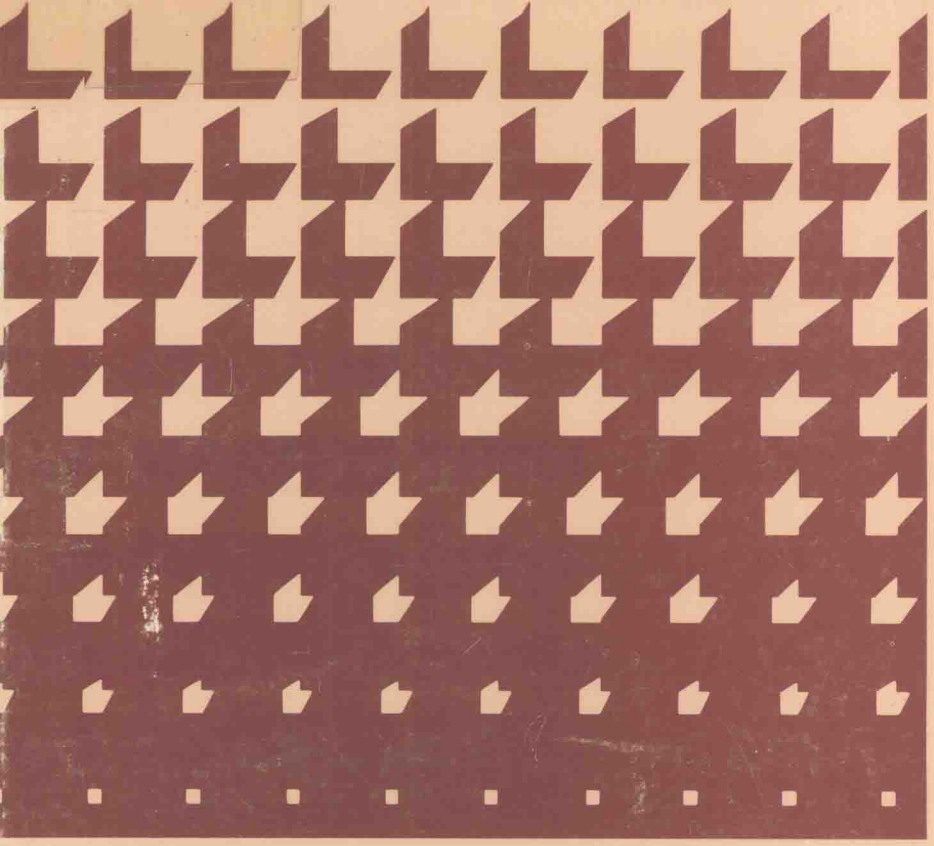
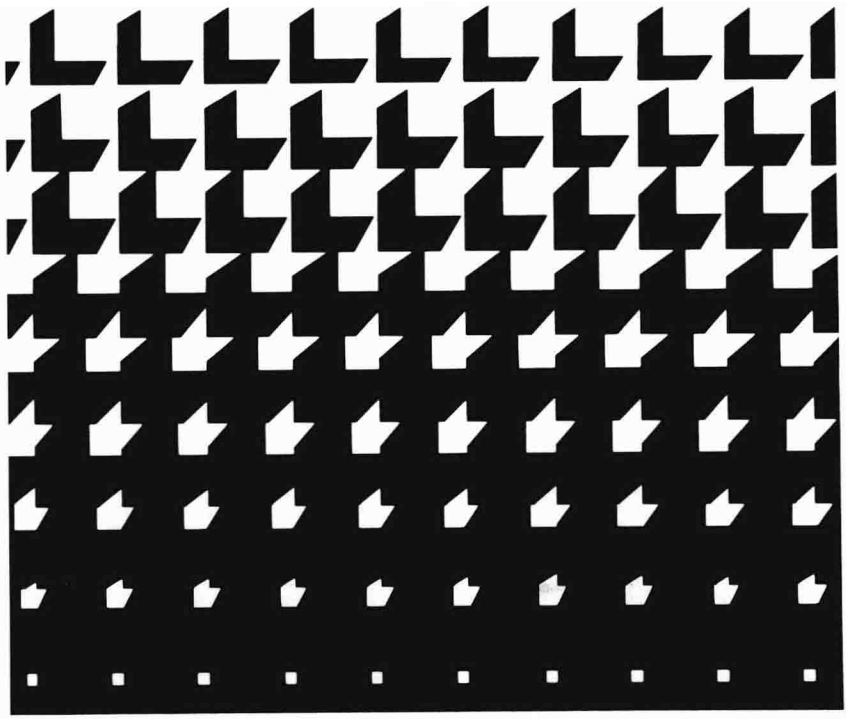


AMERICAN BAR ASSOCIATION

MODEL CODE OF PROFESSIONAL RESPONSIBILITY AND CODE OF JUDICIAL CONDUCT



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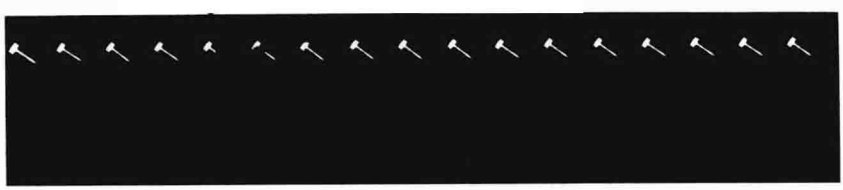

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MODEL CODE OF PROFESSIONAL RESPONSIBILITY

Preface

On August 14, 1964, at the request of President Lewis F. Powell, Jr., the House of Delegates of the American Bar Association created a Special Committee on Evaluation of Ethical Standards to examine the then current Canons of Professional Ethics and to make recommendations for changes. That committee produced the Model Code of Professional Responsibility which was adopted by the House of Delegates in 1969 and became effective January 1, 1970. The new Model Code revised the previous Canons in four principal particulars: (1) there were important areas involving the conduct of lawyers that were either only partially covered in or totally omitted from the Canons; (2) many Canons that were sound in substance were in need of editorial revision; (3) most of the Canons did not lend themselves to practical sanctions for violations; and (4) changed and changing conditions in our legal system and urbanized society required new statements of professional principles.

The original 32 Canons of Professional Ethics were adopted by the American Bar Association in 1908. They were based principally on the Code of Ethics adopted by the Alabama State Bar Association in 1887, which in turn had been borrowed largely from the lectures of Judge George Sharswood, published in 1854 under the title of *Professional Ethics,* and from the fifty resolutions included in David Hoffman's *A Course of Legal Study* (2d ed. 1836). Since then a limited number of amendments have been adopted on a piecemeal basis.

As far back as 1934 Mr. Justice (later Chief Justice) Harlan Fiske Stone, in his memorable address entitled *The Public Influence of the Bar,* made this observation:

> "Before the Bar can function at all as a guardian of the public interests committed to its care, there must be appraisal and comprehension of the new conditions, and the chaned relationship of the lawyer to his clients, to his professional brethren and to the public. That appraisal must pass beyond the petty details of formand manners which have been so largely the subject of our Codes of Ethics, to more fundamental consideration of the way in which our professional activities affect the welfare of society as a whole. Our canons of ethics for the most part are generalizations designed for an earlier era."

Largely in that spirit, the committee appointed by President Powell in 1964 reached unanimous conclusion that further piecemeal amendment of the original Canons would not suffice. It proceeded to compose the Model Code of Professional Responsibility in response to the perceived need for change in the statement of professional principles for lawyers.

While the opinions of the Committee on Professional Ethics of the American Bar Association had been published and given fairly wide distribution with resulting value to the bench and bar, they certainly were not conclusive as to the adequacy of the previous Canons. Because the opinions were necessarily interpretations of the existing Canons, they tended to support the Canons and were critical of them only in the most unusual case. Since a large number of requests for opinions from the Committee on Professional Ethics dealt with the etiquette of law practice, advertising, partnership names, announcements and the like, there had been a tendency for many lawyers to assume that this was the exclusive field of interest of the Committee and that it was not concerned with the more serious questions of professional standards and obligations.

The previous Canons were not an effective teaching instrument and failed to give guidance to young lawyers beyond the language of the Canons themselves. There was no organized interrelationship between the Canons and they often overlapped. They were not cast in language designed for disciplinary enforcement and many abounded with quaint expressions of the past. Those Canons contained, nevertheless, many provisions that were sound in substance, and all of these were retained in the Model Code adopted in 1969. In the studies and meetings conducted by the committee which developed the present Model Code, the committee relied heavily upon the monumental *Legal Ethics* (1953) of Henry S. Drinker, who served with great distinction for nine years as Chairman of the Committee on Professional Ethics (known in his day as the Committee on Professional Ethics and Grievances) of the American Bar Association.

The Formal Opinions of the Committee on Ethics and Professional Responsibility were collected and published in a single volume in 1967, and since that time have been published continuously in looseleaf form. (The name was changed in 1971 to the Standing Committee on Ethics and Professional Responsibility.) The Informal Opinions of

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mum standards. But in the last analysis it is the desire for the respect and confidence of the members of his profession and of the society which he serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

Preliminary Statement

In furtherance of the principles stated in the Preamble, the American Bar Association has promulgated this Model Code of Professional Responsibility, consisting of three separate but interrelated parts: Canons, Ethical Considerations, and Disciplinary Rules.[6] The Model Code is designed to be adopted by appropriate agencies both as an inspirational guide to the members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules.

Obviously the Canons, Ethical Considerations, and Disciplinary Rules cannot apply to non-lawyers; however, they do define the type of ethical conduct that the public has a right to expect not only of lawyers but also of their non-professional employees and associates in all matters pertaining to professional employment. A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client.

The Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession. They embody the general concepts from which the Ethical Considerations and the Disciplinary Rules are derived.

The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.[7]

The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial,[8] the Disciplinary Rules should be uniformly applied to all lawyers,[9] regardless of the nature of their professional activities.[10] The Model Code makes no attempt to prescribe either disciplinary procedures or penalties[11] for violation of a Disciplinary Rule,[12] nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances.[13] An enforcing agency, in applying the Disciplinary Rules,

may find interpretive guidance in the basic principles embodied in the Canons and in the objectives reflected in the Ethical Considerations.

NOTES

1. The footnotes are intended merely to enable the reader to relate the provisions of this Model Code to the ABA Canons of Professional Ethics adopted in 1908, as amended, the Opinions of the ABA Committee on Professional Ethics, and a limited number of other sources; they are not intended to be an annotation of the views taken by the ABA Special Committee on Evaluation of Ethical Standards. Footnotes citing ABA Canons refer to the ABA Canons of Professional Ethics, adopted in 1908, as amended.

2. *Cf.* ABA CANONS OF PROFESSIONAL ETHICS, Preamble (1908).

3. "[T]he lawyer stands today in special need of a clear understanding of his obligations and of the vital connection between these obligations and the role his profession plays in society." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1160 (1958).

4. "No general statement of the responsibilities of the legal profession can encompass all 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." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159, 1218 (1958).

5. "The law and its institutions change as social conditions change. They must change if they are to preserve, much less advance, the political and social values from which they derive their purposes and their life. This is true of the most important of legal institutions, the profession of law. The profession, too, must change when conditions change in order to preserve and advance the social values that are its reasons for being." Cheatham, *Availability of Legal Services: The Responsibility of the Individual Lawyer and the Organized Bar,* 12 U.C.L.A. L. REV. 438, 440 (1965).

6. The Supreme Court of Wisconsin adopted a Code of Judicial Ethics in 1967. "The code is divided into standards and rules, the standards being statements of what the general desirable level of conduct should be, the rules being particular canons, the violation of which shall subject an individual judge to sanctions." In re Promulgation of a Code of Judicial Ethics, 36 Wis. 2d 252, 255, 153 N.W. 2d 873, 874 (1967).

The portion of the Wisconsin Code of Judicial Ethics entitled "Standards" states that "[t]he following standards set forth the significant qualities of the ideal judge. . . ." *Id.,* 36 Wis.2d at 256, 153 N.W. 2d at 875. The portion entitled "Rules" states that "[t]he court promulgates the following rules because the requirements of judicial conduct embodied therein are of sufficient gravity to warrant sanctions if they are not obeyed. . . ." *Id.,* 36 Wis.2d at 259, 153 N.W. 2d at 876.

7. "Under the conditions of modern practice it is peculiarly necessary that the lawyer should understand, not merely the established standards of professional conduct, but the reasons underlying these standards. Today the lawyer plays a changing and increasingly varied role. In many developing fields the precise contribution of the legal profession is as yet undefined." *Professional Responsibility: Report of the Joint Conference,* 44 A.B.A.J. 1159 (1958).

"A true sense of professional responsibility must derive from an understanding of the reasons that lie back of specific restraints, such as those embodied in the Canons. The grounds for the lawyer's peculiar obligations are to be found in the nature of his calling. The lawyer who seeks a clear understanding of his duties will be led to reflect on the special services his profession renders to society and the services it might render if its full capacities were realized. When the lawyer fully understands the nature of his office, he will then discern what restraints are necessary to keep that office wholesome and effective." *Id.*

8. "Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. . . . He is accordingly entitled to procedural due process, which includes

fair notice of the charge." In re Ruffalo, 390 U.S. 544, 550, 20 L. Ed. 2d 117, 122, 88 S. Ct. 1222, 1226 (1968), *rehearing denied,* 391 U.S. 961, 20 L. Ed. 2d 874, 88 S. Ct. 1833 (1968).

"A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. . . . A State can require high standards of qualification . . . but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." Schware v. Bd. of Bar Examiners, 353 U.S. 232, 239, 1 L. Ed. 2d 796, 801-02, 77 S. Ct. 752, 756 (1957).

"[A]n accused lawyer may expect that he will not be condemned out of a capricious self-righteousness or denied the essentials of a fair hearing." Kingsland v. Dorsey, 338 U.S. 318, 320, 94 L. Ed. 123, 126, 70 S. Ct. 123, 124-25 (1949).

"The attorney and counsellor being, by the solemn judicial act of the court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency." Ex parte Garland, 71 U.S. (4 Wall.) 333, 378-79, 18 L. Ed. 366, 370 (1866).

See generally Comment, *Procedural Due Process and Character Hearings for Bar Applicants,* 15 STAN. L. REV. 500 (1963).

9. "The canons of professional ethics must be enforced by the Courts and must be respected by members of the Bar if we are to maintain public confidence in the integrity and impartiality of the administration of justice." In re Meeker, 76 N. M. 354, 357, 414 P.2d 862, 864 (1966), *appeal dismissed,* 385 U.S. 449 (1967).

10. See ABA CANON OF PROFESSIONAL ETHICS, CANON 45 (1908).

11. "Other than serving as a model or derivative source, the American Bar Association Model Code of Professional Responsibility plays no part in the disciplinary proceeding, except as a guide for consideration in adoption of local applicable rules for the regulation of conduct on the part of legal practitioners." ABA COMM. ON PROFESSIONAL ETHICS, INFORMAL OPINION NO. 1420 (1978) [hereinafter each Formal Opinion is cited as "*ABA Opinion*"]. For the purposes and intended effect of the American Bar Association Model Code of Professional Responsibility and of the opinions of the Standing Committee on Ethics and Professional Responsibility, see Informal Opinion No. 1420.

"There is generally no prescribed discipline for any particular type of improper conduct. The disciplinary measures taken are discretionary with the courts, which may disbar, suspend, or merely censure the attorney as the nature of the offense and past indicia of character may warrant." Note, 43 CORNELL L.Q. 489, 495 (1958).

12. The Model Code seeks only to specify conduct for which a lawyer should be disciplined by courts and governmental agencies which have adopted it. Recommendations as to the procedures to be used in disciplinary actions are within the jurisdiction of the American Bar Association Standing Committee on Professional Discipline.

13. "The severity of the judgment of this court should be in proportion to the gravity of the offenses, the moral turpitude involved, and the extent that the defendant's acts and conduct affect his professional qualifications to practice law." Louisiana State Bar Ass'n v. Steiner, 204 La. 1073, 1092-93, 16 So. 2d 843, 850 (1944) (Higgins, J., concurring in decree).

"Certainly an erring lawyer who has been disciplined and who having paid the penalty has given satisfactory evidence of repentance and has been rehabilitated and restored to his place at the bar by the court which knows him best ought not to have what amounts to an order of permanent disbarment entered against him by a federal court solely on the basis of an earlier criminal record and without regard to his subsequent rehabilitation and present good character. . . . We think, therefore, that the district court should reconsider the appellant's application for admission and grant it unless the court finds it to be a fact that the appellant is not presently of good moral or professional character." In re Dreier, 258 F.2d 68, 69-70 (3d Cir. 1958).

CANON 1
A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

ETHICAL CONSIDERATIONS

EC 1-1 A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2 The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education[1] or moral standards[2] or of other relevant factors[3] but who nevertheless seek to practice law. To assure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar.[4] In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of pre-admission and post-admission legal education.

EC 1-3 Before recommending an applicant for admission, a lawyer should satisfy himself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, he should report to proper officials all unfavorable information he possesses relating to the character or other qualifications of an applicant.[5]

EC 1-4 The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules.[6] A lawyer should, upon request serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.[7]

EC 1-5 A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct.[8] Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6 An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and

educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice.[9] In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed, or, if licensed, in being restored to his full right to practice.

DISCIPLINARY RULES

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.[10]

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.[11]

DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.[12]

(3) Engage in illegal conduct involving moral turpitude.[13]

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.[14]

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.[15]

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.[16]

NOTES

1. "[W]e cannot conclude that all educational restrictions [on bar admission] are unlawful. We assume that few would deny that a grammar school education requirement, before taking the bar examination, was reasonable. Or that an applicant had to be able to read or write. Once we conclude that *some* restriction is proper, then it becomes a matter of degree—the problem of drawing the line.

. . . .

"We conclude the fundamental question here is whether Rule IV, Section 6 of the Rules Pertaining to Admission of Applicants to the State Bar of Arizona is 'arbitrary, capricious and unreasonable.' We conclude an educational requirement of graduation from an accredited law school is not." Hackin v. Lockwood, 361 F.2d 499, 503-4 (9th Cir. 1966), *cert. denied,* 385 U.S. 960, 17 L. Ed.2d 305, 87 S. Ct. 396 (1966).

2. "Every state in the United States, as a prerequisite for admission to the practice of law, requires that applicants possess 'good moral character.' Although the requirement is of judicial origin, it is now embodied in legislation in most states." Comment, *Procedural Due Process and Character Hearings for Bar Applicants,* 15 STAN. L. REV. 500 (1963).

"Good character in the members of the bar is essential to the preservation of the integrity of the courts. The duty and power of the court to guard its portals against intrusion by men and women who are mentally and morally dishonest, unfit because of bad character, evidenced by their course of conduct, to participate in the administrative law, would seem to be unquestioned in the matter of preservation of judicial dignity and integrity." In re Monaghan, 126 Vt. 53, 222 A.2d 665, 670 (1966).

"Fundamentally, the question involved in both situations [*i.e.* admission and disciplinary proceedings] is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law, and that usually turns upon whether he has committed or is likely to continue to commit acts of moral turpitude. At the time of oral argument the attorney for respondent frankly conceded that the test for admission and for discipline is and should be the same. We agree with this concession." Hallinan v. Comm. of Bar Examiners, 65 Cal.2d 447, 453, 421 P.2d 76, 81, 55 Cal.Rptr. 228, 233 (1966).

3. "Proceedings to gain admission to the bar are for the purpose of protecting the public and the courts from the ministrations of persons unfit to practice the profession. Attorneys are officers of the court appointed to assist the court in the administration of justice. Into their hands are committed the property, the liberty and sometimes the lives of their clients. This commitment demands a high degree of intelligence, knowledge of the law, respect for its function in society, sound and faithful judgment and, above all else, integrity of character in private and professional conduct." In re Monaghan, 126 Vt. 53, 222 A.2d 665, 676 (1966) (Holden, C.J., dissenting).

4. "A bar composed of lawyers of good moral character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members of an Independent Bar." Konigsberg v. State Bar, 353 U.S. 252, 273, 1 L. Ed. 2d 810, 825, 77 S. Ct. 722, 733 (1957).

5. *See* ABA CANONS OF PROFESSIONAL ETHICS, CANON 29 (1908).

6. ABA CANONS OF PROFESSIONAL ETHICS, CANON 28 (1908) designates certain conduct as unprofessional and then states that: "A duty to the public and to the profession devolves upon every member of the Bar having knowledge of such practices upon the part of any practitioner immediately to inform thereof, to the end that the offender may be disbarred." ABA CANON 29 states a broader admonition: "Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession."

7. "It is the obligation of the organized Bar and the individual lawyer to give unstinted cooperation and assistance to the highest court of the state in discharging its function and duty with respect to discipline and in purging the profession of the unworthy." *Report of the Special Committee on Disciplinary Procedures,* 80 A.B.A. REP. 463, 470 (1955).

8. *Cf.* ABA CANONS OF PROFESSIONAL ETHICS, CANON 32 (1908).

9. "We decline, on the present record, to disbar Mr. Sherman or to reprimand him—not because we condone his actions, but because, as heretofore indicated, we are concerned with whether he is mentally responsible for what he has done.

"The logic of the situation would seem to dictate the conclusion that, if he was

mentally responsible for the conduct we have outlined, he should be disbarred; and, if he was not mentally responsible, he should not be permitted to practice law.

"However, the flaw in the logic is that he may have been mentally irresponsible [at the time of his offensive conduct] . . . , and, yet, have sufficiently improved in the almost two and one-half years intervening to be able to capably and competently represent his clients.

. . . .

"We would make clear that we are satisfied that a case has been made against Mr. Sherman, warranting a refusal to permit him to further practice law in this state unless he can establish his mental irresponsibility at the time of the offenses charged. The burden of proof is upon him.

"If he establishes such mental irresponsibility, the burden is then upon him to establish his present capability to practice law." In re Sherman, 58 Wash. 2d 1, 6-7, 354 P.2d 888, 890 (1960), *cert. denied*, 371 U.S. 951, 9 L. Ed. 2d 499, 83 S. Ct. 506 (1963).

10. "This Court has the inherent power to revoke a license to practice law in this State, where such license was issued by this Court, and its issuance was procured by the fraudulent concealment, or by the false and fraudulent representation by the applicant of a fact which was manifestly material to the issuance of the license." North Carolina ex rel. Attorney General v. Gorson, 209 N.C. 320, 326, 183 S.E. 392, 395 (1936), *cert. denied*, 298 U.S. 662, 80 L. Ed. 1387, 56 S. Ct. 752 (1936).

See also Application of Patterson, 318 P.2d 907, 913 (Or. 1957), *cert. denied*, 356 U.S. 947, 2 L. Ed. 2d 822, 78 S. Ct. 795 (1958).

11. *See* ABA CANONS OF PROFESSIONAL ETHICS, CANON 29 (1908).

12. In *ABA Opinion* 95 (1933), which held that a municipal attorney could not permit police officers to interview persons with claims against the municipality when the attorney knew the claimants to be represented by counsel, the Committee on Professional Ethics said:

"The law officer is, of course, responsible for the acts of those in his department who are under his supervision and control. *Opinion* 85. *In re Robinson*, 136 N.Y.S. 548 (affirmed 209 N.Y. 354-1912) held that it was a matter of disbarment for an attorney to adopt a general course of approving the unethical conduct of employees of his client, even though he did not actively participate therein.

" '. . . The attorney should not advise or sanction acts by his client which he himself should not do.' *Opinion* 75."

13. "The most obvious non-professional ground for disbarment is conviction for a felony. Most states make conviction for a felony grounds for automatic disbarment. Some of these states, including New York, make disbarment mandatory upon conviction for *any* felony, while others require disbarment only for those felonies which involve moral turpitude. There are strong arguments that some felonies, such as involuntary manslaughter, reflect neither on an attorney's fitness, trustworthiness, nor competence and, therefore, should not be grounds for disbarment, but most states tend to disregard these arguments and, following the common law rule, make disbarment mandatory on conviction for any felony." Note, 43 CORNELL L.Q. 489, 490 (1958).

"Some states treat conviction for misdemeanors as grounds for automatic disbarment. . . . However, the vast majority, accepting the common law rule, require that the misdemeanor involve moral turpitude. While the definition of moral turpitude may prove difficult, it seems only proper that those minor offenses which do not affect the attorney's fitness to continue in the profession should not be grounds for disbarment. A good example is an assault and battery conviction which would not involve moral turpitude unless done with malice and deliberation." *Id.* at 491.

"The term 'moral turpitude' has been used in the law for centuries. It has been the subject of many decisions by the courts but has never been clearly defined because of the nature of the term. Perhaps the best general definition of the term 'moral turpitude' is that it imparts an act of baseness, vileness or depravity in the duties which one person owes to another or to society in general, which is contrary to the usual, accepted and customary rule of right and duty which a person should follow. 58 C.J.S. at page 1201.