

REPORT . . .
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

By

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DR 1-103, of the Code of Professional Responsibility, provides that a lawyer who knows about another lawyer's violation of the Code of Professional Responsibility shall report that knowledge to the tribunal empowered to investigate or act upon such information.

There has been a large increase both in the volume of complaints received by this office and in the number of matters requiring disciplinary action after investigation. Only a small percentage of the complaints received, however, are filed by attorneys. The majority of lawyer complaints concern advertising, solicitation, and other "competitive" practices. Ironically, most of these complaints reflect a misunderstanding of new advertising rules by the complainant.

The *Clark Report*, issued in 1970 by the American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, declared at 131:

"Although lawyers and judges have the necessary background to evaluate the conduct of attorneys and are far better equipped than laymen to recognize violations of professional standards, relatively few complaints are submitted to disciplinary agencies by members of the profession. This fact has been cited as a major problem by nearly every disciplinary agency in the United States surveyed by the Committee."

Professional critics of the lawyer disciplinary system are not the only ones concerned about the apparent failure by lawyers to report obvious disciplinary violations. The September, 1979, *Reader's Digest* printed an article by James Nathan Miller entitled "Why Crooked Lawyers Go Free". His caustic criticism of the lawyer disciplinary system included the following volley:

". . . Almost all complaints against lawyers come from the group that's least likely to report serious offenses: clients. Their complaints most frequently involve fee disputes in minor cases (car accidents, divorces, etc.) that are handled by neighborhood practitioners. And, of course, clients never report lawyers who help them commit perjury, cheat on their income taxes, etc. So, by and large, grievance committees don't hear of important violations of the law by big-time lawyers.

Clearly the profession is not disciplining itself. Lawyers are leaving it to outsiders — non-professionals — to select their cases for them; in the process they're catching only little fish. And they are letting even these small fish off either with no punishment or with a secret and toothless warning not to do it again."

I do not agree that Mr. Miller's broadsweeping charges apply in Minnesota. Like Mr. Miller and the Clark Committee, however, I am also concerned that lawyers, for whatever reasons, are not reporting obvious, serious violations of the Code of Professional Responsibility.

Filing an ethics complaint against a fellow attorney is a serious and difficult matter. I believe that disciplinary rules, like other rules, should be interpreted reasonably and would concede that DR 1-103 was not drafted to require a report of every minor, technical, unintentional, and harmless breach of the disciplinary rules. The problem, however, is that there have been recently a number of serious known violations which have gone unreported by attorneys.

We have had cases where lawyers have had strong reason to suspect the conversion of client funds by an attorney, but have not asked us to commence an investigation. The investigations which were subsequently commenced did indeed reveal instances of conversion, some of which occurred or continued after the time when a report should have been made to our office. In other cases, we have filed public disciplinary petitions, only then to be advised of serious misconduct known to local attorneys years before the misconduct alleged in the petition was committed by the respondent lawyer.

One of the primary purposes of disciplinary proceedings is the protection of the public. An attorney guilty of serious misconduct must be disciplined. Yet, because prior misconduct goes unreported, there have been cases in which the public has been further harmed by the subsequent misconduct of the offending lawyer.

Attorneys who fail to report the significant misconduct of one of their peers may feel they are doing him a favor. Frequently the reverse is true. Attorneys whose misconduct stems from alcohol or other impairments may, at an earlier date, be referred to the sources of assistance they need to salvage their personal and professional lives. Discipline for early acts of misconduct may serve as a deterrent to later and often more serious misconduct. Rehabilitative and corrective measures may be implemented by the erring attorney at an early date.

Contrary to Mr. Miller's sweeping condemnation of lawyer disciplinary systems, Minnesota lawyers can take pride in their self-regulatory efforts. We must, however, do better than we have done if we are to respond adequately to his and others' criticism about the failure of attorneys to abide by DR 1-103. If lawyers expect the public to have confidence in the disciplinary process, they themselves should be committed to notifying the disciplinary agency whenever they have substantial reason to suspect serious misconduct by a fellow lawyer.