Professional Responsibility in the Twenty-First Century

F. LaMar Forshee*

"Professional responsibility" is a very broad topic. It covers the full range of a lawyer's responsibilities: to the courts, to the administration of justice, to law reform, to the law making process, and to the public. To reduce the topic to suitable proportions, I will discuss (in addition to background information) only those matters relating to professional responsibility which I believe may be critical to the profession in the foreseeable future. The discussion is divided into six parts: (1) The profession's monopoly over the practice of law and how it was acquired; (2) what the profession considers to be the professional responsibilities of a lawyer; (3) how the current standards of professional responsibility were developed; (4) how the current enforcement of standards started and was stimulated; (5) some attacks that have been made on current standards and how the profession has responded to them; and (6) where I believe professional responsibility should be moving and where it probably will move in the future.

I. Monopoly on Practice, Monopoly on Regulation

Today the legal profession[1] in the United States enjoys a virtual monopoly over the practice of law. The high courts of the states and the District of Columbia, with the assistance of various commissions, boards, committees, and bar associations designated by the courts as "arms of the court," control the admission, the discipline, and the removal of attorneys from the practice of law. The legal profession's monopoly control over its practice is unique among the licensed professions. State and federal legislatures have not effectively challenged the monopoly and the courts have supported it because over the years the legal profession has developed and enforced standards of professional responsibility considered to be in the public interest. Legislative attempts to interfere with the monopoly have been rebuffed by the courts, which have described attorneys as "officers of the court" subject to the control of the courts and immune from legislative interference under the constitutional doctrine of separation of powers.

The profession has not always enjoyed this monopoly. Moreover, recent developments would seem to indicate that unless the profession can more clearly demonstrate that it will exercise its professional responsibility

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* Former Director of the American Bar Association Center for Professional Responsibility.

1. Used here to include the judiciary.

in the public interest, rather than in the self-interest of lawyers, the monopoly may not endure.

That lawyers as a class have never been popular in this country is probably an inevitable result of the adversary system of our common law. Even before the American Revolution, there were attempts to get along without lawyers.[2] After the Revolution, because of the Jeffersonian era's dislike of all professions, standards for admission to the bar were dropped and attorneys rarely were disciplined. Also, because the English system of barristers and solicitors was never adopted in the United States, there were no professional organizations to assume responsibility for the discipline of attorneys until nearly a century after the Revolution.[3]

Early in the nineteenth century, American courts, particularly the United States Supreme Court, began to reassert the English common-law doctrine that the judiciary has inherent power to regulate those who practice law.[4] By that time, however, state and federal legislatures had started to provide by statute for admission and disbarment. The courts divided in their view of how to deal with this development. Some found the right to practice to be subject to the control of the legislature and some found it to be within the inherent power of the courts to regulate. The division ended after the decision of the United States Supreme Court in *Ex parte Garland*.[5] In that case the Court struck down an act of Congress requiring attorneys to take an oath in order to be admitted to practice in the federal courts. Subsequent decisions of the United States Supreme Court and state courts uniformly began to support the inherent power of the courts to regulate the practice of law.

With the development of major bar associations after 1870 (the Association of the Bar of the City of New York was established in 1870 and the American Bar Association [ABA] in 1878) and the formation of integrated or "unified" state bars commencing about 1930, the organized bar gave increasing support to the courts in their efforts to control the admission and discipline of attorneys.[6] Michael Dorf states that "[t]oday, every state except Texas specifically recognizes, by constitution, statute, court or bar rule, or case law, the inherent power of the judiciary to regulate the admission and discipline of attorneys."[7] Dorf concludes his comments on the regulation of the legal profession with a note of caution. He indicates that the struggle between the courts and the legislatures for control of the practice of law may not be over, for

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2. R. POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 135-44 (1953).

3. *Id.* at 182-85, 197, 249.

4. Dorf, *Disbarment in the United States: Who Shall Do the Noisome Work?*, 12 COLUM. J. L. & SOC. PROB. 1, 6-7 (1975).

5. 71 U.S. (4 Wall.) 333 (1867).

6. Dorf, *supra* note 4, at 7-9.

7. *Id.* at 8 (footnotes omitted).

> [t]he inherent right doctrine is essentially one of tradition. As seen in the early practices in the United States, it is dependent on the type of job the courts are willing to do and the amount of responsibility they are willing to assume. *In the absence of effective judicial leadership, the legislative branches of the states have no alternative but to fill the void.*[8]

II. A LAWYER-DEVELOPED CONCEPT OF PROFESSIONAL RESPONSIBILITY

In 1958, a Joint Conference of the American Bar Association and the Association of American Law Schools issued a statement of a lawyer's professional responsibilities in the context of the adversary system.[9] The Conference noted that its concept, as applied to lawyers in the legal profession, covers a wide range of relationships and obligations and that it may vary in different situations. The statement reads in part as follows:

> The legal profession has its traditional standards of conduct, its Codified Canons of Ethics. The lawyer must know and respect these rules established for the conduct of his professional life. At the same time he must realize that a letter-bound observance of the Canons is not equivalent to the practice of professional responsibility.[10]
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> In modern society the legal profession may be said to perform three major services. The most obvious of these relates to the lawyer's role as advocate and counsellor. The second has to do with the lawyer as one who designs a framework that will give form and direction to collaborative effort. His third service runs not to particular clients, but to the public as a whole.[11] In many developing fields the precise contribution of the legal profession is as yet undefined.[12]
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> No general statement of the responsibilities of the legal profession can encompass all of the situations in which the lawyer may be placed. Each position held by him makes its own peculiar demands. These demands the lawyer must clarify for himself in the light of the particular role in which he serves.[13]

III. DEVELOPMENT OF SPECIFIC STANDARDS

The legal profession in the United States has been rather slow to develop specific standards of professional responsibility. The most significant developments took place in 1969 with the adoption of the ABA Code of Professional Responsibility and in 1977 with the creation of an ABA Commission on Evaluation of Professional Standards.

The development of specific standards for the legal profession in the United States stems from the publication in 1854 of Judge George Sharwood's lectures on "Professional Ethics." These lectures became the

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8. *Id.* at 8-9 (emphasis added).
9. Joint Conference on Professional Responsibility, *Report*, 44 A.B.A.J. 1159 (1958).
10. *Id.* at 1159.
11. *Id.* at 1160.
12. *Id.* at 1159.
13. *Id.* at 1218.

basis for a Code of Ethics adopted by the Alabama State Bar Association in 1887. In 1908, the ABA published its original thirty-two "Canons of Professional Ethics"; they in turn were based primarily on the Alabama State Bar Association's Code of Ethics.[14]

In 1964, the ABA created a special Committee on the Evaluation of Ethical Standards to examine the then current Canons of Professional Ethics and to recommend changes. The action was prompted in part by suggestions that the Canons of Ethics did not lend themselves to practical sanctions for violations. On August 12, 1969, after nearly five years of study by the Special Committee, the House of Delegates of the ABA adopted the Code of Professional Responsibility. The Code represented a substantial improvement over the Canons of Professional Ethics, which were essentially admonitory in nature. The Code has three components: Canons, which are admonitory; Ethical Considerations (EC), which are precatory, and Disciplinary Rules (DR), which are mandatory. Since 1969, several amendments to the Code have been adopted by the House of Delegates. Some of the amendments, such as those dealing with group legal service and advertising, can be characterized as substantial.

IV. ENFORCEMENT OF STANDARDS

In addition to the ABA's efforts to improve the standards of professional responsibility expressed in its Code, the leadership of the organized bar in the United States since 1967 has been active on a national basis in efforts to improve the enforcement of lawyer discipline.

The profession's most productive efforts to improve its enforcement of lawyer discipline were initiated in 1967 by the creation of an ABA Special Committee on Evaluation of Disciplinary Enforcement (known as the "Clark Committee" after its Chairman, retired United States Supreme Court Justice Tom C. Clark).[15] Prior to the creation of the Clark Committee the ABA had inquired into the enforcement of lawyer discipline in 1920, 1946, and 1956, but those inquiries had no significant impact. However, when the report of the Clark Committee was published in June 1970,[16] it was widely covered in the press, and on August 11, 1970, it was unanimously approved by the House of Delegates of the American Bar Association.[17] It has since had considerable effect on the enforcement of lawyer discipline in the United States.[18] In its report, the Clark Committee stated that:

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14. AMERICAN BAR ASSOCIATION, CODE OF PROFESSIONAL RESPONSIBILITY AND CODE OF JUDICIAL CONDUCT i-ii (1977).

15. 92 A.B.A. REP. 126-27 (1967).

16. AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON EVALUATION OF DISCIPLINARY ENFORCEMENT, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT (Final Draft 1970).

17. 95 A.B.A. REP. 539 (1970).

18. Dorf, *supra* note 4, at 3-4.

> [a]fter three years of studying lawyer discipline throughout the country, *this Committee must report the existence of a scandalous situation that requires the immediate attention of the profession. . . . Unless the profession as a whole is prepared to initiate radical reforms promptly, fundamental changes in the disciplinary structure, imposed by those outside the profession, can be expected.*[19]

Immediately following its approval of the Clark Report, the ABA appointed a Special Committee to Coordinate the Enforcement of Lawyer Discipline.[20] During its three year tenure that committee assisted several state disciplinary agencies in modifying their disciplinary structures and procedures to incorporate Clark Committee recommendations.[21]

The notorious "Watergate affair" of 1973 greatly stimulated the profession's efforts to improve the enforcement of lawyer discipline because it concerned several prominent lawyers, among them the President and the Attorney General of the United States. In that year, on the recommendation of the Special Committee, the ABA replaced it with a Standing Committee on Professional Discipline;[22] it also implemented a Clark Committee recommendation by establishing a professionally staffed National Center for Professional Discipline at ABA headquarters in Chicago. Since 1973, the Standing Committee and the Center have coordinated their activities in furnishing professional training programs, consulting services, and course and informational materials on lawyer discipline to disciplinary agencies, individual lawyers, and law school teachers of professional responsibility. In 1974 the Committee and the Center developed (and have since periodically revised) Suggested Guidelines for Rules of Disciplinary Enforcement.[23] The Guidelines have been widely used by the states to improve their rules.[24]

After the Clark Report was approved in 1970, the high courts of nearly all the states strengthened their lawyer disciplinary systems by adopting most of the Clark Committee recommendations as well as more recent recommendations of the Standing Committee and the Disciplinary Center. The high courts of fourteen of the nineteen "voluntary bar" states[25] (the exceptions include New York and Connecticut) have adopted

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19. *Id.* at 1-2 (emphasis added).

20. 95 A.B.A. REP. 539 (1970).

21. 97 A.B.A. REP. 792-802 (1972).

22. The new committee was a standing (permanent) rather than a special (temporary) committee, and it was larger: a chairman was appointed at large in addition to 14 members, one from each ABA geographical district.

23. STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE, AMERICAN BAR ASSOCIATION, SUGGESTED GUIDELINES FOR RULES OF DISCIPLINARY ENFORCEMENT (3rd ed. 1977) [hereinafter cited as SUGGESTED GUIDELINES].

24. Dorf, *supra* note 4, at 17.

25. In the 19 "voluntary bar" states, attorneys are not required to become or remain dues-paying members of a statewide bar organization as a prerequisite to the practice of law in the state as they are in the remaining 31 "integrated" (or "unified") bar states (33 if the District of Columbia and Puerto Rico, state-level jurisdictions, are included).

court rules requiring all attorneys practicing in those jurisdictions to register annually and to pay assessments to support the disciplinary system established by their high court. In addition, three "unified bar" states—Missouri, New Mexico and Rhode Island—have adopted rules requiring all attorneys practicing in each of those states to pay an annual assessment to support the lawyer disciplinary system established by their high court.

In most states there has been a substantial increase since 1970 in the financial support lawyers pay to maintain their disciplinary enforcement agencies. The Florida statistics are so dramatic that they merit comment even though they are not representative; the Florida bar is among the national leaders in its support of disciplinary enforcement.

In 1970, the Florida bar's disciplinary budget was $111,312. There were four full-time persons on its disciplinary staff (two lawyers and two secretaries), and the average cost of the disciplinary budget per member (there were then 12,312 members) was $9.03. In 1978, The Florida bar's disciplinary budget is $1,703,390. There are fifty-eight persons on its disciplinary staff (seventeen lawyers, seven investigators, five law student employees, six court reporters, three auditors, and twenty clerical employees), and the average cost of the disciplinary budget per member (there are now 24,300 members) is $70.12.[26] The percentage of the Florida bar's total budget allocated to discipline has thus increased from about twenty-five percent in 1970 to over fifty percent in 1978. This graphically shows the importance the Florida bar attaches to adequately funding its disciplinary program, and these figures do not include additional money allocated to Florida's Client Security Fund.

Since 1970 the high courts of over twenty states have followed the lead of the Supreme Court of Michigan by adopting disciplinary rules providing for public participation (lay or nonlawyer representation) in their statewide disciplinary enforcement system.[27] It has been my experience that without exception these jurisdictions have been very pleased by this change, finding that it has brought new and helpful insights to their disciplinary problems and has increased the credibility of their disciplinary systems with the public.

The high courts of a small but growing number of states have followed another Michigan practice by amending their rules to open their disciplinary hearings to the public after probable cause has been found and formal charges have been filed against an attorney.[28] This change has also been well received by the public and the profession in those states.

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26. Conversation with Norman A. Faulkner, Staff Counsel and Assistant Executive Director for Legal Affairs, the Florida Bar (Nov. 14, 1978). The 1978 employment figures are based on full-time equivalents.

27. The Clark Committee report mentions (at 9) but does not discuss public participation in the disciplinary process. Such participation is recommended in SUGGESTED GUIDELINES, *supra* note 23, at Rules 5, 6. Since the publication of the third edition, other jurisdictions have added public members.

28. *See also* SUGGESTED GUIDELINES, *supra* note 23, at Rule 26(A) (1).

Several states have instituted specific procedures to permit either the audit or verification of lawyers' trust accounts by a board appointed by their highest court.[29] These procedures may or may not be directly linked to the disciplinary process. The purpose of the procedures, which follow the English and Canadian tradition, is to apprise attorneys of their professional obligations in maintaining trust accounts and to provide for the verification of such accounts. There has also been an increase in the number and effectiveness of clients' security funds established by the bar to voluntarily reimburse the victims of lawyer dishonesty. The trustees of the New Jersey Clients' Security Fund recently made payments that brought the total of its voluntary reimbursement payments to over two million dollars.[30]

Prospects are also encouraging for improved lawyer discipline in the federal courts. In 1975 enforcement of lawyer discipline in the federal courts was disorganized and generally unsatisfactory. The rules varied widely among courts; some lacked rules altogether. No funding was provided for enforcement. When, in 1975, a legislative rather than a judicial solution seemed likely, the ABA Standing Committee on Professional Discipline arranged a meeting with representatives of the Administrative Office of the Chief Justice, the Administrative Office of the Federal Courts, and the Federal Judicial Center to try to resolve the problem. As a result of this meeting, the Model Federal Rules of Disciplinary Enforcement were initially drafted by the ABA Center for Professional Discipline and later more fully developed by the Standing Committee in coordination with a subcommittee of the Judicial Conference of the United States. In February 1978, on the recommendation of the Standing Committee, the ABA House of Delegates approved the Model Federal Rules.[31] On September 21, 1978, the Judicial Conference approved the Model Federal Rules of Disciplinary Enforcement and recommended their adoption by all district courts and courts of appeals.[32]

V. ATTACKS ON CURRENT STANDARDS

Within a relatively short time after its national adoption in 1969, the ABA Code of Professional Responsibility was adopted in whole or substantial part by all but a few states. Recently, however, the Code has come under attack.[33] It has been said, for example, that the Code favors

29. *E.g.*, Delaware, Florida, Iowa, Maryland, and Washington.

30. Conversation with Richard L. Amster, Chairman of the Board of Trustees, Client Security Fund of the Bar of New Jersey (Nov. 14, 1978). *See generally* Amster, *Client's Security Funds: The New Jersey Story*, 62 A.B.A.J. 1610 (1976).

31. AMERICAN BAR ASSOCIATION, SUMMARY OF ACTION TAKEN BY THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION 9 (Midyear Meeting 1978).

32. Letter from Elmo Hunter, Chairman of Administrative Committee, to John C. McNulty, Chairman of ABA Standing Committee on Professional Discipline (Oct. 16, 1978).

33. *See, e.g.*, J. AUERBACH, UNEQUAL JUSTICE (1976); M. FREEDMAN, LAWYERS' ETHICS IN AN

the interests of lawyers rather than the interests of the public, and that the Code is primarily concerned with the responsibilities of a lawyer in litigation and does not give sufficient attention to the responsibilities of a lawyer in other roles, such as that of counselor or government attorney.

Between 1963 and 1971, a series of United States Supreme Court decisions affected bar standards of professional responsibility.[34] Since 1975 other Supreme Court decisions have significantly affected certain provisions of the Code of Professional Responsibility.[35] Recent litigation has challenged other aspects of the Code and the operations of certain unified state bars.[36]

In 1977 the American Bar Association responded to these developments by giving high priority to improving its Code of Professional Responsibility. The ABA created a Special Committee on Evaluation of Professional Standards and charged it with the evaluation of all aspects of legal ethics, both substantive and procedural. The size of the Committee has since been increased and its composition has been changed to that of an ABA Commission, with nonlawyer as well as lawyer members. The Commission expects to report a tentative recommendation to the ABA House of Delegates by August, 1979, with a final report and recommendation to follow by August, 1980.

VI. THE FUTURE OF PROFESSIONAL RESPONSIBILITY

I believe that the expressed (specific) standards of professional responsibility in law, as in any true profession, should make it readily apparent that the interests of the public are primary and the interests of the lawyers secondary.[37] I feel that many in the legal profession share the

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ADVERSARY SYSTEM (1975); G. HAZARD, ETHICS IN THE PRACTICE OF LAW (1978); VERDICTS ON LAWYERS (R. Nader & M. Green eds. 1976); Morgan, *The Evolving Concept of Professional Responsibility*, 90 HARV. L. REV. 702 (1977); Patterson, *Wanted: A New Code of Professional Responsibility*, 63 A.B.A.J. 639 (1977); Schnapper, *The Myth of Legal Ethics*, 64 A.B.A.J. 202 (1978).

34. *E.g.*, United Transp. Union v. State Bar of Mich., 401 U.S. 576 (1971); UMW Dist. 12 v. Illinois State Bar Ass'n, 389 U.S. 217 (1967); Brotherhood of R.R. Trainmen v. Virginia *ex rel.* Va. State Bar, 377 U.S. 1 (1964); NAACP v. Button, 371 U.S. 415 (1963).

35. Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978) (solicitation); *In re* Primus, 436 U.S. 412 (1978) (solicitation); Bates v. State Bar of Ariz., 433 U.S. 350 (1977) (striking down prohibition of lawyer advertising); Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) (invalidating minimum fee schedules).

36. The Department of Justice filed suit against the American Bar Association alleging a violation of § 1 of the Sherman Act. United States v. ABA, No. 7601182 (D.D.C., filed June 25, 1976) (action dismissed in August 1978 on motion of Department of Justice). In *Falk v. State Bar of Michigan*, filed in the Supreme Court of Michigan and now pending before the court, petitioner relies on Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977) and seeks to have his obligation to pay bar dues to the unified state bar limited to the amount used for "regulatory purposes." Falk v. State Bar of Mich., No. 60722 (Mich., filed Nov. 30, 1977).

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> There is much more in a profession than a traditionally dignified calling. The term refers to a group of men pursuing a learned art as a common calling in the spirit of a public service—no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.

R. POUND, *supra* note 2, at 5.

dissatisfaction of much of the public with some of the standards of professional responsibility expressed in the Code because they appear to place the self-interest of lawyers ahead of the interests of the public.[38] For this reason, I think that the doctrines of legal professional responsibility will move toward giving primacy to the public's interests. I believe that lawyers, as a whole, combine the idealism of their profession with a healthy measure of pragmatism. They are justly proud of their privilege of self-regulation but I believe they will continue to seek public participation in formulating the profession's standards of professional responsibility.

In my judgment the ABA Commission, if it is to resolve the uncertainties, conflicts, and disputes which have arisen over the provisions of the current Code, must recommend generally acceptable alternatives to existing provisions in at least the following subject matter areas of the Code:

—unauthorized practice of law (DR 3-101 (A));
—geographic limitations on the practice of law (in view of problems inherent in the current rapid growth of multistate law firm practice) DR 3-101(B));
—specialization or concentration of practice (DR 2-105(A));
—"benign" commercial solicitation;[39]
—group legal practice (DR 2-103(D)(4)(a)-(c)); and
—conflicts of interest (probably one of the most important areas and a very difficult one to resolve) (DR 9-101(B) and DR 5-105(D)).

Recently there have been some developments which would appear to presage more appropriate standards. In Maryland, for example, the organized bar recommended that the advertising provisions of the Maryland Code of Professional Responsibility be amended to authorize limited lawyer advertising. The Maryland Court of Appeals, however, went beyond its bar's recommendation to adopt a much broader amendment, essentially authorizing any lawyer advertising that is not dishonest, misleading or deceptive. I believe the Maryland court acted primarily in the interest of the public in allowing maximal dissemination of information to those who wish to select a Maryland lawyer.

Other jurisdictions, such as California, are giving increased publicity to individual cases of lawyer discipline. Instead of listing the names of disciplined attorneys in a state bar publication of limited circulation, California is using general press releases to publicize the names of attorneys who receive public discipline (disbarments, suspensions, and public reprimands), and the nature and extent of their discipline. Clearly

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38. *See, e.g.*, Morgan, *supra* note 33, at 702.

39. Justice Marshall in his concurring opinion in Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 472 n.3 (1978). (Marshall, J., concurring) defined benign commercial solicitation as solicitation by advice and information that is truthful and that is presented in a noncoercive, nondeceitful and dignified manner to a potential client who is emotionally and physically capable of making a rational decision either to accept or reject the representation with respect to a legal claim or matter that is not frivolous.

this action to inform clients and potential clients is in the primary interest of the public.

The use of client security funds to voluntarily reimburse clients who have suffered financial losses because of the dishonesty of their lawyers has increased in recent years. This demonstrates professional responsibility primarily in the public interest.

Today, despite problems in enforcing certain provisions of the Code, the professional staffs of state disciplinary agencies are growing in size, experience, and value to the profession and to the public. They are also proving the wisdom of the Clark Committee's recommendation that disciplinary complaints be processed by full-time professional staffs. Prosecution of formal charges of gross negligence (repeated acts of attorney neglect, usually concerning failure to perform agreed services for their clients) is increasing. Through observation of their attendance at annual ABA Disciplinary Workshops, their consultation with the ABA National Center for Professional Discipline,[40] and their use of the Center's Disciplinary Research System, I have become convinced that disciplinary agency staffs have greater knowledge of disciplinary enforcement and professional maturity.

Moreover, the rapid growth of the bar has resulted in a preponderance of younger lawyers. They generally are less resistant to change and should benefit by the increased emphasis recently placed on professional responsibility by the law schools, the organized bar, and the bar examiners.

There are, however, many possible pitfalls on the road to the formulation of wholly acceptable standards of professional responsibility. Their adoption may lead to further prolonged conflict between "professional" and "guild or trade" oriented bar groups, between consumer interests and the bar, and between the courts and the legislatures. The outcome of the Falk petition,[41] now pending in Michigan, may adversely affect unified state bars, which are numerous and important in the United States. It could hamper their work in the delivery of legal services and in specialization, to mention but two areas of concern. If recent developments in Montana are any indication, support may be building in the states for some kind of limitation on the previously unfettered constitutional power of their high courts over admission (and perhaps over discipline) of attorneys.[42]

In the face of so many variables it would be foolhardy to try to predict

40. On July 17, 1978, the ABA National Center for Professional Discipline was enlarged in size and scope and became the ABA National Center for Professional Responsibility. Personnel and functional responsibility for disciplinary enforcement, professional standards, and related research support were combined.

41. Falk v. State Bar of Mich., No. 60722 (Mich., filed Nov. 30, 1977).

42. A proposed constitutional amendment was adopted by the Montana Legislature and appeared on the Montana ballot in November 1978. The proposition failed. Had it been approved by the voters, the Montana Legislature would have been authorized to veto rules adopted by the Montana Supreme Court governing admission to the practice of law in Montana.

with any certainty what specific standards of professional responsibility will prevail in the twenty-first century, whether the standards will be specific or general, or whether they will be established by the courts or the legislatures. On the whole, however, I am optimistic about the future. Communication between the leadership of the bar and its rank and file, while never entirely satisfactory, is improving and I believe it will continue to improve.[43]

I am also optimistic that the ABA Commission on the Evaluation of Standards will recommend, and the ABA House of Delegates ultimately will approve, standards of professional responsibility that will clearly reflect the priority of public interests over the interests of lawyers. I believe the standards will be expressed either in a wholly new and expanded Code of Professional Responsibility or, more likely, as a restatement of law.

In my judgment, the profession must also give much higher priority to the resolution of client grievances such as fee disputes, delay, and failures to communicate. These examples of "bad practice" rarely warrant the imposition of discipline, but collectively they bring the profession an overabundance of ill will. Unless better methods of resolving them are devised, these problems could contribute to a public revolt against the bar's privilege of self-regulation. Despite the attendant legal difficulties, mandatory arbitration of these matters pursuant to high court rule may prove to be the only effective solution.

Improvement is also badly needed in the methods of resolving problems of alleged lawyer incompetence. The Commission should confront this problem and, one hopes, resolve it. In my view, questions of competence should be handled by peer review, largely outside the disciplinary process.

In this process of improving and refining the profession's standards of professional responsibility, it is essential that the organized bar continue to seek the cooperation and leadership of the high courts of the state and the federal systems. Ultimately, the professional responsibility of the legal profession rests with them.

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43. The current president of the American Bar Association, S. Shepherd Tate, while president-elect nominee and chairman of the Standing Committee on Professional Discipline, led his committee's successful attempt at the ABA Midyear Meeting in Philadelphia in February 1977 to prevent the tabling of a proposal on lawyer advertising that would have removed nearly all restraints on lawyer advertising. In its place, Tate's committee introduced a substitute amendment (which was adopted) permitting limited advertising.

William O. Spann, the immediate past president of the ABA and present member of the ABA Board of Governors, while president, cosponsored and appointed the Commission on the Evaluation of Standards. He also publicly advocated fewer professional restraints on lawyers that might impair their first amendment rights.

The ABA president-elect, Leonard Janofsky, is a former president of the State Bar of California, a state known for the innovative nature of its disciplinary program.

John C. McNulty is chairman of the ABA Standing Committee on Professional Discipline and chairman of the Board of the American Judicature Society. He has had considerable success in working with the Appellate Judges Conference of the ABA and the Judicial Conference of the United States to coordinate adoption of standards and rules of disciplinary enforcement affecting both judges and lawyers.