

PROFESSIONAL RESPONSIBILITY AND DISCIPLINE

By

R. B. Reavill, Administrative Director

Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (November 1972)

MISCELLANY

In past articles we have discussed the various types of misconduct coming to our attention, principally neglect in taking care of clients' legal affairs, fee disputes, and income tax violations. We have dwelt on these offenses because they constitute about 65% of all complaints.

However, there are numerous other complaints which are made and which, if proven, constitute professional misconduct. Among these are the following:

Failure of the attorney to pay medical bills, witness fees and other charges from the proceeds of settlements in personal injury cases, the attorney having withheld from the settlement the amounts necessary to pay these obligations.

Failure of the attorney to pay sheriffs' fees for service of process and other documents made at the request of the attorney.

Failure to appear in court on behalf of a client at the required times.

Refusal to return fees and files to clients where the lawyer has performed no services, and the client wishes to retain another attorney.

Conflict of interest situations.

Advertising and solicitation of professional employment.

High-pressure collection tactics.

Failure to maintain a trust account.

All of the foregoing are situations which attorneys can very easily avoid and should avoid. It is expected that they will do so.

OPINION NO. 1

The Legal Force and Effect of Opinions Issued by The State Board of Professional Responsibility

It is the policy of the State Board of Professional Responsibility to issue, from time to time, advisory opinions as to the professional conduct of lawyers, whether as a result of a specific request or its own initiative, on matters deemed important by the Board. The Board considers these opinions to be guidelines for the conduct of lawyers in the State of Minnesota. Opinions issued by the Board will be subject to change from time to time as deemed necessary by the Board, or as required by decisions of the Minnesota Supreme Court.

Adopted: October 27, 1972.

OPINION NO. 2

Defense of Criminal Cases by a County Attorney

It is improper for a county attorney of one county to accept the defense of a criminal case in another county of the state. Nevertheless, this rule would be outweighed in any case where the accused would be deprived of competent counsel or put to an unreasonable burden of expense by the application of this rule. In this event, the county attorney to be retained, as soon as practicable after he is asked to represent the accused, shall petition a judge of the court before which the matter is to be tried for permission to represent the accused. Upon a proper showing of good cause, the judge may issue an order approving defense of the case by the petitioner. If the court decides that the facts of the situation do not justify granting this exception, the attorney involved shall then withdraw from the case. In any event, defense counsel who is also a county attorney shall scrupulously refrain from any reference to his position as a county attorney in the course of all proceedings.

Adopted: October 27, 1972.