

ETHICS OPINIONS AND THE COURTS

By

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What is the impact of ethics opinions on the courts that decide lawyers' disciplinary matters? A recent article by Jorge L. Carro, a professor of law at the University of Cincinnati College of Law, contains a quantitative as well as qualitative analysis of that question. The study is based upon a computerized survey of the decisions of the United States Supreme Court, the federal courts, and state courts which have cited ethics opinions from 1924 to 1990. The study reviews court cases citing American Bar Association Formal and Informal Ethics Opinions, as well as ethics opinions issued by other state, county, and city bar associations.^{[Ftn1](#)}

In quantitative terms, Prof. Carro's study found "a total of 1,194 opinions cited in 639 cases of federal and state courts at different levels."^{[Ftn2](#)} On a qualitative level, the study concludes, not surprisingly, that, "[t]he courts treat these opinions with great deference, and, in fact, attribute to them a degree of attention similar to that usually found in the treatment of judicial opinions."^{[Ftn3](#)}

The study notes but does not include statistics regarding ethics opinions of state supreme court boards, such as the Lawyers Professional Responsibility Board (LPRB). According to the author, however, "these opinions may have more persuasive value than those issued by the bar due to the close relationship between the issuing body and the highest court of the state."^{[Ftn4](#)}

In Minnesota, the LPRB has, since 1972, issued 15 advisory opinions, 14 of which are still in effect. The advisory opinions provide guidelines for the conduct of lawyers in Minnesota. The basic principles embodied in the opinions are found within the Minnesota Rules of Professional Conduct and prior case law; however, the LPRB opinions provide specifics as to the Board's interpretation, and consequent enforcement, of the rules. Indeed, failure to comply with the standards set out in the advisory opinions may subject the lawyer to professional discipline.^{[Ftn5](#)}

Based on a computerized study conducted on Westlaw, we have found that since 1972, the Minnesota Supreme Court has specifically cited LPRB opinions in 45 cases. In 17 of those cases, the Court has referred to Board opinions in imposing probation or reinstatement requirements. In 38 cases, the Court has referred to LPRB Opinion No. 9, which deals with maintenance of lawyers' trust account books and records. Four cases have cited Opinion No. 11, which deals with attorneys' liens. Three cases referred to Opinion No. 7, which was repealed in 1983. Two decisions have referred to Opinion No. 5, which deals with failure to comply with fee arbitration. One case referred to Opinion No. 10, which deals with debt collection practices and one case cited Opinion No. 12, which deals with trust account signatories.

The decisions of the Director's Office and the LPRB imposing private discipline also frequently refer to Board opinions. However, statistics on those decisions are not available on Westlaw.

All of the 14 LPRB opinions currently in effect are listed in the sidebar on page 14. Opinions 1-13 were printed in their entirety in the November 1989 issue of *Bench & Bar*, 46 *Bench & Bar* 10 (November

1989), pp. 37-41. Opinions 14 and 15 can be found at 47 *Bench & Bar* 7 (August 1990), pp. 13-15 and 48 *Bench & Bar* 10 (November 1991), pp. 11-13, respectively. As always, copies of the Board opinions are also available from the Director's Office. Finally, in an effort to make the Lawyers Board opinions more accessible to the practicing bar in Minnesota, the Director's Office is attempting to have the opinions published with other statutory materials such as the Rules of Court on a regular basis.

NOTES

1. Jorge L. Carro, "The Ethics Opinions of the Bar: A Valuable Contribution or an Exercise in Futility?" 26 *Ind. L. Rev.* 1 (1992)
2. *Id.* at 17.
3. *Id.* at 35.
4. *Id.* at 9.
5. *LPRB Opinion No. 1*; see, e.g., *In re Pearson*, 352 *N.W.2d* 415 (Minn. 1984).

Lawyers Board Opinions

Opinion No. 1: The Legal Force and Effect of Opinions Issued by the State Board of Professional Responsibility. Adopted: October 27, 1972. Amended: December 4, 1987.

Opinion No. 2: Defense of Criminal Cases by a County Attorney. Adopted: October 27, 1972.

Opinion No. 3: Practice of Law by Part-time Judges, Their Partners and Associates. Adopted: November 20, 1972.

Opinion No. 4: Fee Agreements, Withdrawal from Representation. Adopted: October 12, 1973. Amended: December 4, 1987.

Opinion No. 5: Obligation to Honor Fee Arbitration Agreements. Adopted: April 19, 1974. Amended: December 4, 1987.

Opinion No. 6: Defense of Criminal Cases by Municipal Attorneys. Adopted: June 26, 1974.

Opinion No. 7: Repealed: January 7, 1983.

Opinion No. 8: Attorneys' Guidelines for Law Office Services by Nonlawyers. Adopted: June 26, 1974.

Amended: June 18, 1980; December 4, 1987.

Opinion No. 9: Maintenance of Books and Records. Adopted: September 10, 1976. Amended: June 22, 1977; June 23, 1983; December 4, 1987; September 15, 1989.

Opinion No. 10: Debt Collection Procedures. Adopted: June 22, 1977. Amended: December 4, 1987.

Opinion No. 11: Attorneys Liens. Adopted: October 26, 1979.

Opinion No. 12: Trust Account Signatories. Adopted: May 6, 1983.

Opinion No. 13: Copying Costs of Client Files, Papers and Property. Adopted: June 15, 1989.

Opinion No. 14: Attorney Liens on Client Homesteads. Adopted: June 15, 1990.

Opinion No. 15: Advance Fee Payments and Availability or Nonrefundable Retainers. Adopted: September 13, 1991