



## PROFESSIONAL RESPONSIBILITY

# IN RE UNPROFESSIONAL CONDUCT OF WILLIAM J. CLINTON

BY CRAIG D. KLAUSING

Generally the work of the lawyer disciplinary system grinds on in relative obscurity. Unless personally involved in a disciplinary proceeding, most of us remain blissfully ignorant of the workings of the system. Occasionally, when the alleged unprofessional conduct is particularly egregious, or when the disciplined lawyer enjoys a particularly high profile, the disciplinary system is cast in the spotlight. This has seldom been truer than now, when an Arkansas attorney, while not currently practicing law, is the subject of two ethics complaints (Attorney William Jefferson Clinton, Arkansas Bar I.D. # 73019, CPC Docket Nos. 2000-013 and 2000-018).

The Clinton proceeding has generated extensive coverage and commentary, seemingly as much about politics as about attorney ethics, yet the proceeding offers uncommon visibility to the disciplinary system. While the licensing and discipline of attorneys are handled differently in Arkansas than in Minnesota, an examination of the Clinton case can offer us some insight into the Minnesota system as well.

At the risk of belaboring the obvious, it is helpful to recapitulate the factual basis for the Clinton disciplinary proceeding. President Clinton was named as the defendant in a civil lawsuit brought by a former Arkansas state employee, Paula Jones. As part of their discovery in the case, Jones's lawyers sought to obtain information regarding individuals "with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant time frame state or federal employees." Over Clinton's lawyer's objections Judge Susan Webber Wright ruled that Jones was entitled to that information. Jones's lawyers subsequently deposed President Clinton.<sup>1</sup>

Judge Wright later found that "the President responded to plaintiff's [deposition] questions by giving false, misleading and evasive answers that were designed to obstruct the judicial process." Specifically, the judge found that "the President's sworn statement concerning whether he and Ms. Lewinsky had ever been alone together and whether he had ever engaged in sexual relations with Ms. Lewinsky" were in clear violation of the court's discovery orders. The judge referred the matter to the

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Arkansas disciplinary authorities.

The first thing one may note is that these facts do not involve the President's conduct as a lawyer. President Clinton's "false, misleading and evasive answers" were provided not in his capacity as a lawyer, but in his role as a defendant in a civil lawsuit. For the purposes of the Minnesota attorney disciplinary system, does that matter? The short answer is that it does, but only to a limited extent. In Minnesota the Director's Office has jurisdiction to consider allegations of attorney misconduct whether or not the conduct involved the practice of law.<sup>2</sup> However, the Director's Office limits those investigations to allegations that, if true, would constitute serious misconduct reflecting adversely on the attorney's fitness to practice law. Under Rule 8.4, M.R.P.C., allegations that a lawyer gave false testimony in a legal proceeding would constitute a sufficient basis for the Director to initiate an investigation.

A second issue the Clinton complaint highlights is how cases come to the attention of disciplinary authorities. The Clinton complaint was based in part on the complaint of Judge Wright. In Minnesota, communications from judges are viewed with particular seriousness by the Director's Office. Judges are uniquely situated to observe and to communicate to disciplinary authorities possible misconduct by lawyers. Unlike adverse parties to the litigation, judges are not partisans in the dispute and are more likely to provide a dispassionate and analytical complaint. Finally, in their role as fact-finders, judges are often able to provide the Director's Office with information beyond unsupported allegations. In her opinion, Judge Wright specifically discussed her findings of wrongdoing by the President and con-

cluded that the "record leaves no doubt that the President violated this Court's discovery Order regarding disclosure of information deemed by this Court to be relevant to the plaintiff's lawsuit."

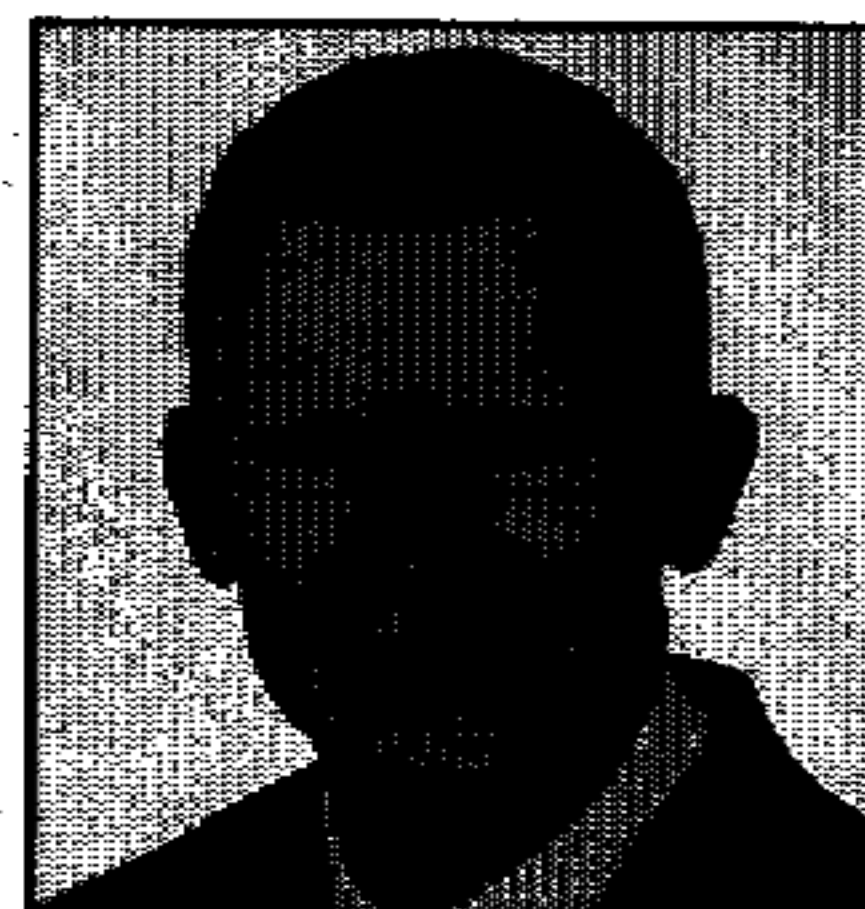
The disciplinary proceeding against President Clinton also raises the question of what the appropriate sanction is for a lawyer who lies under oath. How does the Minnesota Supreme Court decide what discipline it will impose?

In determining the appropriate discipline for attorney misconduct, the Court considers: the nature of the misconduct, the cumulative weight of disciplinary violations, the harm to the public and the legal profession, and the preservation of the integrity of the bar and the system for the administration of justice.<sup>3</sup> Regarding the type of misconduct found by Judge Wright, the Court has spoken in no uncertain terms of the importance of honest conduct and the severity of sanctions to be imposed for dishonest conduct. "Honesty and integrity are chief among the virtues the public has a right to expect of lawyers. Any breach of that trust is misconduct of the highest order and warrants severe discipline."<sup>4</sup> However, the Court has also distinguished an extensive pattern of lying from cases involving a single instance of dishonesty or fabrication.<sup>5</sup>

In one Minnesota case, the plaintiffs, two former clients who had obtained a judgment against the lawyer, sought to discover information about the lawyer's financial situation. The conciliation court ordered the lawyer to complete and return to the judgment creditors a financial disclosure form. The lawyer "returned the forms, but substantially underreported his income. He also failed to disclose or affir-

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matively denied the existence of an investment account owned jointly with his wife; the existence of his incorporated law practice; an automobile and two investment accounts . . . and a boat and some horses."<sup>6</sup> The Court noted that the attorney himself decided which assets might be exempt rather than listing them as a judgment-debtor must list them. The Court described the lawyer's conduct as "misguided stubbornness and obstinacy which led him into dishonest, false and misleading conduct" and suspended him from the practice of law. President Clinton attempted to justify his answers as being defensible because he viewed the questions as being part of a politically inspired lawsuit.<sup>7</sup> Judge Wright noted that even if this were so, the President did not have the option of unilaterally deciding what information he would provide.

The Court has also suspended attorneys for misconduct in the role of attorney. A Minneapolis lawyer, representing a client in a no-fault insurance arbitration matter, took an insurance endorsement form from another client's file and submitted it to the arbitrator. The lawyer then failed to inform either the opposing counsel or the arbitrator of the source of the endorsement (even after learning that the arbitrator had relied on the endorsement form as the basis for his decision). The lawyer, who had no prior disciplinary history, was suspended for six months.<sup>8</sup> In another case, a family law lawyer drafted and notarized an affidavit of no answer for his client that the lawyer knew to be false. He also submitted a proposed finding to the court stating that "at the commencement of this action no separate proceedings for dissolution had been commenced by either party . . . and no such proceeding was pending." The lawyer knew that a dissolution proceeding was pending in another state. This lawyer received a six-month suspension.<sup>9</sup>

The Minnesota Supreme Court considers not only the discipline imposed for similar acts of misconduct, but also "the harm to the public and the legal profession, and the preservation of the integrity of the bar and the system for the administration of justice."<sup>10</sup> As the Court has stated in numerous opinions, the primary purpose of attorney discipline is "not to punish the attorney, but . . . to guard the administration of justice." Therefore, the Clinton case could warrant imposition of greater discipline than would normally be imposed because of the high visibility of the lawyer involved, his office, and the impact his conduct might have on the administration of justice.

The Minnesota Supreme Court also recognizes deterrence as a factor in determining the appropriate discipline. The Court has rejected recommended discipline where it believed the discipline would not "adequately serve to deter misconduct of this type by members of the bar in general and by respondent specifically."<sup>11</sup> In her decision, Judge Wright noted the deterrent effect of imposing sanctions in the *Jones v. Clinton* litigation: "[s]anctions must be imposed, not only to redress the misconduct of the President in this case, but to deter others who . . . might themselves consider . . . engaging in conduct that undermines the integrity of the judicial system."<sup>12</sup>

Finally, in determining the appropriate discipline, the Minnesota Supreme Court may consider mitigating factors. While the Court considers mitigating conduct, mitigation does not excuse the misconduct. In disbaring an attorney, the Minnesota Supreme Court noted that the lawyer's mitigating evidence, including his *pro bono* work and his service as a family court referee, were outweighed by the severity of his misconduct.<sup>13</sup>

As stated in the preamble to the Minnesota Rules of Professional Conduct, "a lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice." When a lawyer fails in that special responsibility, the attorney disciplinary system attempts to address that failing. For all of its visibility, the matter of William J. Clinton presents many of the same issues present in all disciplinary proceedings. As it does in hundreds of cases with less visibility, the system attempts to fashion a resolution that is fair to the public, the legal system, and the lawyer. □

### NOTES

1. See *Jones v. Clinton*, 36 F.Supp.2d 1118 ff. (E.D.Ark. 1999)
2. *In re Scallen*, 269 N.W.2d 834 (Minn. 1978).
3. *In re Thedens*, 602 N.W.2d 863, 865 (Minn. 1999).
4. *In re Ruffenach*, 486 N.W.2d 387, 391 (Minn. 1992).
5. *In re Thedens*, at 865.
6. *In re Ruffenach*, at 389.
7. *In re Jones v. Clinton*, at 1127.
8. *In re Zotaley*, 546 N.W.2d 16 (Minn. 1996).
9. *In re Klien*, 442 N.W.2d 317 (Minn. 1989).
10. *In re Thedens*, at 865.
11. *In re Daffer*, 344 N.W.2d 382, 386 (Minn. 1984).
12. *Jones v. Clinton* at 1131.
13. *In re LaChapelle*, 491 N.W.2d 17, 21 (Minn. 1992).

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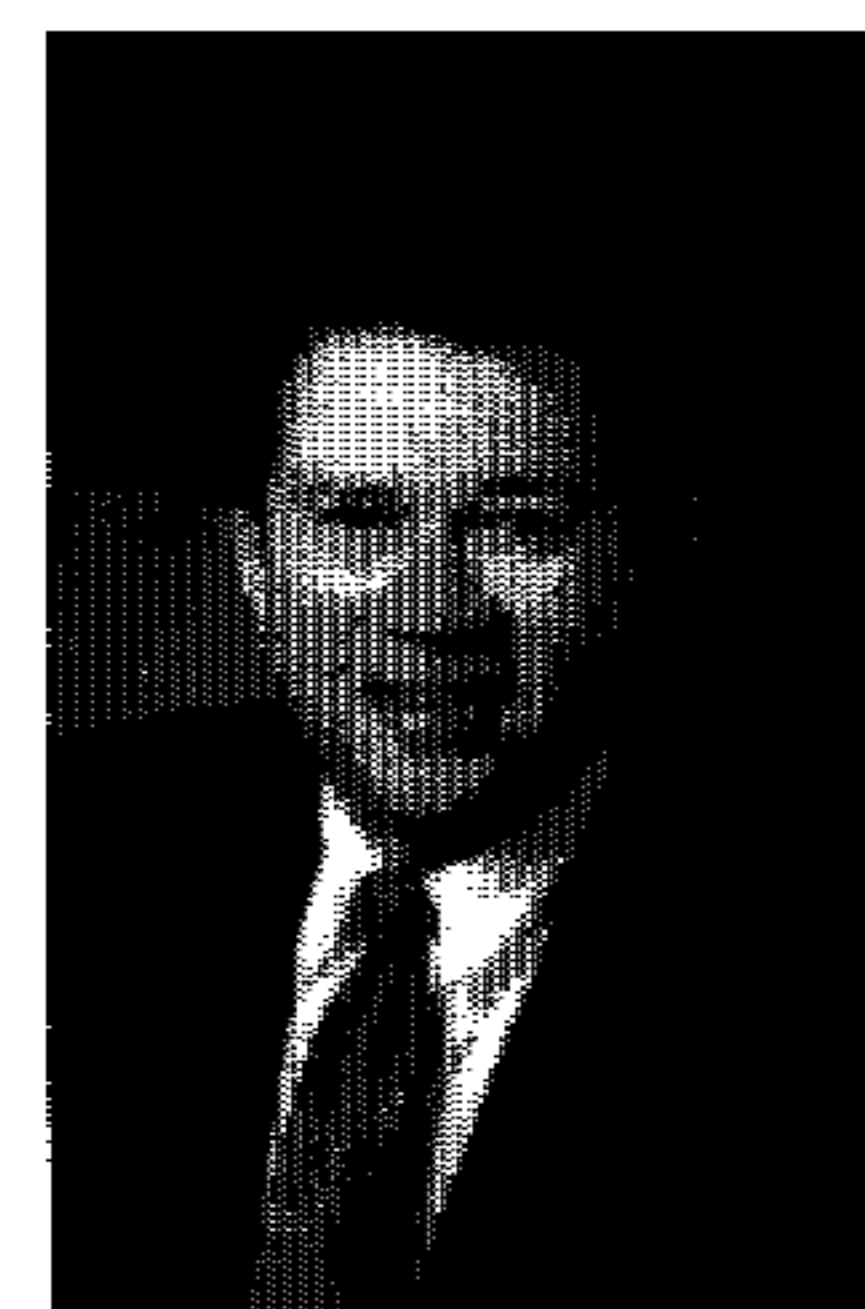
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