

LAWYERS' RESPONSIBILITIES FOR EACH OTHER

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Any enlightened system of ethics will address the ways in which people are responsible for one another. Terrible events or conditions, such as assassinations or famine, often provoke questions of social responsibility. In lawyers' circles, scandals such as Watergate or theft of clients' funds make us question our responsibilities for each other and for the profession. These responsibilities have been addressed by the Supreme Court and by Bar groups.

The new Rules of Professional Conduct specify lawyers' responsibilities for each other in several important and novel ways. Lawyers will have to become more aware that other lawyers' disciplinary rule violations can affect them as well as the offenders.

Rule 5.1, "Responsibilities of a partner or supervisory lawyer", makes supervisory lawyers responsible for subordinates' actions in two ways. First, Rule 5.1(a) requires partners to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurances that all lawyers in the firm conform to the Rules of Professional Conduct." At a minimum, partners are thereby required to see that the firm's structures and procedures (*e.g.*, regarding trust accounts, filing, orientation of new employees, form contingent fee retainer agreements that comply with Rule 1.5, education and conflicts) are properly established. Second, Rule 5.1(b) and (c) requires supervisory lawyers to make reasonable efforts to ensure their subordinates' conformity to the rules, and makes the supervisory lawyer responsible for the subordinate's (or other partner's) violation if the violation is ordered, ratified, or not mitigated when possible.

Rule 5.2 states the subordinate lawyer's responsibility to abide by the rules even when directed to the contrary. Rule 8.4(a) reiterates the duty not to violate the rules through another's acts.

Rule 8.3(a) modifies the obligation to report another lawyer's misconduct. Now lawyers are required to report only rules violations that raise "a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects" The rule was modified because lawyers were seldom, if ever, disciplined for failure to report others' minor infractions. This office in the past occasionally disciplined lawyers who, as a means of gaining some advantage, threatened to report others' alleged disciplinary violations. Rule 4.4 states, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person"

Lawyers within firms bear specific responsibilities for each other in several regards, including trust account practices and imputed disqualification because of conflicts or the need to be a witness. Rule 1.15 imposes detailed requirements for trust accounts, which are further specified by Amended Opinion No. 9 of the Lawyers Professional Responsibility Board (LPRB). Rule 1.15(h) requires lawyers to certify to the

Supreme Court that the firm's books and records are as required.

Rule 1.10, "Imputed Disqualification General Rule," specifies the circumstances in which a firm may be disqualified from representation because of a member's conflicts. The subsections of this rule apply variously to current associates of the firm, incoming lawyers, and departing lawyers. At a time of frequent law firm merger, the rule is of particular importance.

The Minnesota Supreme Court created a unique version of Rule 3.7 "Lawyer as Witness," by adding the following italicized words to the ABA model: "A lawyer shall not act as an advocate at a trial in which the lawyer *or a lawyer in the firm* is likely to be a necessary witness, [with certain exceptions]."

Any enlightened ethical system should also recognize that rules, while necessary and important, are only part of the means for achieving the good that is sought. The new rules recognize that "the ethical atmosphere of a firm [and a profession] can influence the conduct of all its members." It is also understood that compliance with the rules "depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings." New complexities and commercial pressures upon lawyers make taking ethical responsibility for one another all the more necessary to maintain the professional atmosphere of lawyering.

Going beyond their mandated responsibilities for each other, lawyers have voluntarily offered mutual support in many ways. Many lawyers subject to disciplinary inquiry have been represented on a *pro bono* basis. Volunteer probation attorneys supervise the approximately 75 Minnesota attorneys subject to court-ordered or LPRB-approved probation. These supervisors serve without compensation, helping to correct others' problems, so that more severe discipline is stayed. Another group whose good work for other lawyers (and judges) deserves recognition is Lawyers Concerned for Lawyers (LCL). LCL intervenes to help and support lawyers with chemical dependency problems. The tradition of lawyering in which we once referred to each other as, "my brother" is carried on most effectively by LCL.

Unfortunately, volunteer efforts for other lawyers have not always been sufficient. The MSBA has for many years operated a client security fund out of Bar dues. This voluntary fund is no longer sufficient.

On March 18 the Minnesota Supreme Court will consider a petition to transfer the Client Security Fund and its administration to the Court. The petition for this change was filed by MSBA and supported by the LPRB. It entails a financial commitment from each registered lawyer to accept responsibility for others' defalcations. The unfortunate background of the petition is in the inadequacy of the MSBA's Client Security Fund for compensating victims of a St. Paul lawyer's misappropriations. Continued support among lawyers for a registration fee that adequately funds the LPRB, the boards of Continuing Legal Education and Law Examiners, and now the Client Security Fund, evidences the responsibility for each other that we accept as lawyers.

At a time of great changes in lawyering and increasing economic competition among lawyers, we should remember the responsibilities we have for each other, prescribed and voluntary. Our reputations depend, in part, on the actions of our professional brothers and sisters, and the responsibility we take for them.