

REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

By

R. Walter Bachman, Jr., Director

Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (November 1976)

TRUST ACCOUNTS AND ATTORNEYS' BOOKS AND RECORDS

Many of the complaints of unethical conduct lodged against Minnesota attorneys concern alleged mishandling of clients' funds or property. During the past five months, for example, approximately 25 of the new ethics complaints have raised allegations in this area. Such allegations include commingling of clients' funds with law firm funds, conversion of clients' funds, withdrawal of disputed attorneys' fees from a trust account, failure to account for funds collected on behalf of clients, and undue delay in forwarding funds collected on behalf of clients.

Professional disciplinary agencies throughout the country have recognized in recent years that the mishandling of clients' funds is a recurring serious problem of professional responsibility. Based upon my experience thus far as Administrative Director, it appears that a segment of Minnesota's legal community considers the money-keeping requirements of the Code of Professional Responsibility to be "technical bookkeeping" requirements. Accordingly, some lawyers have attempted to characterize their admitted mishandling of clients' funds as being mere technical misconduct unless actual conversion with intent to defraud is proved.

Lawyers owe their clients the highest fiduciary duty in the handling of funds and property. Private practitioners commonly handle large sums of money on behalf of their clients without the necessity of filing a bond. The commingling of client funds with funds belonging to the lawyer subjects the client to the risk of the loss of his funds to the creditors of a lawyer or a law firm. If clients' funds are used by the attorney for even a short period, the attorney may be found to have converted such funds to his own use and benefit. Trust fund violations which appear to be "technical" to the attorney rarely have that appearance to complaining clients.

The key to improper handling of clients' funds is often an inadequate law office bookkeeping system. The investigation of some complaints of unprofessional conduct has shown that some lawyers are unable to reconstruct financial transactions made on behalf of their clients because their financial records are woefully inadequate or non-existent. Other lawyers have kept careful records of trust account transactions, but have virtually no records pertaining to fees, income, or expenses. If a client complains that

funds received by the lawyer were trust funds, and not attorneys' fees, the absence of income records makes defense of such a complaint by the lawyer extremely difficult.

Recognizing the close interrelationship between mishandling of clients' funds and proper record-keeping, the Lawyers Professional Responsibility Board, during 1974-75, studied the experiences of other states with this problem. Some states, such as Iowa, have imposed mandatory audit requirements upon all attorneys. Attorneys in those states are required to consent to audits of their books and records as a pre-condition of licensure. Our Board rejected this extreme approach, but recommended, in cooperation with the Minnesota State Bar Association, that the Supreme Court adopt an amendment to the Code of Professional Responsibility specifying the books and records which should be kept by Minnesota attorneys. Following due consideration and hearing, the Minnesota Supreme Court adopted Disciplinary Rule 9-103, on October 13, 1976, which provides:

“REQUIRED BOOKS AND RECORDS; REQUIRED CERTIFICATE

(A) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, his private practice of law, and to establish compliance with DR 9-102. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate, or, as to books and records relating to funds or property of clients, for at least six years after completion of the employment to which they relate.

(B) Every lawyer subject to DR 9-103(A) shall certify, in connection with the annual renewal of this registration and in such form as the Clerk of the Supreme Court may prescribe that he or his law firm maintains books and records as required by DR 9-103(A).”

Because annual registration forms for Minnesota attorneys had been prepared prior to adoption of this new rule, the certification requirement of subparagraph (B) will not take effect until January 1, 1978. However, the bookkeeping requirements imposed by subparagraph (A) are now in full force.

To provide more detailed guidelines for required books and records, the Lawyers Professional Responsibility Board has adopted Formal Opinion No. 9, which became effective upon the adoption of Disciplinary Rule 9-103. This Opinion was printed in the May-June, 1976, Convention Issue of *Bench & Bar*, pp. 58-9. The Opinion, in summary, provides that the keeping of certain books and records, or their equivalence, will satisfy the requirements of DR 9-103. The Opinion states that adequate books and records for funds and property received and disbursed other than in a fiduciary capacity should include: cash receipts journal; cash disbursements journal; a record reflecting all fees charged or billings to clients; bank statements, checks, and deposit slips; and a periodic reconciliation of the cash balance. Adequate books and records for funds and property received in a fiduciary capacity should include: cash journals; disbursements journal; a subsidiary ledger for each person or company for whom monies have been received in trust; a monthly trial balance of the subsidiary ledger for each client; monthly reconciliation of

cash balance; bank statements, cancelled checks, and deposit slips; and a record showing all property, other than cash, held in trust.

Minnesota lawyers should be aware that the fund-handling and record-keeping requirements of the Code, as recently amended, set forth minimum standards of professional conduct. Complaints alleging violation of these rules will be carefully investigated. Full compliance with these rules is essential to uphold the fiduciary responsibilities of attorneys. All Minnesota lawyers would be well-advised to review their fund-keeping procedures and office records to assure that their present and future policies comply with the Code provisions.