must evaluate several points during the policy-development process. These items include stating the firm's philosophy toward impairment issues, identifying the scope of the problem within the firm, defining to whom the policy will apply, delineating uniform procedures for the disposition of impaired personnel, describing the consequences or disciplinary action that will be taken to address such workplace conduct, discussing treatment and rehabilitation alternatives and addressing the question of drug testing. Policy makers should consider each of these points to ensure a policy suitable to the firm's specific needs.

### Firm Philosophy

By adopting a policy on personnel impairment, a law firm may state formally its position on this topic and may reiterate the firm's philosophy concerning its integrity and standards for quality work performance. The policy may become part of the firm's personnel and procedures manual or rules. When defining its policy, firm members should consider the firm's attitude toward impairment issues on chemical dependency and how the firm intends to address the use and abuse of alcohol and drugs, both in the workplace and off duty.

### Scope of Problem

To define an effective firm policy, firm members should consider to what extent, if any, personnel impairment impacts on the firm's productivity and morale. If firm members lack knowledge regarding whether or not impairment is a problem among its personnel, some investigation should be conducted while the policy is

being developed.

### Procedures for Management

In addition to the policy and the scope of its application, a law firm should set forth procedures to be implemented by management when faced with a worker whose performance is impaired. These procedures can include referral to LAP or to some other designated third party for evaluation and recommendation as to treatment procedures. Policies can set forth various alternatives that management can present to an impaired individual, including rehabilitation programs, leaves of absence and adjusted work schedules.

### Corrective Action

A firm policy should clearly state any corrective or disciplinary action that the firm intends to take when an individual continues to perform at a substandard level as a result of alcohol or drug dependency. Corrective action may require that an individual participate in a treatment program as a condition of continued employment or consideration for rehire. A firm policy may provide that participation in a treatment program will not protect a person from termination for unsatisfactory work performance.

### Treatment Alternatives

In most cases, a policy on personnel impairment recognizes that unsatisfactory work performance due to chemical dependency is treatable. Policies may set forth treatment and rehabilitation services that are supported by the firm. If the firm has established a relationship with an employee assistance program provider, the policy may indicate under what circumstances referral to the LAP would be recommended. In addition, the firm should determine whether or not the cost of treatment would be cov-

ered by the firm, since the objective of treatment is to return the individual to full time working capacity. Of course, many treatment options may be covered by the firm's health insurance provider.

### Lawyers Assistance Program

The Louisiana State Bar Association Committee on Alcohol and Drug Abuse was first established in 1985 to provide confidential assistance to members of the Bar and their families who are experiencing problems with alcohol or drug abuse. The Committee is composed of volunteers, both men and women, some in recovery from alcohol and drug abuse, some family members in recovery, and some people just interested in helping with this mounting problem which permeates our profession and our society.

Due in large measure to the commitment, support, and encouragement of the Louisiana Bar Foundation (IOLTA), the Louisiana Supreme Court and the Louisiana State Bar Association, the Committee formed LAP, a nonprofit corporation in 1991 and hired a director to coordinate and carry out its goals.

The goal of the LAP is to serve the public, the Bar and the profession by assisting, on a confidential basis, lawyers and judges whose professional impairment may stem from alcohol or drug abuse. LAP is first and foremost an absolutely confidential method of providing help to an impaired lawyer or judge. By state statute and Supreme Court rule, any information received by the LAP Director or committee members must remain completely confidential. Any questions concerning LAP can be answered by calling the program director, Bill Leary, at the following toll free telephone number, which is operated 24 hours a day: (800)354-9334.

Have you ever wished that you could sit down and talk in complete confidence with someone about your law practice; someone whose drinking or drug problem may have been worse than yours; someone who can tell you what drinking or the use of drugs did to his/her practice, family and health; or perhaps just someone to listen with an understanding heart rather than with judgment and condemnation?

Have you ever thought what a relief it would be, without any cost whatsoever, to be able to talk frankly with just such a person – a person who is solving problems just like yours and is living happily and usefully in so doing?

Now you can by calling the  
**Lawyers Assistance Program, Inc. Hot Line 1-800-354-9334**  
 Telephone anytime in confidence.



# 1998 Louisiana Supreme Court Cases Involving Attorney Discipline Matters

## NEGLECT OF LEGAL MATTERS

*In re: Phyllis Southall*, 97-3221 (La. 5/8/98); 710 So.2d 245

*In re: Woody Marvin Dunn*, 98-0535 (La. 6/5/98)

*In re: Kevin Thompson*, 98-0079 (La. 5/8/98); 712 So.2d 72

*In re: Jeffrey LeBlanc*, 98-0800 (La. 5/29/98)

*In re: Joe L. Smith*, 98-0619 c/w 98-0620 (La. 5/8/98); 710 So.2d 241

*In re: Anthony Hollis*, 98-0444 (La. 6/18/98)

*In re: Adam Samuel Cohen*, 98-2091 (La. 3/27/98); 708 So.2d 415

*In re: Michael Jude Andrepont*, 98-0346 (La. 3/13/98); 712 So.2d 862

*In re: Walter V. Kendrick*, 98-0623 (La. 4/3/98); 710 So.2d 236

*In re: Katherine Kennedy*, 98-0801 (La. 5/29/98)

## COMMINGLING AND CONVERSION OF CLIENT FUNDS

*In re: Charles H. White*, 97-2731 (La. 2/10/98); 706 So.2d 964

*In re: Glenn Constantino*, 98-0817 (La. 6/1/98)

*In re: Carl V. Williams*, 98-0773 (La. 4/24/98); 709 So.2d 211

*In re: William Yarno Jr.*, 98-0442 (La. 5/29/98)

*In re: David Hilburn*, 98-0288 (La. 5/29/98)

*In re: Wade Kelly*, 98-0368 (La. 6/5/98)

*In re: William Kyle Phipps*, 98-0762 (La. 6/18/98)

*In re: Blake Williams*, 98-1119 (La. 7/2/98)

*In re: Jed Gremillion*, 98-0818 (La. 7/8/98)

*In re: Timothy L. McCune*, 98-0901 (La. 5/1/98); 710 So.2d 796

*In re: George A. Guidry*, 97-3219 (La. 2/20/98); 706 So.2d 966

## CONDUCT INVOLVING DECEIT, MISREPRESENTATION, CONFLICT OF INTEREST OR DISHONESTY

*In re: Leonard O. Parker Jr.*, 97-2351 (La. 1/30/98); 705 So.2d 736

*In re: Douglas C. Ellis*, 98-0078 (La. 5/10/98); 710 So.2d 794

*In re: Mitchell Herzog*, 98-0761 (La. 5/1/98); 703 So.2d 592

## UNAUTHORIZED PRACTICE OF LAW

*In re: Adair Jones*, 98-0207 (La. 3/27/98); 708 So.2d 413

## ASSERTING MERITLESS CLAIMS

*In re: William R. Brough*, 98-0366 (La. 4/3/98); 709 So.2d 210

## CRIMINAL CONDUCT

*In re: Andree G. Basile*, 98-0900 (La. 5/29/98)

*In re: Patrick H. Harrington*, 98-0344 (La. 5/8/98); 710 So.2d 243

*In re: Anne "Sherry" Schneider*, 97-2457 (La. 1/30/98); 707 So.2d 38

*In re: Gavin J. Plaisance*, 98-0345 (La. 3/13/98); 706 So.2d 969

*In re: William Taylor*, 97-3220 (La. 4/24/98); 710 So.2d 238

*Information compiled by  
Emily Morrison*

*In re: Woody Marvin Dunn*, 98-0535 (La. 6/5/98); 1998WL289775 (La.)

**Sanction: Six-month suspension, deferred, with one-year probation**

Formal charges alleged that Dunn allowed a client's personal injury suit to be dismissed on grounds of abandonment and that Dunn engaged in a conflict of interest by attempting to settle his liability with the client without advising him to seek review of the offer by independent counsel.

Dunn acknowledged his error after the client notified him of the dismissal of the lawsuit. Although Dunn offered to settle with the client for the amount of \$4,500, he did not advise the client to seek advice from an independent counsel.

The Hearing Committee found that Dunn demonstrated a lack of diligence, but determined there was no evidence that Dunn took advantage of the client in the settlement offer. The Committee considered several aggravating and mitigating factors (including Dunn's acknowledgment of his error, his candor with his client and his attempt to settle) before deciding to dismiss the charges.

The Disciplinary Board concluded that the Committee had erred in finding that Dunn's conduct was not a violation of the Rules of Professional Conduct. The Board recommended a six-month suspension, deferred, with probation.

The Louisiana Supreme Court accepted the Board's recommendation. In its decision, the Court agreed with the Committee's finding that Dunn was not attempting to cheat the client in the settlement offer. It concluded, however, that Dunn's failure to advise his client to seek independent counsel was a clear violation of the Rules of Professional Conduct.

*In re Jed G. Gremillion*, 98-0818 (La. 7/6/98); \_\_\_ So2d \_\_\_.

**Sanction: 36-month suspension (to run concurrently with 18-month suspension previously imposed)**

Gremillion was charged with a variety of violations in two sets of formal charges.

The first set involved Gremillion's conduct after being retained in two separate succession matters.

In the first case, Gremillion obtained permission to sell immovable property, but failed to take any further action for about 18 months. Gremillion was also charged with failing to provide an accounting to the heirs and with disbursing property without court approval.

In the second case, Gremillion received funds from the testamentary executor and placed those funds into a bank account that was not properly labeled as a trust or fiduciary account. Gremillion also disbursed funds to the heirs without court approval. Those checks were subsequently returned for insufficient funds.

Additionally, the Office of Disciplinary Counsel charged that Gremillion failed to appear in response to a subpoena issued in connection with their investigation.

The second set of formal charges involved two complaints filed against Gremillion.

In the first complaint, Gremillion was retained to represent the complainants in connection with a boating accident. Gremillion failed to communicate with the clients and refused to relinquish the case file to the new attorney hired by the complainants.

In the second complaint, Gremillion was retained to initiate and complete a succession. Gremillion failed to prepare an Affidavit of Death and Heirship until two years later, causing the client to miss two sales of a house that was part of the succession property.

In both cases, Gremillion was also charged with failure to respond to subpoenas in connection with the ODC's investigation.

In response to the first set of formal charges, Gremillion denied the allegations in the first complaint, but admitted to misconduct in the other two complaints. Subsequently, Gremillion submitted a motion for consent discipline suggesting an 18-month suspension as an appropriate sanction.

The hearing committee proposed accepting the consent discipline. The Disciplinary Board determined that a three-year suspension was the baseline sanction for this type of misconduct, but noted factors in mitigation and recommended ac-

ceptance.

Gremillion failed to respond to the second set of formal charges, prompting the ODC to file a brief seeking disbarment. Considering the 18-month suspension as prior discipline and Gremillion's substantial experience as factors in aggravation, the hearing committee recommended disbarment. The board, relying on the aggravating circumstances cited by the committee, concurred with the committee's decision.

The Supreme Court concluded that the committee and the board erred in considering the prior discipline as aggravating circumstances. "Since the misconduct in each case occurred within the same time frame," the opinion read, "This is not a case in which a lawyer is disciplined and then proceeds to commit similar misconduct, despite the warning to watch his step resulting from the initial discipline."

Setting aside the prior discipline as an aggravating factor, the Court ordered a 36-month suspension to run concurrently with the 18-month suspension previously imposed.

*In re: Anthony Hollis, 98-0444 (La. 6/18/98); 1998WL327847 (La.)*

**Sanction: One-year suspension followed by one-year probation**

Hollis was retained to represent two clients in an employment discrimination suit and received \$250 from each client as a "non-refundable" retainer. The clients alleged Hollis failed to pursue the case or to maintain communication with them.

When Hollis failed to respond to the charges, they were deemed admitted. The Hearing Committee found no mitigating factors, but several aggravating factors, including prior discipline (Hollis had been admonished previously). The Committee recommended Hollis receive a one-year suspension, followed by a one-year probation period.

Hollis appeared for the hearing before the panel of the Disciplinary Board. In light of that argument, the Board considered several factors in mitigation in addition to most of the aggravating factors considered by the committee. The Board, however, determined that, because the record contained no information as to the nature of the charge in the previous admonishment, the former discipline could not be considered as an aggravating factor. Also, the Board concluded that indifference to making restitution could not be considered an

aggravating factor based on respondent's testimony before the Board. The Board also noted the presence of mitigating factors, including absence of dishonesty or selfish motive, remorse, and personal/emotional problems. Based on its findings, the Board recommended Hollis be suspended for a period of one year and three months, with all but three months being deferred, followed by a one-year period of unsupervised probation.

The Court concluded that "the discipline recommended by the disciplinary board is inappropriate under the facts of this case. In reaching this conclusion, we note the disciplinary board clearly erred in failing to consider respondent's prior admonition as an aggravating factor." The Court explained that although the Board felt it could not consider the prior discipline because it was not introduced into the record, nothing in the rule requires the admonition to be formally introduced. The Court then adopted the Hearing Committee's recommended sanction of a one-year suspension, followed by a one-year period of supervised probation with conditions.

*In re William Kyle Phipps, 98-0762 (La. 6/19/98); 1998WL327850 (La.)*

**Sanction: Disbarment**

Three sets of formal charges (cases consolidated) were filed against Phipps including converting clients' funds to his own use, conviction of a criminal offense, neglect of cases, failure to communicate with clients, giving false information to clients, issuing worthless checks to clients and failure to cooperate in the Office of Disciplinary Counsel's investigation.

In the first set of formal charges, which were deemed admitted after Phipps failed to respond, the hearing committee recommended a sanction of one-year suspension, with return to practice subject to certain conditions.

The Board agreed with the hearing committee's finding that Phipps' actions were knowing and intentional; and, after considering several aggravating and mitigating circumstances, recommended that Phipps be suspended for one year and one day, subject to several conditions for reinstatement.

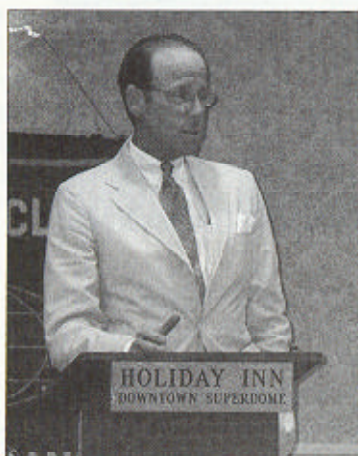
In the subsequent two sets of formal charges, which were consolidated independently of the first set, Phipps and the ODC filed for Consent Discipline.



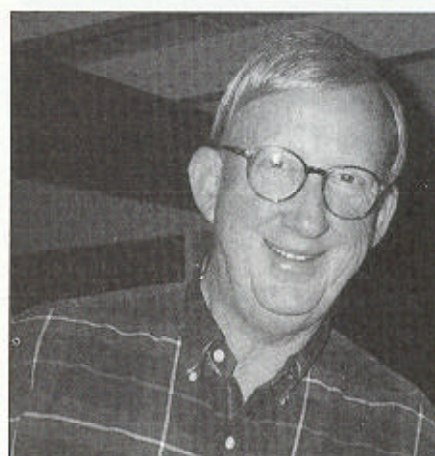
# Board Profiles



**LILA TRITICO HOGAN, Board Chair:** Having been appointed to the Disciplinary Board in January of 1993, Lila has served as Board Secretary, Vice-Chairman and is the 1998 Chair of the Louisiana Attorney Disciplinary Board.



**ROBERT A. KUTCHER, Vice-chair:** A native of New York, Bob has been a member of the Disciplinary Board since 1993. He earned his law degree from Loyola University in New Orleans.



**HOMER ED BAROUSSE JR., Immediate Past President:** A founding partner of the Crowley law firm of Barousse and Craton, Homer Ed served as chairman of a Hearing Committee from 1990-92 before his appointment to the Disciplinary Board in 1993.



**DONALD R. BROWN, Panel A:** A native of Monroe, Don began serving as a member of the Disciplinary Board in January. He received his undergraduate and law degrees from LSU and has been a member and partner of his present law firm since 1974.

*Information compiled by Emily Morrison*



**SIBAL SUAREZ HOLT, Panel A:** A New Orleans native who has resided in Baton Rouge for the past 25 years, Sibal serves as the Secretary- Treasurer of the Louisiana AFL-CIO and is a registered labor lobbyist representing the Louisiana AFL-CIO. Sibal's community service achievements are numerous.



**DAVID R. FROHN, Panel B:** A Georgia Tech Aerospace Engineer who worked as a quality control engineer for Boeing on the S-IC Saturn Launch Vehicle, David earned his law degree at Loyola University in New Orleans. David previously served as a hearing committee chair for the Lake Charles area from 1992-97 before being appointed to the Disciplinary Board in 1998.



**JOHN G. BECKWITH SR., Panel B:** One of the first nonlawyer members to volunteer to serve in the attorney disciplinary system, John was an active public member of Monroe area hearing committees until his appointment to the Board in 1996.



**JOSEPH LAWRENCE SHEA JR., Panel C:** Larry began his service with the disciplinary system in 1996 as a chair of a Shreveport area hearing committee. He was appointed to the Disciplinary Board in 1997. Larry earned his undergraduate degree from Tulane and his law degree from LSU, where he placed first in the 1978 Robert L. Tullis Moot Court Competition.



**ROBERTE E. LEAKE JR., Panel C:** This year marks Bob's first year as a member of the Disciplinary Board. He was recently honored by the Louisiana State Bar Association as one of several members celebrating 50 years of practicing law in Louisiana.



**E.J. CHAMPAGNE, Panel C:** A native of St. Mary Parish, Jay is a recent addition to the Disciplinary Board. He is a graduate of USL and served in the South Pacific during World War II. Jay served as city clerk for the City of Franklin for 17 years, was the treasurer of the St. Mary Police Jury from 1966-70 and served as Franklin's mayor from 1970-74.

*The disciplinary board is composed of 14 members who are appointed by the Supreme Court. One member is nominated by the Louisiana State Bar Association each year and must have prior lawyer discipline experience. Of the 14 members, four are members of the general public with diverse backgrounds: lobbyist, former mayor, educator and businessman. Women comprise 25 percent of the Board and one-third are minorities. The terms of office for all board members is three years and no board member may serve more than two consecutive terms. None of the members of the Board receive any compensation for their services.*



**JOHN J. UHL, Executive Officer:** This year marks John's last year of service as a public member of the Disciplinary Board. He has been a member of the Board since 1993. He is a vice president of Carlo Ditta Inc., and has worked for the company for more than 38 years.



**CLARE E. JUPITER, Administrative Committee:** A member of the Board since September 1996, Clare is one of the senior partners of Bryan & Jupiter. Clare is graduate of Yale University who earned her law degree at Duke University.



**IKE SPEARS, LSBA Member:** Ike is a magna cum laude and Phi Beta Kappa graduate of Morehouse College in Atlanta. He earned his law degree at Tulane University.



**BURTON E. CESTIA JR., Administrative Committee:** Burt is a former lawyer member and chair of a Third Circuit Hearing Committee who was appointed to the Board in 1996. A lifelong native of Iberia Parish, Burt earned a degree in business from USL and he received his law degree from LSU.

**Hearing Committee Members  
Continued from page 13**

*Hearing Committee # 21*

- Patrick J. Briney, Chair
- G. Vaughn Walton, Public Member
- Terry L. Rowe, Lawyer Member

*Hearing Committee # 22*

- Andrew D. McGlathery III, Chair
- Joseph G. Hynes, Public Member
- O. Edwin Dunahoe, Lawyer Member

**ADDITIONAL MEMBER FOR  
THE THIRD CIRCUIT**

- Ruby Norris Freeman, Lawyer Member

**FOURTH AND FIFTH CIRCUITS --  
TIER I**

*Hearing Committee # 8*

- Laura E. Fahy, Chair
- Robert J. Guasco, Public Member
- Thomas K. Potter, Lawyer Member

*Hearing Committee # 9*

- John D. Fitzmorris Jr., Chair
- Rosalyn Weinstein, Public Member
- Timothy Mathison, Lawyer Member

*Hearing Committee # 10*

- Martin Stern, Chair
- Sedrick T. Thomas, Public Member
- Thomas J. Grace, Lawyer Member

*Hearing Committee # 11*

- Jack A. Grant, Chair
- Dr. Constance C. Dolese, Public Member
- Wanda Anderson Davis, Lawyer Member

*Hearing Committee # 12*

- Stephen H. Kupperman, Chair
- Barbara G. Bush, Public Member
- Leslie Gerome Smith, Lawyer Member

*Hearing Committee # 13*

- Arthur G. Kingsmill, Chair
- Rosalyn J. Smith
- Sally A. Shushan, Lawyer Member

**FOURTH AND FIFTH CIRCUITS --  
TIER II**

*Hearing Committee # 23*

- Darryl M. Phillips, Chair
  - Cynthia S. Caliste, Public Member
  - Dane S. Ciolino, Lawyer Member
- Hearing Committee # 24*
- Anthony P. Dunbar, Chair
  - Dr. Carl S. Merlin, Public Member
  - Richard P. Lemmler Jr., Lawyer Member

**ADDITIONAL MEMBER FOR THE  
FOURTH AND FIFTH CIRCUITS**

- Michael D. Meyer, Lawyer Member

# LADB goes public

The Public Outreach Program of the Louisiana Attorney Disciplinary Board is continuing to spread its message across the breadth of our state.

The cities and towns visited so far by the program's speakers this summer have included tiny Livonia, Gov. Mike Foster's hometown of Franklin, New Orleans and its environs, as well as the far-north country of Monroe-Shreveport and the western frontier of Lake Providence.

Regardless of the location, the message has remained the same: the disciplinary system is intended for the benefit of the public as well as the legal profession.

At a recent Rotary Club meeting in Metairie, LADB Chair Lila Tritico Hogan, Executive Officer John Uhl and Administrator Donna L. Roberts presented those in attendance with an overview of what the board's role in the attorney disciplinary system encompasses.

According to the speakers, among other things, the board is responsible for answering queries received from the public, providing the public with information on the complaint process and, also, providing citizens with information on the disciplinary record, if any, of attorneys licensed to practice in Louisiana.

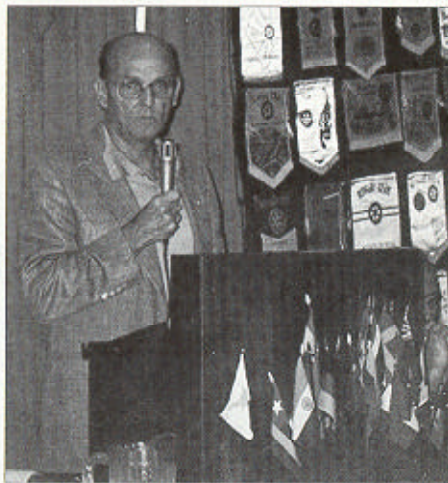
Before closing out with a question-and-answer period, the speakers went on to sketch out the route that a complaint takes from its receipt, through the investigation stage, upward to the hearing committee and board levels, culminating with the final decision of the Louisiana Supreme Court.

LADB speakers are presenting the same set of facts across the state. The styles may be varied but the effect remains the same: increased public awareness.

## On the Road with Public Outreach



*Jack Grant, Hearing Committee 11 chair, addresses members of the West Bank Rotary Club July 21 at Gretna United Methodist Church.*



*John Uhl, LADB executive officer, outlines recent changes within the disciplinary system at a gathering of the Metairie Rotary Club held Aug. 6 at the Quality Inn in Metairie.*



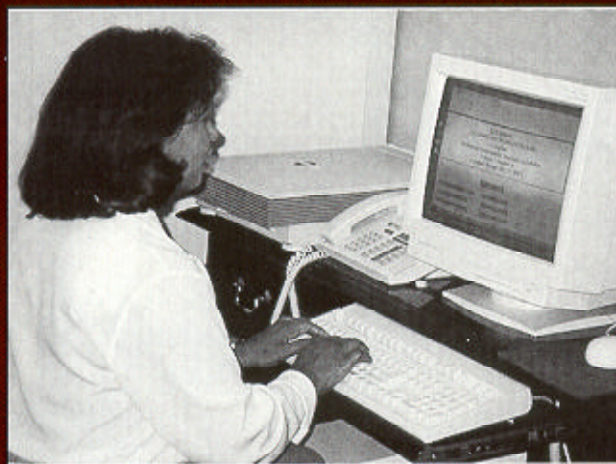
*(From left) Nick Hamilton, Jim Crigler, Sherman Boughton, president of the Lake Providence Rotary Club, and Clay Hamilton pause for a moment after the Hamiltons and Crigler spoke to the group about the makeup and function of the Louisiana Attorney Disciplinary Board at the Lake Providence Country Club July 15.*

**To schedule a speaker call Jennifer Stewart at (504) 834-1488 or 1-800-489-8411**

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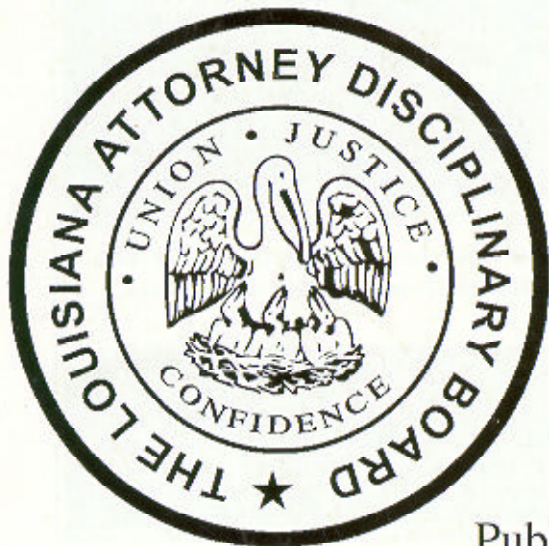
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