

XIII. Professional Responsibility

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A. Introduction

Professional Responsibility, formerly known as Legal Ethics or Professional Ethics, fits uneasily into a Survey of Recent Developments in Indiana law. Like International Law from its inception, and Commercial Law in its formative stages, it is difficult in Professional Responsibility to ascertain which actions of official and unofficial bodies are law, rather than mere custom or professional etiquette. Similarly, it is difficult to ascertain for whom these actions are binding, and which actions of official and unofficial bodies outside Indiana have become part of the Indiana law of Professional Responsibility. Moreover, yearly developments in Professional Responsibility cannot be analyzed properly without discussing real and asserted power relations among various groups within the legal profession, and their relations with lay groups and governmental institutions. Within the constraints inherent in the annual format,¹ this Article will attempt merely to summarize developments in Professional Responsibility from June 1, 1980 through May 31, 1981,² as impartially

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¹The following Surveys have appeared in this series since it began in 1975: Bubalo, *Professional Responsibility*, 13 IND. L. REV. 325 (1980); Honecker, *Professional Responsibility*, 12 IND. L. REV. 258 (1979); Jackson, *Professional Responsibility and Liability*, 14 IND. L. REV. 433 (1981); Kelso, *Professional Responsibility*, 9 IND. L. REV. 281 (1975); Kelso, *Professional Responsibility*, 10 IND. L. REV. 283 (1976); Kelso, *Professional Responsibility*, 11 IND. L. REV. 219 (1977).

Professional liability of legal professionals, including attorney malpractice, could be included in Professional Responsibility in a broad sense but is omitted from this survey. Professional liability of legal professionals deals with professional standards, but is best understood in the broader context of torts and more specifically, malpractice generally. See Harrigan, *Torts, 1981 Survey of Recent Developments in Indiana Law*, 15 IND. L. REV. 423, 432-33 (1981).

²Cases are included as though decided on the date on which the opinion is included in the N.E.2d advance sheets, not necessarily the date of the decision.

as possible using published documents with a minimum of subjective analysis or critical comment.

B. "Statutory" Developments

1. *American Bar Association.*—The most important current moral code of the American legal profession is the American Bar Association Code of Professional Responsibility originally adopted in 1969. During the Survey year, the House of Delegates of the Association added a new Ethical Consideration (EC9-7) to the Code, stating that a lawyer has an ethical obligation to participate in efforts by the bar to reimburse those who have lost money or property because of the misappropriation or defalcation of another lawyer.³ This is primarily a rule of aspiration,⁴ and applies immediately and directly only to members of the American Bar Association;⁵ but Ethical Considerations may be used to interpret Disciplinary Rules and have a tendency eventually to influence the interpretation of professional standards by all adjudicatory bodies.

The American Bar Association Board of Governors approved Revised Rules of Procedure for the ABA Standing Committee on Ethics and Professional Responsibility.⁶ These rules do not apply immediately or directly to Indiana disciplinary proceedings, or requests for opinions from the Indiana State Bar Association Standing Committee on Legal Ethics, but would apply to members of the American Bar Association dealing with that body's Standing Committee on Ethics and Professional Responsibility. Also, the revised ABA rules eventually may influence the interpretation of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys.

Last year, the American Bar Association Commission on Evaluation of Professional Standards, popularly called the Kutak Commission, prepared a discussion draft of Model Rules of Professional Conduct dated January 30, 1980, intended to replace the 1969 ABA Code of Professional Responsibility, as amended. At its February 1981 meeting, the Kutak Commission voted that its final draft provide for only voluntary disclosure by an attorney of contemplated future mis-

³7 LEGAL ECONOMICS 10 (Jan. 2, 1981).

⁴See generally L. FULLER, THE MORALITY OF LAW at 5 (2d ed. 1969) (contrasting the moralities of duty and of aspiration); ABA CODE OF PROFESSIONAL RESPONSIBILITY, Preliminary Statement (1970).

⁵IND. R. ADMISS. & DISCP. 23(2)(a); Kizer v. Davis, 369 N.E.2d 439, 443 (Ind. Ct. App. 1977). Indiana lawyers who practice in subject matter areas subject to the jurisdiction of federal courts and administrative agencies should check the text of the CODE OF PROFESSIONAL RESPONSIBILITY adopted there from time to time, especially with respect to amendments after its original promulgation by the ABA in 1969.

⁶67 A.B.A. J. 504 (1981).

conduct of his or her client unless the attorney is directly involved in the misconduct.⁷ Chairman Kutak has been quoted as saying that the latest draft is "so different [from the January 30, 1980 draft] that [he] would describe it as a new text."⁸ The last meeting to draft changes in the Model Rules apparently was held in May 1981, after which the final draft was issued.⁹ When and if adopted by the ABA House of Delegates,¹⁰ the Model Rules will become binding on members of the American Bar Association. It may be adopted in federal courts and administrative agencies with respect to practice there, and might be adopted in Indiana eventually. In any event, the Model Rules will tend to influence interpretation of existing codes of professional responsibility by all adjudicatory bodies.

2. *Indiana Supreme Court.*—The Supreme Court of Indiana amended the Indiana Rules for Admission to the Bar and the Discipline of Attorneys in several respects. The amendments deal with admission on foreign license (Rule 6), fees for the bar examination (Rule 16), and fees for professional corporations (Rule 27(h)).¹¹

C. *Indiana Court Cases*

State supreme courts claim inherent power to discipline attorneys admitted to practice before them as officers of the court with respect to all of their professional activities, whether or not related to pending or contemplated litigation.

1. *Effective Representation.*—Two Indiana Supreme Court cases passed on the effectiveness of representation of counsel in criminal cases. One¹² involved a defense attorney who put the defendant on the witness stand and examined him concerning a prior juvenile conviction for theft, which the prosecutor could not have disclosed. Also, the defense attorney failed to attempt to establish the defendant's being at home as an alibi, though the defendant's wife's testimony did not agree with the defendant's testimony on this point. Justice DeBruler, writing for a unanimous court, argued

⁷Winter, *Kutak Panel Softens a "Whistleblowing" Rule*, 67 A.B.A. J. 282 (1981).

⁸*Id.*

⁹*Id.*

¹⁰William M. Osborn, Esq., Chairman of the Standing Committee on Legal Ethics of the Indiana State Bar Association, reported that the Kutak Commission planned to submit its final draft of the Model Rules to the ABA House of Delegates in August, 1982. 24 RES GESTAE 661 (1980). A letter dated May 30, 1981, from Robert J. Kutak, Esq., Chairman of the Kutak Commission, which accompanied the ABA COMMISSION ON EVALUATION OF PROFESSIONAL STANDARDS, PROPOSED FINAL DRAFT: MODEL RULES OF PROFESSIONAL CONDUCT: MAY 30, 1981, says this draft will be submitted to the ABA House of Delegates in January, 1982.

¹¹25 RES GESTAE 84, 87 (1981).

¹²*Morris v. State*, 409 N.E.2d 608 (Ind. 1980).

that deliberate choices made by counsel for some contemplated tactical or strategic reason do not necessarily establish ineffective representation, even though such choices may be subject to some criticism or may turn out later to be detrimental to the client's cause. Perhaps, he speculated, trial counsel's point was that the defendant's prior criminal record did not involve a sex offense.¹³

The other case¹⁴ involved a 1963 guilty plea to murder in exchange for a life sentence, rather than the death penalty. The two defense attorneys spent a total of 154 hours on the case, but did not attempt to claim that the death penalty was unconstitutional under the United States Constitution, or anticipate that it might be held to be so.¹⁵ Justice Hunter, writing for a unanimous court, held that an attorney need not necessarily foresee such a result nearly a decade before it occurred.¹⁶

2. *Information from Clients.*—Where an attorney arranged a land sale contract, apparently representing both vendor and purchaser, and the attorney passed on to the buyer statements about the property told to him by the seller, the attorney may be disciplined if the statements turn out to be incorrect and lead to a legal conflict between the parties.¹⁷ The attorney in this case received a public reprimand for multiple employment, prejudicing or damaging his client, and engaging in conduct which adversely reflected on his fitness to practice law.¹⁸

Where an attorney represented a husband and wife with respect to their corporations, and represented the wife, with the husband's consent, in a divorce action, the attorney later could not report their desperate financial condition or the particulars of the divorce to a police officer after the husband was killed.¹⁹ The wife was suspected of murdering the husband. Therefore, the attorney revealed confidences of his client to the client's disadvantage, and was given a public reprimand.²⁰

3. *Attorney as Witness.*—On the other hand, defense counsel in a criminal case may not cause the prosecuting attorney to be disqualified as such, by calling him as a witness to testify with respect to any offers of leniency made to a prosecuting witness.²¹ The ABA

¹³*Id.* at 611-12.

¹⁴*Huggins v. State*, 403 N.E.2d 332 (Ind. 1980).

¹⁵*Furman v. Georgia*, 408 U.S. 238 (1972). *But see* *Gregg v. Georgia*, 428 U.S. 153 (1976).

¹⁶403 N.E.2d 332, 334 (Ind. 1980).

¹⁷*In re Hugh V. Banta*, 412 N.E.2d 221 (Ind. 1980).

¹⁸*Id.* at 222.

¹⁹*In re John M. Rhame III*, 416 N.E.2d 823 (Ind. 1981).

²⁰*Id.*

²¹*Rufer v. State*, 413 N.E.2d 880 (Ind. 1980).

Code of Professional Responsibility Disciplinary Rule 5-102 calls for an attorney to withdraw from a trial after serving as a witness to a contested matter in it. Justice Prentice, however, writing for the court wrote that this rule " 'was not designed to permit a lawyer to call opposing counsel as a witness and thereby disqualify him as counsel.' "22

4. *Neglect.*—Two recent cases involved unexplained neglect of routine matters where the attorney was paid in advance. In one case, a bankruptcy was to be obtained for \$302.00,²³ and in another case a marriage dissolution proceeding was to be prosecuted for a \$300.00 fee.²⁴ The first attorney, who did not appear, was suspended for two years,²⁵ while the second received a public reprimand.²⁶

Similarly, where an attorney for an administrator received a check for past due inheritance taxes, but lost the file and did not close the estate until more than four years later, the attorney received a forty day suspension.²⁷

5. *Failing to File Tax Return.*—The Supreme Court of Indiana rather consistently considers conviction for failing to file a federal income tax return as illegal conduct involving moral turpitude, and suspends the offending attorney from practice for about thirty days beginning about one month after the suspension order.²⁸

6. *Conduct During Disciplinary Proceedings.*—An unfortunate case,²⁹ growing out of long-standing difficulties of Mark Daniel Friedland with the Indiana Supreme Court Disciplinary Commission, ended in disbarment during the Survey year. Mr. Friedland was suspended for thirty days in 1978 for making apparently agitated

²²*Id.* at 883 (quoting *Galarowicz v. Ward*, 119 Utah 611, 620, 230 P.2d 576, 580 (1951), cited in ABA CODE OF PROFESSIONAL RESPONSIBILITY DR5-102 n.31).

²³*In re George A. Purvis*, 416 N.E.2d 439 (Ind. 1981).

²⁴*In re Bruce E. Bloom*, 406 N.E.2d 1169 (Ind. 1980).

²⁵416 N.E.2d at 440.

²⁶406 N.E.2d at 1170.

²⁷*In re C. Keith Pettigrew*, 416 N.E.2d 821 (Ind. 1981). Mr. Pettigrew also was convicted for failing to file his individual federal income tax return for the year the inheritance tax was due. *Id.*

²⁸*Id.* (40 day suspension). *In re Donald E. Gibson*, 416 N.E.2d 822 (Ind. 1981) (30 day suspension). *In re Greeley Gay*, 413 N.E.2d 879 (Ind. 1980) (30 day suspension). The suspension here must have begun one month after the hearing, i.e. on January 19, 1981, rather than on January 19, 1980, the date indicated in the published opinion. *In re Paul F. Brady*, 412 N.E.2d 221 (Ind. 1980) (30 days suspension). *In re Spencer J. Schnaitter*, 407 N.E.2d 1153 (Ind. 1980) (30 day suspension).

The opinions seem to assume that the taxpayer in each case had sufficient gross income to require a return to be filed. Guilty pleas or findings in each case seem to support that assumption. Failure to file a federal income tax return is not a crime unless the taxpayer received gross income for that year in the prescribed amount for the year in question.

²⁹*In re M. Daniel Friedland*, 416 N.E.2d 433 (Ind. 1981).

remarks to a referee (David B. Caldwell) who went behind an agreed settlement of a paternity suit.³⁰ Mr. Friedland also was suspended for nonpayment of disciplinary fees on April 15, 1980, and reinstated on September 9, 1980. Apparently this was a routine administrative suspension.³¹ Prior to these two disciplinary actions, James W. Bradford had filed a grievance against Mr. Friedland alleging misrepresentation of the status of a pending lawsuit, made while arguing a motion to intervene in another case. The Bradford complaint ultimately was dismissed by the Indiana Supreme Court for insufficient evidence.³² Disbarment of Mr. Friedland resulted, however, from events which took place with respect to the handling of the Bradford claim by the Disciplinary Commission.³³

On March 15, 1978, Sheldon Breskow, Executive Secretary of the Disciplinary Commission, notified Mr. Friedland that the Bradford grievance had been reclassified as "'misconduct.'" ³⁴ Five days later, Mr. Friedland and three of his clients called on Mr. Breskow and Cecil L. Martin, investigator for the Disciplinary Commission. Mr. Friedland apparently "became agitated, uttered profanity, and at one point stated to Breskow, 'You are . . . lying . . . and I'm going to get you.'" ³⁵ Several weeks later, Mr. Friedland came back with a letter which he said would be sent to "1,000 selected lawyers" if all grievances were not dropped.³⁶ The letter referred to Mr. Breskow in uncomplimentary terms and accused him of personal and professional misconduct in the manner in which he was administering the work of the Commission.³⁷ Several days later, several major Indianapolis law firms received the letter, which accused Mr. Breskow of "'perverting the function of the commission,'" pursuing "'personal animosity,'" using his office "'for [a] personal vendetta,'" and using his "'power base to harrass lawyers for personal reasons.'" ³⁸ A few

³⁰*In re* Mark Daniel Friedland, 268 Ind. 536, 376 N.E.2d 1126 (1978). Mr. Friedland's remarks included: "'This is an ordeal'"; "'[t]his is a travesty'"; "'[t]his is the biggest farce I've ever seen'"; and "'Judge, you're the biggest fool I've ever seen.'" *Id.* at 538-39, 376 N.E.2d at 1127-28. When the Indiana Supreme Court reviewed the findings of the Indiana Supreme Court Disciplinary Commission, Mr. Friedland's petition for oral argument before the Indiana Supreme Court was denied. *Id.* at 537, 376 N.E.2d at 1127.

³¹416 N.E.2d at 434. Payment of \$25.00 as an annual fee to the Indiana Supreme Court Disciplinary Commission, plus \$2.00 per day up to a maximum of 20 days' late fee, is necessary to preserve good standing as an attorney in Indiana. *See generally* 23 RES GESTAE 462 (1979).

³²416 N.E.2d at 434.

³³*Id.* at 438-39.

³⁴*Id.* at 434.

³⁵*Id.* at 435.

³⁶*Id.*

³⁷*Id.*

³⁸*Id.*

days before the hearing, Mr. Friedland, "while riding his bicycle past Breskow's personal residence, shouted to Breskow that he had better hope the Commission did not win this case."³⁹

During this period, Mr. Friedland attempted to see Judge Paul H. Buchanan, a member of the Disciplinary Commission, and when unable to do so, apparently said in a loud and angry manner, "'Alright, you are on my list.'"⁴⁰ Later Mr. Friedland sent the Disciplinary Commission a draft complaint he had signed as attorney for a client who had lost a case before the court of appeals on which Judge Buchanan sat; the draft complaint sought damages in the sum of \$750,000 from Judge Buchanan.⁴¹

The Supreme Court of Indiana found *per curiam* that the conduct summarized above and reported in a five-page published opinion, was not protected free speech under the first amendment to the United States Constitution.⁴² The court further found that Mr. Friedland's motive was "to bring personal pressure on the members and staff of the Disciplinary Commission so as to affect their official judgment;"⁴³ that he intended to sue those who had "administered and prosecuted this proceeding;"⁴⁴ that he had engaged in "undignified and discourteous conduct degrading to a tribunal;"⁴⁵ and that he did not "appear to understand the responsibilities of attorneys."⁴⁶ Hence, the court concluded that the strongest form of discipline (disbarment) should be imposed.⁴⁷

In two cases,⁴⁸ the Supreme Court of Indiana imposed temporary suspension pending final outcome, retroactive to the date of the hearing before the hearing officer. In each case, the suspended attorney voluntarily consented to suspension retroactive to that date. The facts are not stated in the published order in either case. Two

³⁹*Id.*

⁴⁰*Id.*

⁴¹*Id.* An additional grievance, with threats and a suit in federal court is described in the opinion, which should be read in full before drawing any final conclusions concerning this case. Also, the files of the Indiana Supreme Court Disciplinary Commission and transcript of the hearings undoubtedly contain further details which should be taken into account. The brief summary of these events in the text is designed merely to bring the case and reported opinion to the attention of any interested reader.

⁴²*Id.* at 437-38.

⁴³*Id.* at 435.

⁴⁴*Id.* at 437.

⁴⁵*Id.* at 438-39.

⁴⁶*Id.* at 439.

⁴⁷*Id.*

⁴⁸*In re* William R. McCain, 410 N.E.2d 1201 (Ind. 1980). *In re* Preston M. Thomas, 410 N.E.2d 1202 (Ind. 1980).

published orders granting reinstatement⁴⁹ likewise omit any statement of facts. In the first case both the Disciplinary Commission and Supreme Court of Indiana were divided on whether unconditional reinstatement as a member of the bar in good standing should be granted. In the second case, both bodies were unanimous.

7. *Judicial Conduct.*—Two cases involved special rules applicable to judges as legal professionals. The First District of the Court of Appeals of Indiana held that a judge (Paul Jasper) who tried and convicted a person jointly charged with another for possessing narcotics, need not have disqualified himself under Canon 3 of the Indiana Code of Judicial Conduct, when he tried the second defendant.⁵⁰ Each of the defendants waived a jury trial. Canon 3(C)(1)(a) requires a judge to disqualify himself when he has personal knowledge concerning a case; but the court held that this is confined to extrajudicial knowledge, absent a showing of actual bias or prejudice, which will not be presumed.

In the second case,⁵¹ Judge William D. Bontrager was found guilty of "indirect criminal contempt" by the Indiana Supreme Court for failing to carry out an order of that court. A defendant pleaded guilty to first degree burglary. At that time, a ten to twenty year sentence was mandatory, and probation was precluded. Judge Bontrager first imposed the prescribed sentence in 1978, but then found the statute unconstitutional and imposed a lesser sentence with probation. On appeal, the Indiana Supreme Court found the statute constitutional and remanded for the required sentence. Judge Bontrager allowed further proceedings for two months and then recused himself. Richard H. Sproull then was appointed as Special Judge and imposed the prescribed sentence, but released the defendant on bond pending another appeal. Apparently Judge Bontrager made public statements concerning the justice of the prescribed sentence under the circumstances of this case. The Supreme Court of Indiana, by a vote of three to two, found Judge Bontrager guilty of "indirect criminal contempt," and referred the matter to the Judicial Qualifications Commission for investigation.⁵² This Commission makes recommendations concerning discipline, removal or retirement of Indiana Judges.

⁴⁹*In re Michael Riley*, 402 N.E.2d 975 (Ind. 1980) (split). Justice Hunter dissented on the ground, *inter alia*, that the petitioner has admitted "his problem and his inability to completely overcome that problem." *Id.* at 976. The nature of the "problem" is not indicated in the published material. *In re William D. Neal*, 407 N.E.2d 1 (Ind. 1980) (unanimous).

⁵⁰*Jones v. State*, 416 N.E.2d 880, 881 (Ind. Ct. App. 1981).

⁵¹*Palmer v. State*, 418 N.E.2d 530 (Ind. 1981).

⁵²*Id.* at 532.

D. Federal Cases

1. *Attorney-Client Privilege of House Counsel*.—Federal courts occasionally treat United States Constitutional provisions as limitations on state actions enforcing state standards of professional ethics. They also occasionally enunciate principles affecting federal practice, an increasingly important concern of practitioners and judges everywhere.

A recent United States Supreme Court decision, *Upjohn Co. v. United States*,⁵³ illustrates the pervasive influence of federal decisions today. In *Upjohn*, interpretation of federal discovery rules in effect defined the basic relationship of a corporate general counsel to his employer. Here, the corporation's general counsel was informed of questionable payments by a foreign subsidiary of the corporation, to foreign government officials. The general counsel conducted interviews with various corporate officers and employees, and sent a questionnaire to managers of foreign operations of the company concerning payments of this type. The Internal Revenue Service later sought to ascertain the tax consequences of such payments as were made, and issued a summons under 26 U.S.C. §7602 calling for production of the questionnaires and notes of the general counsel concerning the interviews. The corporation refused, claiming that these items constituted the work product of an attorney prepared in anticipation of litigation. The Internal Revenue Service successfully sought enforcement of its summons in the United States District Court for the Western District of Michigan, and the Court of Appeals for the Sixth Circuit affirmed in part.⁵⁴ The United States Supreme Court, however, held that the requested items were protected by the attorney-client privilege. Justice Rehnquist, writing for himself and seven colleagues, commented that:

[i]n the corporate context . . . it will frequently be employees beyond the control group as defined by the court below — “officers and agents . . . responsible for directing [the company’s] actions in response to legal advice” — who will possess the information needed by the corporation’s lawyers. Middle-level — and indeed lower-level — employees can, by actions within the scope of their employment, embroil the corporation in serious legal difficulties, and it is only natural that these employees would have the relevant information

⁵³449 U.S. 383 (1981). See also Harvey, *Civil Procedure and Jurisdiction, 1981 Survey of Recent Developments in Indiana Law*, 15 IND. L. REV. 69, 86-89 (1982).

⁵⁴*United States v. Upjohn*, 600 F.2d 1223 (6th Cir. 1979), *rev'd*, 449 U.S. 383 (1981).

needed by corporate counsel if he is adequately to advise the client with respect to such actual or potential difficulties.⁵⁵

2. *Failure to Prosecute a Civil Action.*—In *Roadway Express, Inc. v. Piper*,⁵⁶ plaintiff's attorney filed a federal civil rights case in the district court, but failed to comply with subsequent orders relating to discovery and filing briefs. In a five to four decision on this issue, the Supreme Court held that, where an attorney willfully abuses judicial processes, federal courts have inherent power to charge him with the costs and attorney fees of his opponent.⁵⁷ "Like other sanctions," Justice Powell wrote, "attorney's fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record."⁵⁸ Mr. Justice Stevens had grave doubts about the district court's inherent powers in this regard, Chief Justice Burger would not have reached this issue, and Justices Stewart and Rehnquist do not state their positions on this question.⁵⁹

3. *Criminal Due Process.*—Federal courts often deal with effectiveness of trial counsel in state criminal cases under the due process clause of the United States Constitution. A recent United States Court of Appeals decision for the Seventh Circuit,⁶⁰ on appeal from the United States District Court for the Northern District of Indiana, illustrates federal review of state professional activities in this type of case. A prisoner filed a habeas corpus action in 1977 for denial of due process in 1968, in that two law partners, each of whom was privy to what the other was doing, represented two defendants who had participated jointly in criminal activity. One defendant pleaded guilty and testified against the other. The other defendant claimed that representation of both defendants by law partners "tainted" his representation, and denied him effective assistance of counsel. The court of appeals agreed, citing, *inter alia*, ABA Standards Relating to the Administration of Criminal Justice, The Defense Function (1974), and the United States Supreme Court

⁵⁵449 U.S. at 391.

⁵⁶447 U.S. 752 (1980).

⁵⁷*Id.* at 764-67.

⁵⁸*Id.* at 767.

⁵⁹*Id.* at 768-72.

⁶⁰*Ross v. Heyne*, 638 F.2d 979 (7th Cir.), *rev'g*, 483 F. Supp. 798 (N.D. Ind. 1980). Indiana courts also apply federal standards to ascertain whether assistance of counsel in state criminal cases was effective under due process requirements. *See, e.g.*, notes 12-16 *supra* and accompanying text.

For a series of annual surveys with extensive analysis of federal court cases affecting Professional Responsibility, see the chapters bearing that heading in the N.Y.U. School of Law ANNUAL SURVEY OF AMERICAN LAW.

Proposed Amendment to Rule 44 of the Federal Rules of Criminal Procedure, then to become effective December 1, 1980.

E. Ethics Committee Opinions

The American Bar Association Standing Committee on Ethics and Professional Responsibility publishes summaries of professional ethics opinions⁶¹ which apply to all members of the American Bar Association, and tend to influence other committees on legal ethics and professional responsibility, as well as courts.

The Standing Committee on Legal Ethics of the Indiana State Bar Association, a voluntary association of more than 6,500 lawyers,⁶² published six opinions during the period of this Survey.⁶³ Additional opinions have been issued by this Committee.⁶⁴ These opinions apply to members of the Indiana State Bar Association, and would tend to influence any committees dealing with legal ethics and professional responsibility in the 95 local bar associations in Indiana.⁶⁵

F. Indiana Supreme Court Disciplinary Commission

Attorneys admitted to practice in Indiana, whether or not members of any bar association, are subject to the Indiana Rules for

⁶¹Professional Ethics Opinions Nos. 1443-57 are summarized in 66 A.B.A. J. 1136 (1980), and Professional Ethics Opinions Nos. 1458-62 & 1464 are summarized in 67 A.B.A. J. 221 (1981). The complete text of any opinion may be obtained from the National Center for Professional Responsibility, 77 South Wacker Drive, Chicago, Illinois 60606, for 25 cents per page, plus \$1.00 for postage and handling. *Id.*

The ABA Standing Committee on Ethics and Professional Responsibility currently has eight members, under the Chairmanship of Henry M. Kittleson of Lakeland, Florida. Membership, from time to time, may be ascertained from opinions published in the ABA Committee on Ethics and Professional Responsibility loose-leaf service, RECENT ETHICS OPINIONS. Five rules for "Composition and Jurisdiction" of the Committee, and twelve "Rules of Procedure," are set forth in 8 MARTINDALE-HUBBELL LAW DIRECTORY 69M (1981). See also note 6 *supra* and accompanying text for recent revisions.

⁶²See, e.g., INDIANA LEGAL DIRECTORY 90 (1980).

⁶³25 RES GESTAE 324 (1981) (Opinion No. 5 of 1980); *id.* 42 (Opinion No. 4 of 1980); *id.* 202 (Opinion No. 3 of 1980); 24 *id.* 688 (1980) (Opinion Nos. 1 & 2 of 1980); and *id.* 644 (1980) (Opinion No. 11 of 1979).

⁶⁴Opinion Nos. 6-8 of 1980, Unpublished Opinion No. U1 of 1980, and Opinion Nos. 1 & 2 of 1981, have been obtained from the Indiana State Bar Association.

Committee membership may be ascertained, from time to time, by consulting the *Directory of the Indiana State Bar Association: Officers, Committees, Sections and Affiliated and Cooperating Organizations* published in RES GESTAE. 23 RES GESTAE 542 (1979) shows William M. Osborn, of Indianapolis, Indiana, as Chairman, and 15 other members from October 1979 to October 1980. 25 *id.* 25 (1981) shows the same membership with two new members added for October 1980 to October 1981.

⁶⁵INDIANA LEGAL DIRECTORY 83-87 (1980) lists 95 local county and city bar associations in Indiana, with their principal officers.

Admission to the Bar and the Discipline of Attorneys, and the Appendix setting forth the Code of Professional Responsibility for Attorneys-at-Law and Judicial Conduct and Ethics.⁶⁶ Grievances may be filed with, and are investigated by, the Indiana Supreme Court Disciplinary Commission, a group of seven lawyers or judges appointed by the Indiana Supreme Court.⁶⁷ The current annual report of the Disciplinary Commission shows the number of formal grievances filed during the 1979-80 fiscal year to be about the same as those filed in the preceding fiscal year.⁶⁸ Some grievances are dismissed by the Disciplinary Commission without further classification; but of the remainder, the most prevalent activities giving rise to formal complaints, in the order of their prevalence, are: criminal matters, divorce matters, wills and estates, tort matters and judicial matters.⁶⁹ These also are the activities most often suggesting misconduct, in the order of their prevalence.⁷⁰ Many grievances, upon investigation, involve no misconduct in the opinion of the Commission. The most prevalent types of misconduct found as a result of formal grievances, in the order of their prevalence, are: neglect or failure to communicate with the client, incompetence, "minor fee disputes," overreaching, and conflicts of interest.⁷¹ "Excessive fees," on the other hand, are ninth among 17 categories of misconduct; of 21 grievances filed on this ground in fiscal 1979-80, only five were classified as misconduct by the Disciplinary Commission.⁷²

G. Conclusion

Professional responsibility is both a new field and an old one, both changing and changeless. It currently suffers from the natural propensity of lawyers to treat recent rules and opinions in this field like those in other legal fields, with insufficient attention to real

⁶⁶See note 5 *supra*.

⁶⁷Members and staff of the Indiana Supreme Court Disciplinary Commission are listed in its annual report for July 1, 1979 through June 30, 1980, published in 24 RES GESTAE 634 (1980). Officers are elected annually. The current list is in 24 RES GESTAE 687 (1980).

⁶⁸24 RES GESTAE 634 (1980). About 300 grievances per year were filed from 1971-72 through the 1976-77 fiscal year. The past two fiscal years, however, show 560 and 544 grievances per year respectively. *Id.* This increase could be the result of more objectionable conduct by attorneys, more public awareness of the availability of grievance machinery, or other factors.

⁶⁹*Id.* at 635-36. Other matters less often giving rise to formal grievances are: real estate matters, contract matters, bankruptcy, collections, guardianships, workmen's compensation, personal misconduct, formation of corporations, zoning, administrative matters, condemnation, and adoption, in the order of their prevalence.

⁷⁰*Id.*

⁷¹*Id.* at 636-37.

⁷²*Id.* at 636.

historical and structural changes in the legal professions, and actual power relations among various official and unofficial bodies seeking to control professional standards and activities.

Our relatively short period of legal education, lack of formal internship, great numbers of lawyers per capita, recent influx of new lawyers, independent, voluntary and overlapping bar associations, and complex federal legal and bar association structures, pose many special problems for the immediate future. Lawyers and judges certainly will survive, as businessmen or government bureaucrats if not as members of a legal profession. But it remains to be seen whether our professional guild traditions, reaching back into the Middle Ages, can survive in a highly regulated commercial economy.⁷³ If the spirit of professional service which underlies our calling does not survive these times, it will be very difficult to recreate a legal profession in the society of the future.

⁷³For a recent hint of what the future may hold, see Edwards, *The President's Message: Leader Session Identifies Bar Concerns*, 24 RES GESTAE 657 (1980), referring to a Federal Trade Commission questionnaire addressed to state bar associations, inquiring about association regulations which might limit access to legal services.

