

## PROFESSIONAL RESPONSIBILITY

By

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During one of my recent visits to a local Bar Association meeting, a lawyer suggested that I write about responding to ethics complaints. This suggestion is very timely, especially in view of the large increase in complaints. In 1980, the number of new investigations initiated increased by 35%, to a total of 919.

The vast majority of attorneys respond to an ethics complaint in a highly professional and cooperative manner. Unfortunately, however, a substantial minority of respondents display misunderstanding of or hostility toward the disciplinary process. I suggest that compliance with the following would both facilitate our work and minimize problems for the respondent lawyer:

1. *Consult an Attorney.* An ethics complaint is a legal problem which may require expert and objective advice. While it may not always be necessary to formally retain an attorney, it is probably always desirable to consult at least informally with another lawyer. The earlier such advice is sought, the better. It is rarely, if ever, desirable for a respondent to proceed to a formal Board hearing without counsel. The retention of counsel usually permits a more objective discussion of the case between the respondent and my office and facilitates the presentation of matters to Board Panels.

2. *Do Not Panic.* A lawyer who is asked to submit a written response to a complaint filed against him should not assume that a pre-judgment of unethical conduct has been made. Nothing could be further from the truth. Written responses are requested in almost every case and provide a permanent record of the lawyer's position. Such responses more often than not serve as the primary basis for a finding of no unethical conduct and a dismissal of the complaint. We recognize that there is some burden in requesting a written response, but emphasize that the written response is the lawyer's best opportunity to state fully his position in the matter.

3. *Tell the Truth.* No matter how bad the truth is for a lawyer, it can never be as bad as the discovery by disciplinary authorities that the lawyer has lied to them during an investigation. Ironically, many lawyers around the country have been disbarred or severely disciplined for lying to disciplinary authorities about misconduct which, had it been admitted, would have resulted in relatively minor discipline.

4. *Cooperate.* Stonewalling has no place in a disciplinary investigation. The Minnesota Supreme Court has held repeatedly that disciplinary proceedings are civil rather than criminal in nature. Consequently, subject only to narrow and well-defined privileges, an attorney is required to respond to requests for information, to provide requested documents, and to appear for interviews and hearings. A general denial to charges of unprofessional conduct is rarely, if ever, justified; instead, a detailed answer to such charges must be made.

5. *Do Not Entice Or Intimidate The Complainant.* Statements made to disciplinary authorities in complaints or during the course of investigations are privileged and may not serve as the basis for a

lawsuit. Threatening suit or other retaliatory action against a complainant may itself be unethical conduct. Similarly, enticing complainants to “withdraw” complaints by paying them money or reducing fees can constitute obstruction of the investigation, in violation of the lawyer’s affirmative duty of cooperation. Such conduct should be avoided in any event since it is a long-standing policy of our office to investigate to a conclusion any complaint which is received, even if the complainant subsequently seeks to withdraw it.

6. *Consult the Rules.* Disciplinary investigations by the Ethics Committees and the Director, and disciplinary proceedings before the Board and the Supreme Court, are governed by the Minnesota Rules on Lawyers Professional Responsibility. These rules have been promulgated by the Minnesota Supreme Court and appear in the Desk Copy of *Minnesota Rules of Court*, compiled by West Publishing, and elsewhere. Many of the questions which lawyers commonly have about ethics investigations and proceedings can be easily answered by consulting these rules.

7. *Be Realistic.* I know that lawyers generally have a healthy respect for the Code of Professional Responsibility and the disciplinary process. I expect that most lawyers view the disciplinary process somewhat apprehensively when an ethics complaint, no matter how unmeritorious, is filed against them. As natural as some apprehension is, fear of the disciplinary process is frequently exaggerated. Egregious misconduct may, of course, result in suspension or disbarment. Such instances are, of course, relatively rare. Lawyers guilty of relatively minor violations of the Code should realistically expect to receive less serious discipline. For the record, there were over 700 cases closed in 1980. Seventy-three percent of those cases resulted in a finding of no unethical conduct. Seventeen percent resulted in a letter of warning from the Director. Only 8% of the cases were presented to a Board Panel and resulted in private discipline, including a private reprimand, a warning, or a stay of disciplinary proceedings subject to conditions. The remaining 2% resulted in probation, reprimand, suspension, or disbarment by the Supreme Court. While the number of cases resulting in a warning or disciplinary action has increased somewhat in recent years, the 1980 statistics again show that very serious discipline is meted out sparingly.

Responding to ethics complaints will no doubt never be a pleasant task. Compliance with the foregoing suggestions can, however, minimize the pain to the respondent and facilitate the investigation and disposition of the case by disciplinary authorities.