

PROFESSIONAL RESPONSIBILITY AND DISCIPLINE

By

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Editor's Note: *We were sorry to learn that press of business has caused John Finnegan, Executive Editor of the St. Paul Pioneer Press And Dispatch to submit his resignation from the State Board of Professional Responsibility. Mr. Finnegan has served the Board well, and as outgoing Director Harry McCarr explained, "We felt his experience and observations would be an excellent source of ideas on which to draw as we strive to remain alert to every possible way in which to improve the effectiveness of the State Board of Professional Responsibility."*

Mr. Finnegan's comments—written especially for BENCH & BAR - follow:

"The Legal Profession is Doing a Good Job Of Policing Itself. I Do Not Know Of Any State Which Does A Better Job. A Good Job, I said. Not An Excellent Job. Not A Perfect Job."

The reporter from the Rochester television station wanted to know whether an attorney from a southern Minnesota county had been brought before his local ethics committee on charges of unprofessional conduct.

She was both unhappy and perplexed when I told her that I would not give her that information even if I knew whether a complaint had been filed against him.

"But you're always advocating the public's right to know", she said. "And you won't tell me this?"

It was interesting that she had put her finger on a problem which I wrestled with when I was first appointed to the State Board of Professional Responsibility more than three years ago: the conflict between my job as a newsman and my role as a volunteer member of a professional disciplinary board. The board's work is governed by a cloak of confidentiality laid down by the Minnesota Supreme Court.

It was a restriction that I could accept since the board is essentially a private organization, funded by the legal profession, although its members are appointed by the court.

I felt I could live with the confidentiality rule as long as those lawyers who were ultimately found guilty of serious misconduct were either forced to reform or prevented from further injuring the public through disbarment or suspension.

After more than three years I have not changed that basic opinion. I do think that the Supreme Court should consider exposing to public view more of its decisions in disciplinary cases.

There ought to be fewer “private warnings” or unpublicized suspensions than there are in order to make the public more aware of what significant progress has been made in this area in Minnesota. That also would serve to deter some lawyers from going down the wrong road.

The legal profession in Minnesota is doing a good job of policing itself. I do not know of any state which does a better job.

A good job, I said. Not an excellent job. Not a perfect job.

There are improvements to be made. I believe cases have to be handled more quickly. The time between filing of a complaint and the initial action by disciplinary bodies (whether the district committees or the state board) must be reduced. There must be better communication between the committees and complainants, the committees and the state board director and the state board and complainants.

A complainant should feel that his problem is being dealt with quickly and fairly. He should be informed of progress.

In one or two instances, I felt that some district ethics committees did not do satisfactory jobs of investigating complaints. I doubt if the lawyers on those committees would have prepared a court case as haphazardly.

The board is aware of these problems and has moved to deal with them.

Addition of more lay members will help improve the process. There are three laymen on the board. Three more will be added. It is not necessary that these new members come from any particular segment of society. What is required is that a layperson be one who is deeply interested in the subject, is willing to volunteer significant portions of his/her time to board activities and is able and willing to communicate his/her views about how lawyers should practice their profession.

I found that lawyers on the board are extremely tough and penetrating in their questioning of individuals brought before them. They are fair but firm. They advocate high principles but accept the fact that they are dealing with human beings with all their frailties.

On only one occasion did I seriously disagree with the recommendation of a panel. I wanted to be tougher—I sought disbarment. The individual ultimately was suspended from practice.

A lay person can approach the disciplinary function from a more detached point of view. He/she may not be concerned with whether an attorney advertises his services but she/he is concerned whether he performs these services well. A lay person may not recognize all of the nuances in performing some legal

tasks but he/she can recognize that an attorney who has been guilty of a felony ought to have some action brought against him, and quick.

Some revisions of the rules of the state board are currently under discussion. These will improve the process significantly.

However, the most important factor in disciplinary processes is the depth of the commitment of the profession to the work of the board or other such agencies.

The public is going to continue to demand that the legal profession improve its disciplinary procedures, that the bums be thrown out or made to change their ways.

A woman wrote me recently saying that, "The average citizens now days are smart enough to know and see that a lawyer is just ripping off the people so they grease the wheels (governmental) with our money.

"A lawyers business is to make work for other lawyers."

I do not agree with her. But it must be accepted that her views are shared by some others.

If the legal profession is to alter that image, it must be more open in its dealings with clients, more willing to move speedily when there are complaints filed, more willing to make thorough investigations of all charges and more willing to publicize results.

Attorneys must be less willing to overlook the questionable activities of some of their associates. Judges must be unwilling to tolerate unprofessional conduct in their courtrooms as has occurred in at least one jurisdiction in recent years.

Minnesota can be proud of the state board and what it has accomplished. I have been impressed with the leadership the board has enjoyed. I regret that I find myself unable to continue to serve on it. I leave the board with a very positive feeling, however, and the hope that the commitment of the Minnesota State Bar Association to the work of the state board will remain firm and deep.