

## LAWYER PROFESSIONAL RESPONSIBILITY . . . AND THE PUBLIC

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Reprinted from *Bench & Bar of Minnesota* (April 1982)

Next month I will summarize the Board's 1981 activities. The summary will disclose record numbers of investigations commenced and public disciplinary proceedings initiated in the supreme court. The numbers for private disciplinary dispositions is also high although not a record. The report will also indicate that with additional staff now working on a huge backlog, it is virtually certain that 1982 will see an unprecedented increase in disciplinary dispositions.

Last year when I commented upon the increase in complaints being filed I was contacted (several months later I might add) by a newspaper reporter interested in the details. The subsequent newspaper article and accompanying editorial comment were followed by criticism from some segments of the Bar about allegedly tainting the image of the profession by publicly airing our scandals. This month I will focus upon the role of publicity in disciplinary proceedings.

### The Clark Report

In February, 1967, the American Bar Association created a special committee on evaluation of disciplinary enforcement chaired by then retired Supreme Court Justice Tom C. Clark. The committee spent nearly three years studying the operation of disciplinary systems across the country before issuing a June, 1970, report entitled *Problems and Recommendations in Disciplinary Enforcement*, hereinafter *Clark Report*. The *Clark Report* focused on 36 separate problems in disciplinary enforcement and recommended solutions to them. One of these problems was the failure to publish the achievements of disciplinary agencies. *Clark Report* at 143. The report noted:

"Most disciplinary agencies deliberately discourage any publication of information concerning their activities, believing that the public image of the profession is damaged by a disclosure that attorney misconduct exists. . .

This policy denies the public information that would demonstrate the profession's concern for effective disciplinary enforcement and show the steps taken by the Bar to maintain its integrity. The public's dissatisfaction with the effectiveness of the disciplinary system may be attributed in part to the inadequacy of information made available concerning the existence of disciplinary agencies, the services they render and their accomplishments. *Id.*

The *Clark Report* recommended that disciplinary agencies widely publicize the full scope of their activities. In arguing for its recommendation, the committee noted:

"Any effort to achieve greater public acceptance of the profession's role in

administering discipline must begin by acknowledging reality. The public is aware that lawyers sometimes are guilty of misconduct and, in fact, probably suspects that guilt is far more extensive than it actually is. Efforts to foster public acceptance of a myth that there is no misconduct in the profession are not only useless, but may expose the profession to ridicule as well. The route to encouraging public confidence in the disciplinary process lies in acknowledging the existence of attorney misconduct and in showing the public the steps taken against it." *Id.*

### **ABA Standards for Lawyer Discipline and Disability Proceedings**

ABA efforts to improve lawyer discipline systems continued through the 70's culminating in the December, 1978, *Standards for Lawyer Discipline and Disability Proceedings*, hereinafter *ABA Standards*. The standards codify recommendations for structure and practice in disciplinary proceedings.

ABA Standard 3.16 provides in part as follows:

*"Informing the Public.* The Board should inform the public about:

- (a) The existence and operation of the discipline and disability system: and
- (b) The disposition of each matter in which public discipline has been imposed. . . "

The commentary to Standard 3.16 declares:

*"The public interest is served by wide publication of the availability of a process for investigating and disposing of substantial allegations of misconduct. . .*

*. . . Information about the system and cases within it which is public should be easily accessible on request.*

*Public confidence in the discipline and disability process will be increased as the profession acknowledges the existence of lawyer misconduct, and shows the public what the agency is doing about it."*

Thus, ABA policy for over a decade has been that information about lawyer discipline should be widely disseminated.

### **ABA Evaluation**

In May, 1981, the Minnesota disciplinary system was evaluated by a team of national experts on lawyer discipline sent to Minnesota by the ABA at the invitation of the Minnesota Supreme Court and the Board. The team issued a final report in June, 1981, making over 30 recommendations. The team had the following comments about our public relations policies:

*"A necessary function of any discipline system is to educate and inform the public and the Bar about the existence and the availability of the lawyer disciplinary process. A theme which recurred during the interviews was a lack of knowledge by the public concerning the disciplinary process. . .*

The team is concerned about the failure of the agency to provide a brochure describing

the grievance process. Our investigation revealed that approximately 30% of the individuals who contact the agency about the complaint process never file formal complaints. The team believes that the public is not sufficiently knowledgeable about the disciplinary process, and views the failure to inform and educate the public about the operation and availability of the enforcement program as a deficiency in the Minnesota discipline system. Lawyer Standard 3.16 notes that public confidence in the disciplinary system will be increased by wide publication of the availability and operation of the discipline system.”

The team strongly recommended “the development of a campaign to disseminate information about the disciplinary system to the public.” It also recommended that the Board issue press releases on public discipline imposed and that it assist Minnesota newspapers in drafting feature articles about the disciplinary system.

### **Current Public Relations Policies**

Current rules and policies concerning public relations preceded my administration and have been little changed during it.

Prior to the time that a public disciplinary petition is authorized, the individual lawyer’s interest in protecting his or her reputation is given supremacy by limiting severely the information which can be disseminated about investigations and private disciplinary proceedings. See Rule 20, Rules on Lawyers Professional Responsibility. It is important to note that a public disciplinary petition is not authorized unless a panel after hearing has found probable cause for public discipline. Information about private discipline is severely limited by rule. As a practical matter, publicity will occur only if the press obtains information independently from other sources.

Once a public disciplinary petition is authorized, the proceedings become a matter of public record. At that point, inquiries from the press about the contents of a petition and the procedures to be used in the disciplinary process are answered.

My office has and will continue to provide information to the public about the general operation of the disciplinary system. Included in this category are statistics about complaints and dispositions, the types of complaints filed, the process for filing a complaint and the procedures for investigating complaints and prosecuting disciplinary actions.

Some of the publicity undoubtedly reinforces the negative opinions about the Bar held by some. My experience is, however, that the majority views such information as evidence of the ability of the profession to regulate itself. To the extent that this purpose is accomplished, support for outside interference in the disciplinary process will be minimal. My own experience in dealing with the public convinces me that the rationale of the *Clark Report*, the *ABA Standards*, and the Minnesota Evaluation Team is sound.

The disciplinary process does not belong only to the lawyers. In exercising their authority, the Board and the Director serve as agents of the Minnesota Supreme Court which has a constitutional responsibility to regulate the Bar. The public has a right to information about performance of the judicial branch. The justices of the supreme court are ultimately accountable to the voters. Substantial tax dollars make possible the operation of the judicial system. Although the discipline system is supported primarily by revenues from the attorney registration fee, the direct and indirect subsidies by tax monies are growing annually.

We are doing a more than credible job of maintaining the integrity of the legal profession. We should not be afraid to let the public know about our activities, especially when the Bar can benefit from publicizing information to which the public is entitled.