As an avid collector of legal ethics works, it's with special pleasure that I now can add to my hard-copy library a reviewer's copy of Bill Wernz's "Minnesota Legal Ethics: A Treatise."1 With its publication, Minnesota lawyers will enjoy perhaps the most important ethics publishing event in the history of the Minnesota bar. That doesn't say nearly enough for this truly fine work. At least in the treatise line, Bill's only direct competition is the meager and hopelessly dated effort that the late Morris Clark and I put together in the mid-1970s2—well back in the stone age of legal ethics scholarship. It was not remotely as fine a book as is Bill's.

One can't imagine a better-credentialed author to write such a work. Bill served for seven years as head (1985-1992) of the Office of Lawyers Professional Responsibility (OLPR), succeeding Mike Hoover who hired him as assistant disciplinary counsel four years before that. More recently, Bill has been a partner at Dorsey & Whitney serving as their inhouse ethics guru. He has read and written widely on legal ethics topics, litigated many cases involving lawyers, and given expert testimony on legal ethics. Throughout much of his career, he has had the opportunity to work with some of the finest and most deservedly regarded names in the Minnesota bar.

Accessible to All
Minnesota Legal Ethics is extraordinary in several additional ways beyond its author. To start, it's being published in the most accessible fashion imaginable—as an online e-book. Any lawyer, judge, law student, nonlaw student, client, or curious citizen can download and consult it, any time, anywhere. (While a print edition might appear later, I'm holding on to my reviewer's copy as a potential collector's item.) Due to the Minnesota State Bar's commendably public-spirited financial and editorial assistance, the treatise is absolutely free to anyone and everyone seeking a copy. If only the American Bar Association and some other state and local bars around the country took a similarly public-spirited approach. I appreciate that bars make money selling books, ethics opinions, and the like. But a price tag inevitably curtails circulation and severely limits the bars' public outreach and the usefulness of these publications to the bar and the public. Hats off to the MSBA!

Minnesota Legal Ethics is also an ongoing and hopefully collaborative project. The part being published now—weighing in at almost 400 pages—is wide in scope and deep in coverage. But more is to come. Online publication of a large part of the whole now allows what Bill has already wrestled to earth to be published while it's still current, and it's more likely to have an immediate impact. I'm deeply envious. The Sisyphean task for any writer of a comprehensive treatise is getting everything into publishable shape before any part becomes out-of-date. Serial publication online allows that. In the case of this treatise, it also gives Bill the opportunity to invite others to help on parts yet unwritten, as he suggests in his Introduction (pages 8-9). Given the high quality of the first-published parts, it's likely that volunteers are already lining up. Bill, and hopefully others, will be available to keep the text current with online updates, which one devoutly hopes will happen.

Thankfully, the initial publication of Minnesota Legal Ethics tackles at the outset some of the most important and pervasive ethical issues of practicing lawyers. In fact, the great bulk of the work now available, from page 97 onward, is devoted to conflicts of interest—by far the most litigated of contemporary issues in legal ethics. (So pervasive are conflicts questions, particularly in large firms, that, as Bill notes, some firm lawyers have come to refer to all ethics issues as "conflicts" issues.) A short review such as this cannot do justice to the scope of Bill's discussion. Suffice it to say that there is little about conflicts of interest that he doesn't cover about as well as existing Minnesota authority permits.
Valuable Insights

Bill's thinking is sharply reasoned, and his writing is clear and wry. He writes with a personal “voice” and viewpoint. Unlike some legal ethics writing, this treatise will leave no reader guessing where Bill's heart is or where he thinks the paths of sound moral and practical outlook and careful lawyering should lead. The work occasionally discusses moral and even religious themes front on, without apology. Yet, the writing isn't preachy, nor does it nag.

Wernz also occasionally takes advantage of one of the prerogatives of a legal treatise writer—revisiting a case or cause from the past in which he was personally involved. (Those occasions seemingly are always identified.) Bill's targets are large ones, such as the entire episode of Minnesota Supreme Court Justice Todd's self-sanctioned open-book cheating on his Florida bar exam as he was heading toward retirement, as well as the drawn-out and ultimately tepid disciplinary response to it (pp. 30-35). Bill also notes smaller episodes such as an unreported decision of the OLPR dismissing an ethics complaint against him by a character known as “The Earth Protector” (p. 92). Whatever one's own ultimate views on such issues, to my mind those presented are either plainly correct or at least well-worth considering. Also, the book often provides access to hitherto hard-to-get-at documents from the historical record.

Bill's analysis on the great mass of the legal ethics topics that I reviewed is spot on. One can pick nits here and there. Here's a very small nit, but I need some evidence suggesting that I read the work critically. I don't think it's literally correct that “[t]he American Bar Association opposed the Brandeis nomination” (p. 101)—although the media audience of the time probably shared that impression. To be sure, seven former presidents of the ABA did publicly oppose his nomination, including Brandeis' future colleague on the Supreme Court, president Taft, but not, I believe, the ABA as an organization.

Broad Scope

The treatise discusses many Minnesota ethics issues and ethics decisions, as one would expect, but this work will also be of interest to those interested in the law of lawyering beyond legal ethics narrowly defined. Naturally, it comprehensively reviews and analyses Minnesota authorities. Those include reported as well as unpublished decisions of Minnesota's state and federal courts, provisions of the Minnesota Rules of Professional Conduct, articles in the Minnesota Lawyer, decisions of the Lawyers Professional Responsibility Board (LPRB), and opinions and reports of the OLPR. (Much of that authority that's available online is hyperlink from the text.) Bill is particularly apt to report views of OLPR lawyers, primarily from their published thoughts in their columns in Minnesota Lawyer and Bench & Bar. Those views will be helpful for lawyers defending complaints or cases before the LPRB. But he widens the focus usefully when Minnesota authority is sparse or nonexistent. His references include but extend beyond the usual suspects—the Restatement of the Law Governing Lawyers of the American Law Institute, national treatises, ABA ethics opinions, Bill Freivogel's online “conflicts” e-book, and the like. He also displays an impressive appreciation for significant law review scholarship and well-known case authority from other jurisdictions that have been widely followed in other states.

In years gone by, I would have said that Minnesota Legal Ethics ought to be in the library of every Minnesota lawyer. Happily, I can say that it is—at least it's within the immediate, free, and easy reach of every Minnesota lawyer (or anyone else) connected via broadband to the internet. All you need do is go to: www.minnesotalawyering.com and you'll be quickly connected to the downloadable (.pdf) version of the book. I'm not aware of a single other instance where such a rich store of useful and important information and analysis was made available so widely at no cost to the user.

Notes


