ON DOING THE JOB OURSELVES

By
William J. Wernz, Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (November 1985)

> The new procedures, including the increased registration fee, came about because the profession recognized the inadequacies and inequities of the prior clumsy and underfinanced procedures. The profession further realized that it was becoming more and more difficult to clean up our house and keep it clean. We felt we owed the public the obligation to do the job ourselves. We now have the machinery and the financing. In addition to this, in order to do the job necessary to assure the integrity of our profession to the end that it be worthy of public confidence, we must have the cooperation of lawyers and judges. The choice is yours.

With these words Richie Reavill in 1971 began his tenure as the first Director of Lawyers Professional Responsibility. His words are again timely, although much has changed.

The changes that have occurred in 15 years are striking. In 1971 there were 5,830 registered Minnesota attorneys and 525 complaints; now there are over 15,000 attorneys and 1,200 complaints. In 1970 the Minnesota Code of Professional Responsibility, in its now-familiar format of canons, ethical considerations, and disciplinary rules was adopted, superseding the old canons which had been used since the turn of the century. The code lasted only 15 years in Minnesota, and effective September 1, 1985, was replaced by the new Minnesota Rules of Professional Conduct.

Significant changes in the procedures of the discipline system have occurred in 1976, most notably that district committees' dispositional authority was removed, and in 1982, after an ABA evaluation, when the board panel "probable cause" hearing system was codified. In 1986 further changes will occur as a result of the Supreme Court Advisory Committee report. Changes have also occurred to components of the disciplinary rule system through suggestion, through constitutional challenge, and through case law interpretation. In particular, First Amendment interpretations have eliminated many of the restrictions on lawyer advertising and solicitation, and on attorney comment to the press. Our disciplinary system must be a hardy perennial to have survived and evolved from the challenges, studies, and tinkerings of the past 15 years.

While much has changed, much remains constant. The disciplinary system still largely depends on the voluntary efforts of the lawyers and nonlawyers who make up the MSBA district ethics committees and the Lawyers Professional Responsibility Board. The disciplinary system's spirit of vigorous enforcement depends upon these volunteers and upon the bench and bar generally. The MSBA's endorsement at its 1984 convention of a registration fee increase reflects a continued support for such enforcement.

One perhaps surprising element of continuity is in the number of complaints annually per registered attorney: aside from 1971-72 (when the ratio was .09), the annual figures have never strayed far from .075

complaints per registered attorney.

Unfortunately, another hardy perennial seems to be certain forms of attorney misconduct. Former directors Richie Reavill, Paul Sharood, Walt Bachman, and Mike Hoover all lamented the number of complaints of attorney neglect and noncommunication with clients. In 1984, as in 1971, 40-45 percent of all complaints alleged such failures. New rules 1.3 ("Diligence") and 1.4 ("Communication") provide a stronger basis for discipline in such cases.

Misappropriation of client trust funds does not appear to occur frequently, but even the handful of cases each year can seriously damage clients and their image of the profession generally. It is now timely for all those involved in attorney ethics and professional affairs generally to consider whether the prevailing methods of investigation, discipline, and recompense are adequate. A bill to require attorney fidelity bonds reportedly will be introduced in the next Legislature. There are alternative approaches. If they are superior, they should be recommended in the spirit of Richie Reavill's words: "We felt we owed the public the obligation to do the job ourselves." The "machinery and the financing" to do the attorney discipline job ourselves are now largely in place. New challenges arise, however, and certain problems persist, so that further machinery and (for bonding or fully funding a client security fund) more financing is needed to do the job of assuring the public and clients that they will not be permanently harmed by an attorney's intentional misdeeds.

The discipline system is able to "do the job necessary" to see that the profession is "worthy of public confidence." There is an excellent and experienced staff of assistant directors, a talented and energetic Lawyers Board of Professional Responsibility, and a large and willing group of district ethics committee volunteers. The problems of inadequate resources and delay in handling disciplinary complaints have largely been overcome. With the continued support of the bench and bar, and a continued willingness to change when necessary, our house should be kept in good order.