

REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

By

R. Walter Bachman, Jr., Administrative Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (February 1977)

NEW RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

The new Rules on Lawyers Professional Responsibility, which became effective on January 1, 1977, create a new alternative for disposing of ethics complaints against lawyers. The old rules required either dismissal or a private reprimand for any complaints resolved without public disciplinary proceedings. The new remedy available is a *private warning*.

More than 90% of all ethics complaints against Minnesota lawyers are disposed of without public discipline. In the overwhelming majority of cases, the complainant is fully satisfied with such non-public resolutions. Since most complaints are handled privately, the addition of the new private warning is already proving to be an appropriate disposition for a sizable minority of complaints.

The new warning rule, Rule 8(c)(2), provides:

“Warning. If in any matter, with or without a complaint, the Director concludes that a lawyer’s conduct does not warrant discipline but warrants a warning, he shall notify the lawyer of the warning and that:

- (i) The warning is in lieu of the Director’s presenting charges of unprofessional conduct to a Panel,
- (ii) The lawyer may within a specified reasonable time demand that the Director so present the charges, and
- (iii) Unless the lawyer so demands the Director after that time will notify the complainant, if any, and the Chairman of the District Committee, if any, that has considered the complaint, that the Director has issued the warning.”

The crucial feature of the warning is that it may be issued without a hearing—but the attorney may refuse to accept a warning and demand a full hearing.

Hopefully, the use of warnings in many situations will serve an educational as well as a disciplinary function. Consideration of the types of complaints which are likely to lead to a warning illustrate this point, as follows:

- Repeated failure to return clients' telephone calls or correspondence: A warning may be coupled with suggestions for revised office procedures to correct the problem.
- Improper or inadequate bookkeeping or record keeping: We ordinarily send copies of the new Disciplinary Rule 9-103 and Formal Opinion No. 9 to lawyers who receive a warning in either of these areas.
- Neglect of clients' affairs: Since complaints of this nature far too frequently develop into a pattern for some attorneys, the warned attorney may be advised in some detail as to the earmarks of the pattern of neglect shown by the complaint files. Such advice will hopefully guide the way to corrective office measures and will also alert the attorney to the possibility of more serious discipline should the pattern recur.
- Solicitation or advertising: Most violations in these areas, at present, are either unintentional or borderline in nature. Attorneys who are warned regarding the applicable rules seldom make the same error twice.
- Improper use of trade name or partnership designations: Again, the offending attorneys are ordinarily unaware of the ethical requirements. A common problem, for example, is the "firm" of office-sharing sole practitioners which improperly holds itself out as the firm of "A, B & C". Any warning issued on this subject would be accompanied with a copy of the pertinent ethics opinion which states the reasons why such practice is impermissible.

I hope and believe that the availability of the private warning remedy will help Minnesota move towards a more preventive—rather than punitive—professional discipline system. The issuance of reasoned warnings in appropriate cases may avert the need for more serious discipline at some future date.