

**PROFESSIONAL
RESPONSIBILITY
AND DISCIPLINE**

By

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Reprinted by *Bench & Bar of Minnesota* (February 1971)

AREAS OF INQUIRY AND COMPLAINT*

My attempt here is to set forth what I have considered to be common recurring problems facing the Counsel, with some evaluating comments:

Fee Disputes — This is perhaps the most bothersome problem at the local ethics committee level. Our State Committee has generally looked upon these as civil and not ethical in nature. I do not recall having forwarded a matter involving a fee dispute to the State Board of Law Examiners. The rule has been that if a fee is unconscionable, it should be considered by the disciplinary body. However, I have found that a fee which shocks the conscience of a client will not necessarily have the same effect on his lawyer. The difficulty most often arises from a lack of communication. In the usual case, the attorney renders his statement when the case is completed. When the client receives the statement, instead of calling the lawyer and expressing dissatisfaction, he goes directly to the ethics committee. It then becomes a three-sided affair. Many of these fee dispute complaints could be resolved by immediately putting the client in contact with the lawyer and asking the lawyer to report to the ethics committee. Most fee disputes would never reach the complaint stage if they were initially subject to a discussion between the lawyer and his client. However, the attorney involved is often the last to know about the dissatisfaction with the fee.

Other recommendations have included the formation of an arbitration committee, whose decisions would be binding upon the attorney. There is merit to this suggestion; however, the attorneys of the state would have to agree to such a procedure.

Lack of Communication — Of course, all of us know that this is the most prominent problem in the Bar as well as in other endeavors in life. If the lawyers of this state, or any state, could keep in constant communication and keep their clients properly informed, the disciplinary machinery would be practically out of business. Most attorneys fail to phone or correspond with their clients about pending matters. Speeches, articles and reminders in Bar Association Journals are helpful; unfortunately, many lawyers most in need of these reminders never attend Bar Association meetings or read legal periodicals.

Crank Complaints — Approximately one quarter to one third of your time as Counsel will be spent talking to people who actually have no legitimate complaint whatsoever. Some of these folks are most persistent and require a good deal of attention in attempting to give them some type of satisfactory explanation. In

this category are those people who are on the verge of mental instability. In the past, they have made life miserable for their own attorney and they can do the same for the people involved in the disciplinary procedure.

Poor Losers — The reference here is to those who, either because their attorney has inflated their chances of prevailing in a law suit, or because of their own unwarranted ideas of the merits of their cause, are tremendously dissatisfied when their case is lost. Often times when they make their complaint, appeal time has lapsed and there is no further legal relief available. Unable to let by-gones be by-gones and close the case from their minds, they strike upon the disciplinary machinery as a further legal method or weapon with which to reopen or keep alive their legal cause. The ethics committee cannot act as a reviewing body, nor can they second guess the court that has already decided the case.

Disabled Lawyer — This concerns the attorney who is having tremendous personal problems arising out of marital, alcoholic, mental or emotional difficulties. I believe that extreme economic over-extension might also be included. This is a recurring problem; we see a number of very similar cases each year. The lawyer's attention to business grows progressively worse as his problem becomes more acute. Unfortunately, while we stand helplessly by waiting for the lawyer to hit the bottom so we can exercise extreme disciplinary action, the lawyers' clients go down with him. I am pleased that the new Rule anticipates this serious drawback by providing for "preventive discipline". This is one of the problems former Justice Tom Clark felt to be most severe.

Income Tax Problem — Several attorneys in this state, during the past three years, have failed to file their federal income tax returns. When discovered, they generally entered a plea of guilty and were placed on probation. Subsequently, when elaborated before the state ethics committee, their explanations were usually not completely coherent. Since January 1, 1970, the federal district court has adopted a procedure for suspension in cases such as this. Failure to file income tax returns is a federal misdemeanor. Generally, our Committee has looked upon this as a matter not involving moral turpitude. As a result, there has been no severe discipline imposed. I think the lawyers of the state would be well served if a policy statement were issued containing a clear expression of the effect failure to file income tax returns will have on professional standing:

Advertising and Solicitation — This has not been a problem as far as our office is concerned. However, it is the subject of constant conversation among attorneys in practice. It seems that most lawyers feel that there is a fair amount of solicitation, but no one has wished to file complaints against other lawyers with respect to it.

I would guess that this general area may well become the subject of future ethics opinions, particularly with respect to group legal services. Already we have had one case before our Committee. I have prepared briefs for the three U.S. Supreme Court cases, the NAACP, Brotherhood of Railroad Trainmen and United Mine Workers cases. As you know, the new Code of Professional Responsibility has

limited group legal services to the constitutional expression contained in those three cases, and prospectively, to subsequent decisions as they are handed down.

Heinous Conduct — This category includes all of the infamous acts known to humanity, most especially the ultimate compromise of an attorney . . . the personal use of his clients' trust account, the failure to file a minor's passbook after the settlement of a personal injury case, or other form of stealing from a client. Each year we see about a dozen of these very serious complaints. They are not merely matters of ethics, they are criminal acts requiring immediate attention.

Discourtesy — A lawyer's lack of courtesy, when visited upon a police official, a judge, another lawyer or (particularly) a client, is a sure way to generate a complaint against the attorney. A momentary loss of temper or a discourteous statement which results in embarrassment or hurt feelings often reaches the ethics organization with the aggrieved party crying out for vengeance. Much time is then spent investigating the complaint. The attorney involved is required to respond to the complaint and, often times, to appear before the Committee in an attempt to correct his act of discourtesy. It seems to me worth mentioning that the more courteous lawyers are, the less complaints we have to handle.

We have followed the general policy that when a complaint is filed against an attorney with respect to pending litigation, civil or criminal, and the attorney is involved in the litigation either as a client or an advocate, we advise the complaintant and the attorney that the complaint has been received and the nature of the complaint. We also advise the attorney and the complaintant that no action will be taken pending the outcome of the litigation.

I have also noticed that there is a problem on top of a problem when an attorney involved with a disciplinary complaint fails to cooperate with the disciplinary organization.

In general, I have found that this is one field where trial by ambush is not recommended. Much time can be saved by immediately contacting the attorney against whom a complaint is made. The vast majority of attorneys in this state are attempting to act in a professional and ethical manner in conducting their practice. They will cooperate and much needless work can be spared by immediately advising the attorney involved of the nature of the complaint. More often than not, the difficulty will be cleared up by that attorney.

* Ed. Note: With the advent of the new Supreme Court Rule on Professional Responsibility and Discipline, George R. Ramier resigned February 1, 1971, following three years of service as retained Counsel to the Minnesota State Bar Association Committee on Professional Responsibility and Discipline, formerly known as the Practice of Law Committee. This article is an edited excerpt from a letter written as a professional courtesy by Mr. Ramier to his full-time successor, Mr. Richey Reavill of Duluth, who requested a capsule commentary on areas of inquiry and complaint.