

PROFESSIONAL RESPONSIBILITY AND DISCIPLINE

By

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We have now completed our second full year of experience under the present procedures, and I feel it might be worthwhile to review what has taken place during this period and, to the extent possible, take a look into the future.

I assumed the duties of Administrative Director on January 4, 1971; Robert H. Meier was appointed Assistant Administrative Director as of May 1. As soon as arrangements could be made, I appeared before every District Bar Association at its annual meeting, seeking the cooperation of lawyers, and talked to the district judges association, the probate judges association, and the municipal judges association for the same purpose. These efforts have continued, and I am happy to report that we have had fine cooperation from both lawyers and judges throughout the state.

Also, from time to time we have found it necessary to seek information from other state agencies, including the Department of Taxation, the Workmen's Compensation Commission, the Office of the Attorney General, the Department of Labor and Industry, the Department of Public Welfare and the Securities Division of the Commerce Commission, and from the Internal Revenue Service and the Federal Probation Officer, all of whom have been most cooperative.

THE DISTRICT ETHICS COMMITTEES

It is apparent that the district ethics committees perform one of the most important functions under the Rules because of the requirement that all complaints be first forwarded for investigation to the district ethics committee of the district in which the lawyer complained about resides. To the extent that the district ethics committees fail to function, the whole system bogs down, so that it is essential that the Administrative Director keeps himself advised of the activities of these committees, and where they appear not to be functioning, to find and correct the reasons for their failures. In this connection, it must be remembered the members of the committees take time from a busy practice to perform the services they do perform, without any compensation.

STATE BOARD OF PROFESSIONAL RESPONSIBILITY

The first meeting of the Board was held on February 5, 1971. In all, there have been eight meetings of the Board, all of which have been well attended.

THE RULES

Our Rules being unique, it is inevitable that experience under them develops the advisability of amendments and additions.

At the very beginning, it was felt advisable that there be some laymen on the Board. Legislation was introduced in the last session of the Legislature which would have required that a third of the members of the Board be laymen. We appeared before the Senate Judiciary Committee and informed that Committee that while we had no objection to laymen on the Board, we felt that there should not be more than three. We called attention to the fact that the Board was divided into three hearing panels, and that with three laymen on the Board, this would permit one layman to be on each of the panels. The Bill was amended so as to provide for the appointment of three lay members to the Board over a period of three years, and as amended passed the Senate. However, it was our feeling that we should, wherever possible, avoid legislation in matters which were within the sole jurisdiction of the Court. Therefore, the Board recommended to the Court that the Rule be amended to provide for three lay members as provided for in the Bill which passed the Senate. The Supreme Court so amended the Rule.

We believe that lay members of the Board lend us credibility which we might not otherwise have, and also that they bring to the Board the layman's point of view.

The Rules have been further amended as follows:

Rule 5 has been amended so as to require district ethics committees, when they dismiss a complaint on the grounds of no professional misconduct, to notify both the attorney and the complainant of their action.

Rule 6 has been amended so that an order of discipline may be entered in cases where a petition for discipline has been filed with the Supreme Court and the sheriff of the county in which the attorney complained about resided makes a return of not found.

Rule 9 has been amended by adding thereto a provision that a petition for discipline having been filed, it is made to appear that continuation of the practice of law by the attorney during the pendency of the disciplinary proceedings will result in substantial risk or serious injury to the public, the Administrative Director, on direction of a panel of the Board, at least five members of the panel voting in the affirmative, shall petition the court for an order suspending the respondent during the pendency of the disciplinary proceedings.

Rule 9 has been further amended so as to permit the court to place an attorney on a probationary status, either for a stated period or until further order of the court. This amendment was found advisable in

dealing with alcoholic lawyers who have their drinking problem, at least for the time being, under control.

While we have only one answer for the dishonest lawyer, and that is to get him out of the profession as fast as possible, at the same time we can aid troubled lawyers to overcome their problems and continue as useful members of the profession. In doing this, we have made free use of the authority vested in the court to place lawyers on probation for a stated period or until further order of the court. Some examples.

Our first use of probation involved an alcoholic. Complaints were made against him that he had neglected his clients' legal affairs, and that he was guilty of willfully and knowingly failing to file income tax returns. Investigation disclosed that he was a lawyer of fine ability and integrity when he was not drinking, and further disclosed that after several attempts, he had gotten his drinking problem under control. By agreement with him, he was placed on probation until further order of the court, his probation being conditioned that he refrain from the use of alcohol, that he regularly attend meetings of Alcoholics Anonymous, and that he make periodic visits as an outpatient to an alcoholic treatment center. Arrangements were made with a member of his Alcoholics Anonymous squad to report periodically to the Administrative Director with regard to the alcoholic lawyer's regular attendance at meetings of Alcoholics Anonymous and his continued abstinence.

The agreement further provided for an order of the court that if the alcoholic violated the terms of his probation, then upon a showing to the court satisfactory to the court and without any formal hearing, he should be immediately indefinitely suspended from the practice of law. Under these arrangements, we have given the alcoholic lawyer better than a 70% chance of remaining a useful member of the profession and at the same time have fulfilled our obligation to protect the public, the profession, and the courts.

We presently have seven lawyers under probation. In addition to three alcoholic lawyers, a lawyer is on probation after a finding that he was not capable of engaging in the general practice of law as a sole practitioner. His probation is until further order of the court, and is conditioned that he confine his practice of law to that of an employee of a large corporation where he is under supervision by another lawyer.

Another lawyer, in addition to being an alcoholic, had health problems which prevented him from engaging in the general practice of law. He is on probation under the conditions pertaining to alcoholism, and further he must confine his practice to an office practice within the county in which he resides.

Another lawyer had for years suffered severe pain because of a physical defect which led him to excessive drinking and anti-social behavior. He was guilty of income tax violations and because of his attitude was required to serve a term in a federal penitentiary. While in the penitentiary, he received medical treatment which relieved the intense pain which he had been undergoing. He came out of the penitentiary with a completely changed outlook towards his profession and his personal life. He was placed on probation, conditioned that he not neglect legal matters entrusted to him, that he not engage in any conduct in connection with his practice or his personal life adversely reflecting upon his fitness to

practice law, that he refrain from the excessive use of alcohol, and that he enter into agreements with the Internal Revenue Service and the Minnesota Department of Taxation satisfactory to them for the settlement of his tax liabilities. It was further provided that he be supervised by at least two lawyers satisfactory to the Administrative Director, which lawyers entered into an agreement with the Administrative Director to undertake such supervision and to make periodic reports to the Administrative Director. Two well known lawyers entered into such agreements and have faithfully performed the terms of the agreement.

In this connection, I might say that we frequently have occasion to call upon lawyers to assist troubled lawyers and, without fail, these lawyers have complied with our requests and have ably assisted the troubled lawyer.

In all cases of probation, there is the provision that if the lawyer violates the terms of the probation, he shall, upon a showing satisfactory to the court and without any formal hearing, be immediately indefinitely suspended from the practice of law. To date all lawyers under probation have complied fully with the terms of their probation.

In several instances, we have had complaints against lawyers charging neglect of legal affairs entrusted to them. Our investigation has disclosed that the lawyer complained against was in ill health or had another personal problem affecting his professional work. In these instances we have found lawyers in the locality who have assisted him in disposing of matters which he had neglected.

We have also had complaints against lawyers for failure to answer telephone calls and letters and neglecting legal affairs, and investigation has disclosed that these lawyers have no system set up in their offices to enable them to keep track of matters entrusted to them. We have been able to advise the lawyer as to systematic procedures which would enable him to keep track of his work. These lawyers have followed these suggestions, and we have no further complaints against them.

We occasionally hear of a lawyer who because of the infirmities of age has reached a stage where he should no longer practice law. In one such instance, arrangements were made for the lawyer to resign. We are in the process of making arrangements for a second lawyer to resign, and are in touch with another lawyer who appears to be in the same situation.

Another activity has been that of pointing out to the lawyers ways and means by which they may avoid complaints against them. Altogether too many lawyers fail to keep their clients informed as to the status of their clients' affairs, and fail to respond to telephone calls and letters from clients or other persons entitled to information. Failure to answer telephone calls or letters from persons entitled to information is not only discourteous but professional misconduct.

COMPLAINTS

One of the objectives of the present procedures was to expedite the handling of complaints.

The establishment of a full time staff adequately financed, and the flexibility of the rules of procedures have made it possible to handle complaints in the manner in which they should be handled.

STATISTICS

Complaints received through 1/31/73	1,015
(Note: This does not include complaints pending before the State Bar Association Committee on 2/1/71)	

Origin of complaints:

Administrative Director	461
District Ethics Committees	321
Minnesota State Bar Association	132
Attorney General	19
District and Probate Judges	18
Others	64
	1,015

Files closed through 1/31/73	942
(Note: This includes files received from MSBA Committee on 2/1/71)	

Disposition of complaints:

Dismissed by Administrative Director— no professional misconduct	282
Adjusted between attorney and client and dismissed by Adm. Director	60
Dismissed by district ethics committees— no professional misconduct	467
Adjusted between attorney and client and dismissed by DEC	34
Censures, reprimands, warnings, admonishments, criticisms	75

Disciplinary actions:

Disbarments	7
Probation	6
Suspension	2
Suspension by agreement not to pay registration fee	1

Resignation	2
Censure by Supreme Court	2
Censures, reprimands, by Panel SBPR	4

Three petitions are pending in the Supreme Court. Action has been deferred by panels in four matters. In addition to written complaints, we have had numerous telephone complaints and inquiries in which we have been able to satisfy the complainant that no professional misconduct was involved.

PANEL HEARINGS

The first Panel Hearing was held on June 16, 1971. Through January 31, 1973, there have been 16 Panel Hearings, involving 27 lawyers.

Almost 50% of all complaints have been complaints of neglect of legal matters entrusted to lawyers, including failure to communicate with clients and others entitled to information. We have made it clear in talks to lawyers and in articles in BENCH & BAR that we intend to put a stop to this type of professional misconduct. To date, two lawyers have been censured by the Supreme Court for this misconduct. The court has made it clear that discipline will be administered against lawyers neglecting their clients' affairs, and it will not accept the excuse that the lawyer has more work to do than he can take care of it. The Court has stated that if this is the case, the lawyer is obligated to get such help as is necessary to take care of his practice.

Presently pending in the Supreme Court is one petition charging the lawyer with neglect, and two petitions charging the lawyers with neglect and failure to cooperate with the district ethics committees and the Administrative Director on Professional Conduct.

A large portion of the complaints that lawyers neglect legal matters entrusted to them arise out of probate matters. It became apparent that the probate judges were not fulfilling their own responsibilities in seeing to it that estates were closed expeditiously. We made this fact known first to the Probate Judges Association, and more recently to the County Court Judges Association. Ramsey and Hennepin County Probate Courts have already set up procedures for keeping track of the status of matters in their courts and are notifying attorneys to proceed where it appears that the estate is being neglected.

At the meeting of the County Court Judges Association in January, 1973, that association adopted resolutions resolving that county and probate judges establish some system of keeping track of estates and of notifying the lawyers to close such estates where it appears they have been neglected. As a part of these procedures, it is understood that the probate and county court judges, after notifying lawyers of their neglect and failing to obtain any response from the lawyers, will report the failures to the Administrative Director.

We found that a number of lawyers who had been neglecting their affairs were also guilty of failure to file Minnesota income tax returns. It is now routine for us to make inquiries of the Minnesota Department of Taxation as to the filing of tax returns in all matters where we have complaints against lawyers that have been neglecting their work. The Supreme Court has made it clear that in the future, and absent extreme extenuating circumstances, lawyers who are guilty of failure to file income tax returns will be either disbarred or suspended.

We have found that approximately 15% of all complaints involve fee disputes of one kind or another. While certain types of complaints of fee disputes, if true, constitute professional misconduct, we have concluded that generally speaking disciplinary action is not the answer to fee disputes. Upon our recommendation, Robert King, when President of the State Bar Association, appointed a committee for formulating procedures for state-wide arbitration of fee disputes. My information is that presently all but three district bar associations have established committees to arbitrate fee disputes.

Among other things, the procedures provide that if the fee dispute appears to involve professional misconduct, the dispute nevertheless will be arbitrated, and thereafter a copy of the petition shall be forwarded to the appropriate district ethics committee.

Other types of complaints which have been brought to our attention include charges of misappropriation of clients' funds, conflict of interest, forgery, contempt of court, failure to appear in court, discourteous conduct, failure to maintain trust accounts, use of trust account funds to pay personal obligations, issuing checks which have been dishonored on account of insufficient funds, failure to pay hospital and medical expenses, the lawyer having withheld funds of clients to pay these, and failure to proceed with the trial of divorce actions until the client pays the entire fee.

One disturbing thing is that complaints are increasing in number rather than decreasing. More complaints were received in January of this year than in any other month.

The American Bar Foundation has chosen Minnesota as one of three or four states in which the Foundation will make an in-depth investigation of the handling of complaints, the kind of people making complaints, in fact covering all facets of the disciplinary procedures. The request to examine our files in connection with this in-depth investigation is on the agenda. The Supreme Court may authorize an inspection of our files, but I am certain that the Court will want the recommendation of the Board as to whether this should be done.

The State Bar Association has requested that the Board take responsibility for stopping the activities of disbarred lawyers who engage in the unauthorized practice of law. The Chairman of the Board has appointed a committee to work with the State Bar Association on this matter.

Among other matters which will require attention by the Board in the near future are the following: Refusal of a lawyer to proceed with a client's matter until his fee is paid in full; lawyer's withdrawal from a

matter because of the failure to pay his fees; failure to turn over files where the client wishes to terminate the attorney-client relationship; maintenance by lawyers of hospitality suites at Bar Association and other lawyer meetings; request of the State Bar Association that the Board proceed against disbarred lawyers who engage in the unauthorized practice of law; establishment of an "English-type Bar Council" to issue opinions; request of Minnesota State Bar Association to publish "box scores" in BENCH & BAR.

The length of this report is perhaps justified in that it may be helpful to my successor in office and to new members of the Board. Hopefully also the report may result in suggestions as to ways and means of making the procedures even more effective than they have been to date.