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Annual Report 2013

MINNESOTA BOARD ON JUDICIAL STANDARDS

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ANNUAL REPORT 2013

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MEMBERS AND STAFF*

Judge Members

Hon. Jill Flaskamp Halbrooks
Minnesota Court of Appeals
St. Paul, MN

Hon. Vicki E. Landwehr
Seventh Judicial District
St. Cloud, MN

Hon. David Knutson
First Judicial District
Hastings, MN

Hon. Ellen L. Maas
Tenth Judicial District
Stillwater, MN

Attorney Members

Cindy K. Telstad
Winona, MN

William J. Wernz
Minneapolis, MN

Public Members

Jeff Bumgarner, Ph.D.
New Ulm, MN

Gerald T. Kaplan, M.A., L.P.
Wayzata, MN

Timothy Gephart
Minneapolis, MN

Terry Saario, Ph.D.
Minneapolis, MN

Staff

Thomas C. Vasaly
Executive Secretary

John H. Fuller
Executive Assistant

* As of June 1, 2014. Brief biographies are appended at the end of this report.

FOREWORD FROM THE CHAIR

The Minnesota Board of Judicial Standards is charged with enforcing the Minnesota Code of Judicial Conduct (the “Code”) and with interpreting the Code for the education of judges and others. The Code establishes a high standard for judicial conduct in the State of Minnesota. The Preamble to the Code states:

The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all of the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest public confidence in their independence, impartiality, integrity, and competence.

The members of the Board take these principles to heart in carrying out their duties. Since 1972, in its 42nd year of operation, the Board continues to make every effort to fulfill its mission.

In carrying out its responsibility to enforce the Code, the Board’s primary function is to consider and act on complaints of judicial misconduct. The Board receives and evaluates complaints, makes summary dispositions where investigation is not warranted, investigates and conducts hearings, issues private disciplines and public reprimands, seeks other public disciplines through formal complaints, and makes recommendations to the Supreme Court concerning allegations of judicial misconduct and allegations of physical or mental disability.

The Board received 108 written complaints of judicial misconduct in 2013. As in years past, the majority of complaints was dismissed by the Board either because the complaints were frivolous or did not allege a Code violation, or the Board investigated and concluded that the complaint was without merit. In 2013, the Board conducted 24 investigations. Three of the investigations were substantial and resulted in discipline of the judges.

I am happy to begin this report by describing the Board’s achievement of all its ambitious agenda for 2013.

Website. In 2013, the Board launched its new website at www.bjs.state.mn.us. The need for the new website had been recognized for several

years, and creating the website was the Board's primary 2013 goal. The new website has greatly revised and enhanced content, as well as much greater ease of use.

Education/Board Opinions. In 2013, the Board issued its first two Formal Advisory Opinions. Prior Board opinions were issued to respond, privately, to queries from individual judges. The Board's informal opinions were typically a few sentences in length, with brief citation to authority. Summaries of these informal opinions have been posted on the Board's website and have been useful. The Formal Opinions are much more ambitious. They are drafted for a general audience. The Formal Opinions cover numerous issues related to a central topic. The topics are chosen for their importance to judges and the public. The Formal Opinions cite and discuss authorities.

Fiscal Calendar. In 2013, the Board and Executive Secretary developed a fiscal calendar for Board activities. The Board has become much more involved in fiscal monitoring and decision-making.

Outreach. The Board invited legislative leaders to meet with the Board, and met with the former chair of the Senate Judiciary Committee. The Board communicated with legislators and with the Minnesota Supreme Court regarding its revised expungement policy and procedure. The Board also met with representatives of the Minnesota District Judges Association. The Executive Secretary made several presentations to outside groups.

Record Retention Compliance. Under Rules 6(f) and 19, as amended in 2009, the Board retains until a judge's death all files, including private admonitions, in which the Board finds there is reasonable cause to believe the judge committed misconduct.

In 2011, the Board determined that prior Rule 17 of its Rules, in effect before July 1, 2009, contemplated destruction of several categories of files that the Board had retained, namely where the Board found a complaint "without sufficient cause." The Board had previously believed that under prior Rule 6(f), it could retain records where the complaints were "without sufficient cause" if the judge received a warning or similar informal consequence that did not constitute discipline. On reconsideration, the Board concluded that the law requires record destruction, subject to several file-retention exceptions for (1) public discipline files, (2) private disciplines issued after June 30, 2009 (current Rule 19), and (3) files that the Board Chair determines should be retained "upon good cause shown."

In 2012, the Board began the significant undertaking of reviewing the retained warning files to determine which would be retained under these exceptions, and which should be destroyed. The Board enlisted the assistance of a retired Minnesota district court judge to review all disciplinary files that were closed with warnings prior to July 1, 2009, but nonetheless retained. This project was completed in 2013.¹

¹ In February 2014, the Board began expunging the large number of dismissed complaints that remained in the Board offices. This second project was completed in July 2014.

The people serving the Board are, of course, crucial to the Board fulfilling its mission. In 2013, the Board welcomed new members Jeff Bumgarner and Gerald Kaplan and thanked Cynthia Jepsen and Doug Fuller for their service. Judge Vicki Landwehr served as Board Chair during most of 2013, with Judge Jill Flaskamp Halbrooks serving beginning November 2013. The Executive Committee comprised the Board Chair, William J. Wernz (Vice-Chair), and Terry Saario (public member). The Board's longtime Executive Secretary, David S. Paull, retired from the Board at year's end. The Board's new Executive Secretary is Thomas C. Vasaly.

INTRODUCTION

A society cannot function without an effective, fair, and impartial procedure to resolve disputes. In Minnesota, the Constitution and laws provide a system designed to fit these essential criteria. The preservation of the rule of law, as well as the continued acceptance of judicial rulings, must depend on unshakeable public recognition that the judiciary and the court system are worthy of respect and trust. The maintenance of justice in our State is directly dependent on the proper conduct of our judges. It is the Board's mission to guard public confidence in the independence, integrity, and impartiality of our judicial system by enforcing the Code of Judicial Conduct and by educating judges regarding proper judicial conduct. To accomplish its goal, the Board discharges three general responsibilities:

- The Board reviews complaints alleging judicial misconduct or disability, conducting investigations when necessary.
- In cases in which the Board finds misconduct, the Board seeks or issues public discipline where appropriate and may issue non-public discipline where the improper conduct is isolated and non-serious.
- The Board advises and educates judges on the application of the Code of Judicial Conduct.

AUTHORIZATION

The Minnesota Constitution authorizes the Legislature to "provide for the retirement, removal, or other discipline of any judge who is disabled, incompetent, or guilty of conduct prejudicial to the administration of justice." Minn. Const. Art. 6, Sec. 9. The Legislature authorized the Minnesota Supreme Court to discipline a judge for "persistent failure to perform the judge's duties, incompetence in performing the judge's duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Minn. Stat. § 490A.02, subd. 2. The 1971 Legislature created the Board on Judicial Standards to assist in this task and authorized the Supreme Court to make rules to implement the legislation. Minn. Stat. §§ 490A.01-.03.

ORGANIZATION

The Board has ten members: one judge from the Court of Appeals, three district court judges, two lawyers, and four citizens who are not judges or lawyers. All members are appointed by the Governor and, except for the judges, require confirmation by the Senate. Members' terms are four years and may be extended for an additional four years.

The Board meets at least nine times annually and more often if necessary. The judge members are not paid but do receive expense reimbursement. Non-judge members may claim standard state per diem, as well as expense reimbursement.

The Board is supported by a two-person staff, the Executive Secretary and the Executive Assistant. At the direction of the Board, the staff is responsible for reviewing and investigating complaints, providing informal opinions to judges on the application of the Judicial Code, maintaining records concerning the operation of the office, preparing the budget, administering the Board funds, and making regular reports to the Board, the Supreme Court, the Legislature, and the public.

CODE OF JUDICIAL CONDUCT

The Minnesota Supreme Court has adopted the Code of Judicial Conduct to govern judicial ethics. Intrinsic to the Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The Code should not be construed so as to impinge on the essential independence of judges in making judicial decisions.

The Board considers only complaints involving the professional or personal conduct of judges. Complaints about the merits of decisions by judges may be considered through the appellate process.

RULES AND PROCEDURES

The rules of the Board are issued by the Minnesota Supreme Court. Under its rules, the Board has the power to investigate allegations of judicial misconduct or, on its own motion, to make inquiry into a judge's conduct or physical or mental condition. If a complaint provides information about conduct that might constitute grounds for discipline, the Board directs the Executive Secretary to conduct an investigation.

The rules permit the Board, upon a finding of reasonable cause, to issue a private admonition or public reprimand or to commence public hearing. The rules also permit the Board to defer a disposition or impose conditions on a judge's conduct such as obtaining professional counseling or treatment.

The Board affords judges a full and fair opportunity to defend against allegations of improper conduct. Public hearings are conducted by a three-person panel appointed by the Supreme Court. After a public hearing, the Panel may dismiss the complaint, issue a public reprimand, or recommend that the Supreme Court censure, suspend, or remove the judge. Discipline other than a private admonition or public reprimand can be imposed only by the Supreme Court.

All proceedings of the Board are confidential unless a public reprimand is issued or a formal complaint and response have been filed with the Supreme Court.

An absolute privilege attaches to any information or testimony submitted to the Board, and no civil action against a complainant, witness, or his or her counsel may be based on such information.

AUTHORITY AND JURISDICTION

The Minnesota Board on Judicial Standards has jurisdiction over complaints concerning the following judicial officials:

- State court judges, including judges of the District Courts, Court of Appeals and Supreme Court. There are 289 district court judge positions and 26 appellate judge positions.
- Approximately 100 retired judges in “senior” status who at times serve as active judges.
- Judicial branch employees who perform judicial functions, including referees, magistrates, and other judicial officers.
- Judges of the Minnesota Tax Court and the Workers’ Compensation Court of Appeals and the Chief Judge of the Office of Administrative Hearings.

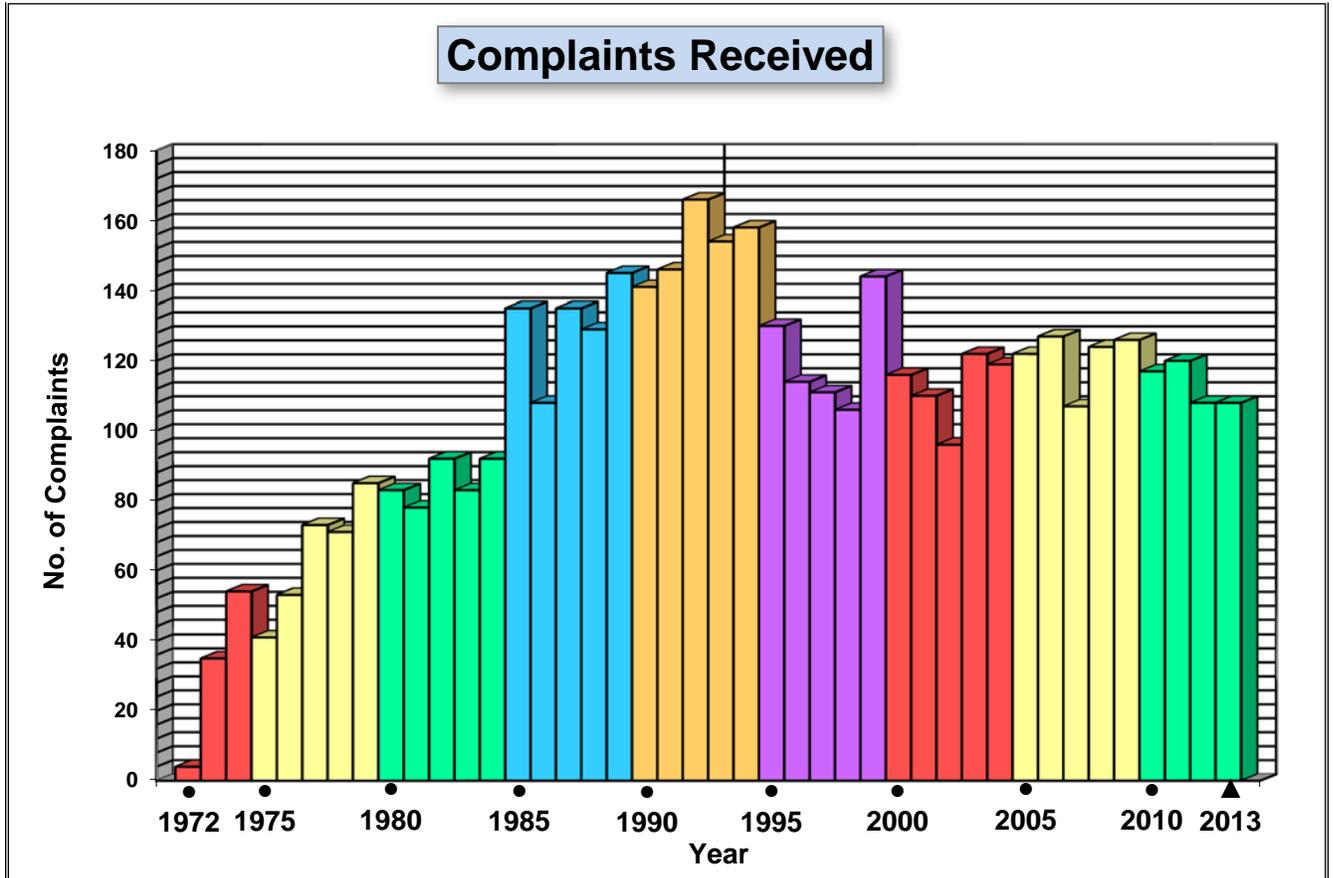
See Rule 2, Rules of Board on Judicial Standards; Code of Judicial Conduct, “Application” section; and Minn. Stat. §§ 14.48, subd. 2, 175A.01, subd. 4, 271.01, subd. 1, and 490A.03.

The Board does not have jurisdiction over complaints that concern the following persons:

- Court administrators or personnel, court reporters, or law enforcement personnel and other non-judicial persons.
- Federal judges. Complaints against federal judges are filed with the Eighth Circuit Court of Appeals.
- Lawyers (except, in some circumstances, those who become judges or who were judges). Complaints against lawyers are filed with the Office of Lawyers Professional Responsibility.

2013 CASE DISPOSITIONS

During 2013, the Board received 108 written complaints. The number of complaints received annually by the Board following its creation in 1971 is set forth below:



SOURCE OF COMPLAINTS - 2013

Litigants	51
Board	12
Inmates/Prisoners	10
Judges	9
Attorneys	10
Citizens	8
Victims	1
Anonymous	1
Other	2
Unassigned	4
TOTAL	108

ALLEGATIONS REPORTED - 2013

Bias, discrimination or partiality	60
General demeanor and decorum	49
Delay in handling court business	28
Conflict of interest	23
Abuse of authority	19
Ex parte communication	16
Improper influence, ticket fixing	16
Failure to follow law or procedure	10
Failure to perform duties	8
Reputation of judicial office	8
Administrative irregularity	7
Criminal behavior	6
Improper conduct on the bench	6
Loss of temper	6
Attorney unethical conduct prior to office	3
Chemical dependency	2
Corruption, bribery	1
Financial activities or reporting	1
Health, physical or mental capacity	1
Incompetence as a judge	1
Unassigned	1
Willful misconduct in office	1
Other	2

JUDGES SUBJECT TO COMPLAINTS - 2013

District Court Judges	97
Court of Appeals Judges	0
Supreme Court Justices	0
Referees/Judicial Officers	5
Retired Judges on Active Duty	2
Child Support Magistrates	4
Judicial Candidates	0
Tax Court Judges	0
Workers Comp-Court of Appeals	0
Chief Administrative Law Judge	0
Part time judge	0
Conciliation Court Judge	0
Disability retirement during pendency	0
No longer a judge	0
Resigned during pendency	0
Pro tem judge	0
Deceased	0
TOTAL	108

The Board requested 16 judges to respond in writing to the Board for explanation of their alleged misconduct. In addition, eight judges self-reported possible Code violations, making a request for a response unnecessary. Three judges appeared before the Board in 2013.

The majority of complaints were dismissed. The reasons for dismissal are set forth below. The total exceeds 108 because some complaints were dismissed for more than one reason.

DISMISSAL REASONS - 2013

Insufficient evidence	61
No misconduct; no violation	26
Lack of jurisdiction	9
Within discretion of judge	8
Frivolous or no grounds	7
Corrective action by judge	5
No issue left to resolve	5
Legal or appellate issues	3
Complaint withdrawn	2
Left bench, died or lost election	2
Unsubstantiated after investigation	2

As indicated below, three matters resulted in discipline and two matters were resolved with letters of caution.

DISPOSITIONS - 2013

Public reprimand	1
Private admonition	2
Letter of caution	4

PUBLIC CASES

The year 2013 was marked by the continuing litigation of the Board's complaint against Tax Court Judge George Perez. In addition, the Board issued one public reprimand. The key documents in Judge Perez's case and the public reprimand are available on the Board's website, www.bjs.state.mn.us. The cases are described below.

Judge George Perez

In May 2013, a Panel appointed by the Supreme Court found that Judge Perez had falsely certified on his timesheets that he had no cases pending longer than three months after submission. After the Panel issued its findings, the Legislature voted not to confirm Judge Perez, which caused his removal from the Tax Court. The Panel's findings were then submitted to the Supreme Court. In its decision, the Supreme Court stated:

We agree with the Board that discipline is warranted in this case. Judge Perez undermined the integrity of the judiciary because he did not comply with Minnesota law. Judge Perez failed to timely release opinions, with delay of over a year in some cases. His misconduct severely undermined the people's trust and confidence in the judicial process. Judge Perez also falsified dates in his orders so it appeared he was complying with the law. Furthermore, by making a substantial number of false statements in order to be paid, Judge Perez seriously undermined the integrity of the judicial system. The public at large, and in particular, those appearing before the tax court could have reason to question whether a judge who fails to comply with Minnesota law and makes a substantial number of false statements will respect and follow the law.

In re George Perez, 843 N.W.2d 562, 568 (Jan. 15, 2014). The Court publicly censured Judge Perez. (Since the Court's decision was issued in 2014, the matter is not reported as a 2013 disposition in the table on the previous page.)

Judge Richard Spicer

The Board issued one public reprimand in 2013. The Board reprimanded First District Judge Richard Spicer for making numerous remarks during a criminal trial which he intended to be humorous but which were insensitive and demeaning.

PRIVATE CASES

The Board issued two private admonitions in 2013. The Board issued four letters of caution to judges for failure to issue a submitted matter within 90 days as required by Minn. Stat. § 546.27.

EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

The purpose of these examples of private admonitions issued during the last several years is to educate the public and to assist judicial officers in the avoidance of improper conduct. To maintain confidentiality, the Board has eliminated the details of the individual cases summarized below. References are to the Minnesota Code of Judicial Conduct.

- Ordering judgment in favor of a landlord in an eviction case without receiving any evidence and without affording a trial to the tenants who contested the eviction. Rules 1.2, 2.5(A), and 2.6(A).
- Contacting a police chief to criticize a plea agreement proposed by the city attorney that was pending before the judge. Rules 1.1, 1.2, and 2.4(B).

- Engaging in a pattern of disparaging comments about other judges, attorneys, parties, and court staff that served no legitimate purpose and comments that reasonably appeared to the targeted attorneys and clients to be close-minded about their cases. Rules 2.2, 2.5(A), 2.6A), and 2.8(B).
- Delaying decisions in submitted cases for an unreasonable time or failing to issue an order in a submitted case within the statutory 90-day period. Rule 2.5 and Minn. Stat. § 546.27(2012).
- Initiating and engaging in ex parte communication relating to a pending case with a person who had previously acted as a witness in that same case. Rules 1.1, 1.2, 2.2, and 2.9 (A).
- Presiding in a criminal trial without disclosing to the defendant that a retainer contract to act as an expert witness was at that time in existence with the county in which the trial was taking place. Rules 1.1, 1.2, 2.1, 2.2, and 2.11.

PUBLIC INQUIRIES

The staff receives frequent inquiries about judges' conduct or that request information. The inquiries are often from parties involved in court proceedings. Callers are told how to file a complaint or are given appropriate referrals to other resources.

The staff often receives complaints that concern persons over whom the Board has no jurisdiction or that do not allege judicial misconduct. These persons are given appropriate referrals when other resources are available.

2013 FORMAL OPINIONS

The Board is authorized to issue advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct. The Board encourages judges who have ethical questions to seek its guidance. In 2013, the Board began issuing Formal Opinions on issues that frequently arise. The Formal Opinions also update, summarize, and often supersede informal opinions on the same general subjects. The Board issued two Formal Opinions in 2013:

Judicial Disqualification – Judge's Professional Relationship with Lawyer
(Opinion 2013-2)

Letters of Reference or Recommendation by Judges (Opinion 2013-1)

Formal opinions are sent to the chief judges of the Minnesota courts and are posted on the Board's website, www.bjs.state.mn.us.

2013 ADVISORY OPINIONS

Upon written request, the Board issues advisory opinions, applying the Code of Judicial Conduct to various specific questions submitted by judges. The Board will issue an informal advisory opinion to any judge. The Board did not receive any written requests in 2013.

INQUIRIES BY JUDGES

Judges regularly contact the Board office for information, material, and informal opinions on various questions involving the Code of Judicial Conduct. Sometimes, judges need immediate advice. These requests are usually handled by the Executive Secretary and/or a designated Board member.

FURTHER INFORMATION

For additional information regarding the Board on Judicial Standards, please feel free to contact the Executive Secretary at 651-296-3999.

Respectfully submitted,

/s/ Jill Flaskamp Halbrooks

Jill Flaskamp Halbrooks
Chair, Minnesota Board on Judicial
Standards

/s/ Thomas C. Vasaly

Thomas C. Vasaly
Executive Secretary, Minnesota
Board on Judicial Standards

BOARD AND STAFF BIOGRAPHIES

Jeff Bumgarner, Ph.D.

Public member. Professor and Department Head of Criminal Justice & Political Science, North Dakota State University. He teaches in the areas of policing, criminal procedure, and judicial process. He remains a licensed peace officer in Minnesota.

Timothy Gephart

Public member. Vice President of Claims at Minnesota Lawyers Mutual Insurance Company since 1985. Mr. Gephart is an adjunct professor at the University of St. Thomas School of Law, where he teaches a course on legal malpractice. He previously served on the Minnesota Lawyers Professional Responsibility Board and the Minnesota Board of Legal Certification.

Honorable Jill Flaskamp Halbrooks

Appointed to the Minnesota Court of Appeals in 1998. Private practice of law from 1985 to 1998.

Gerald T. Kaplan, M.A., L.P.

Public member. Licensed psychologist since 1977. He is the Executive Director of Alpha Human Services and Alpha Service Industries, which offer inpatient and outpatient programs for sex offenders. He is also a member of the Board of Medical Practice. Previously he served on the Board of Psychology, including two years as Board Chair.

Honorable David Knutson

Judge of District Court (First District). Appointed in 2004. Private practice of law from 1986 to 2004. Minnesota State Senator for twelve years serving Apple Valley, Burnsville, Lakeville, and Rosemount, MN.

Honorable Vicki E. Landwehr

Judge of District Court (Seventh District). Appointed in 1993. Private practice of law from 1979 to 1993.

Honorable Ellen L. Maas

Judge of District Court (Tenth District). Appointed in 1995. Law clerk for Minnesota Supreme Court Justice Glenn E. Kelley 1981-1982. Private practice of law from 1982 to 1995.

Terry Saario, Ph.D.

Public member. Former foundation executive and community volunteer. Dr. Saario has more than 26 years of philanthropic experience and extensive nonprofit and corporate board experience.

Cindy K. Telstad

Attorney member. Private practice of law in Winona since 1987, primarily in the areas of real estate law, employment law, probate and trust administration, estate planning, and business law.

William J. Wernz

Attorney member. Former partner, Dorsey & Whitney. Director of the Minnesota Office of Lawyers Professional Responsibility from 1985-1992 and author of *Minnesota Legal Ethics: A Treatise*.

Thomas C. Vasaly

Executive Secretary. Admitted to practice in 1974. Mr. Vasaly has worked in legal services programs, the Office of Lawyers Professional Responsibility, and the Attorney General's Office.