

**THE CODE OF PROFESSIONAL RESPONSIBILITY:
TO WHOM IT APPLIES**

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Convention Remarks of American Bar Association President Edward L. Wright

While my brief remarks of today are entirely of my own composition, my subject was specifically chosen by President Padden. He framed his request in the form of a question, which I quote verbatim: "Would it be possible to impose upon you a request to direct your Address towards the current status of group legal services and public interest law firms in relation to the new Code of Professional Responsibility? . . ."

The Code of Professional Responsibility was promulgated by the House of Delegates of the American Bar Association on August 12, 1969. It is fully effective in 33 states by virtue of court orders and it has been approved by the bars of 10 additional states, each of which has petitioned its court of last resort to enter an order of adoption. Immediately after the Code was promulgated, I ventured the cautious opinion that probably five years would pass before the Code was adopted by 90% of the states, the District of Columbia and Puerto Rico. My confident prediction now is that by the end of this calendar year, the Code will have been adopted as the standard governing authority in all save a half dozen jurisdictions.

While some states have adopted the Code with minor modifications, the overwhelming majority have accepted it without change. At least one jurisdiction has liberalized the provisions of Disciplinary Rule 2-103, which covers group legal services, while at least two others have added restrictive language thereto. For the purposes of our discussion today, these changes in different directions do not constitute exceptions to the basic obligations of the Code.

Lawyers practice their profession in a variety of relationships and circumstances. There are today approximately 327,000 legal licensees in good standing in the United States. No one knows for sure how many are actually engaged in the practice of law; in this sense, we include as practitioners not only those who are in the general practice, but also judges, government lawyers at all levels, corporate lawyers, law teachers, and those lawyers engaged exclusively in any of the numerous types of legal services programs. Based upon bits and pieces of evidence over the country, which are about all we have to go on, I estimate that the number of active practitioners is somewhere in the neighborhood of 275,000.

The Code of Professional Responsibility applies to the professional activities of all lawyers.[Ftn 1](#) It makes no exception, and properly so. Under the Code there is no dual standard or other multiple

standard. There is one norm for all lawyers in their professional conduct. Most of you are aware of the two new bills in the Congress for the creation of an independent legal services corporation to administer federally funded legal service programs currently operating out of the Office of Economic Opportunity. One of these bills is actively sponsored by your Senator Walter F. Mondale, while the other is an Administration measure. Despite some differences of language and approach, both bills have much in common and are identical in their ultimate objective of preserving the professional independence of the lawyers who work in the programs and directly serve clients in the field.

Last month, at the invitation of its Chairman, I testified before the Subcommittee on Employment, Manpower and Poverty of the Senate Committee on Labor and Public Welfare, on the two bills. I read and filed a formal statement, pursuant to the authority of the ABA Board of Governors, supporting the principle of a separate legal services corporation to administer the programs in question but not expressing preferences between non-parallel provisions of the two bills. After the formal statement, I was examined at length by a number of members of the Subcommittee, of whom Senator Mondale was one. Again and again I was asked whether the Code of Professional Responsibility applied in its entirety to OEO legal services lawyers or the lawyers who would be employed by any separate legal services corporation in succession to OEO. Each time I answered unequivocally in the affirmative, and it was clear to me that the answers I gave were precisely what the questioners sought to elicit. After the hearing I then filed, pursuant to the request of Senator Alan Cranston of California, a memorandum giving specific references to and quotations from the Code of Professional Responsibility in support of my answers.

I also testified last month before a House Subcommittee considering the same bills and received the same questions concerning the applicability of the Code of Professional Responsibility to all lawyers working in legal service programs.

All of us are aware of so-called Public Interest Law Firms as well as Pro Bono Publico Programs of private law firms, both of which have come on the legal scene in the recent past. While there is no definition of art for either a Public Interest Law Firm or a Pro Bono Publico Program of a private law firm, each is known to and recognizable by most members of the legal profession. I am fully aware that both are controversial, being enthusiastically espoused by some lawyers and at the same time resolutely rejected by others. I do not propose here to enter the fray. In response to President Padden's request, I simply recognize the fact that Public Interest Law Firms and Pro Bono Publico Programs of private law firms exist in certain states, including Minnesota, and declare unequivocally that the Code of Professional Responsibility in its entirety applies to the professional conduct of every lawyer engaged in either enterprise.

Regardless of who recommends his employment or pays his fee, the undivided loyalty of a lawyer must be to his client.[Ftn 2](#) The independent professional judgment of a lawyer must be exercised in favor of his client, and his client alone. The confidences and secrets of a client who comes to a lawyer through any form of mechanism of a legal services program, by whatever name it may be known, must be held

inviolable.^{Ftn 3} The lawyer-client relationship has no shadings, variations, or gradations; it cannot be pared, peeled, or sliced.

I wish to turn briefly to another subject, that of disciplinary enforcement. Throughout my term as President of the American Bar Association I have given great emphasis to the urgent work to be done in this area. I have repeatedly said in public statements that the organized bar has no job to do that is more important than the effective policing of its own ranks. My first official act as President of the ABA was to appoint a 12-man Committee on Coordination of Disciplinary Enforcement to implement the recommendations of the Committee on Evaluation of Disciplinary Enforcement, of which Mr. Justice Tom C. Clark had been Chairman. After naming Henry L. Pitts of Chicago as Chairman of the Committee of National Coordination of Disciplinary Enforcement, my next act was to appoint John C. McNulty of Minneapolis as a member. This Committee has done a magnificent job; within the immediate future the bar of the nation and, more importantly, the public will see tangible and wholesome results of its labors. I cannot praise too highly the outstanding efforts of Pitts, McNulty & Company.

In the field of Disciplinary enforcement, Minnesota shines, out like the proverbial beacon light. The American Bar Association is proud of you. What you have done in the past two years is serving as an example for us all. The Minnesota Bar Association did not wait for a suggestion or a nudge from any person or organization after learning of the work of the Clark Committee on Evaluation of Disciplinary Enforcement; under the guidance of then President Paul Sharood you petitioned the Supreme Court of Minnesota to increase the registration fee of each attorney to a maximum of \$25.00 each year for the purpose of financing a centralized state disciplinary system with full-time professional administration. Heartiest congratulations to you for initiating the action and to the Supreme Court of Minnesota in acting upon your recommendation.

Every day you and I go to our respective places of business to practice our profession. What is happening in the United States that day? Here is a portion of the statistical score:

Every day nearly 10,000 babies are born, over 10,000 young persons turn 21, and more than 10,000 citizens are injured in automobile accidents. On the same day over 4,000 men and women cross the mysterious line labeled "age 65." Each 24 hours there are over 5,000 marriages, and approximately 1,500 divorces. Each month the mail brings a Social Security check to 25 million beneficiaries and a welfare payment to more than 10 million persons.

On an average day the following serious crimes are committed: One murder every 39 minutes; one burglary every 17 seconds; and one auto theft every 41 seconds.

Every one of those people and every one of those events must be of concern to us as responsible professionals in a changing society, which needs our skills, our knowledge, and our vision.

¹ Code of Professional Responsibility, Preliminary Statement

² Code of Professional Responsibility, Canon 5; DR 5-107; EC 5-22; EC 5-23; and EC 5-24.

³ Code of Professional Responsibility, Cannon 4 and EC 1 thru 6.