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# A.B.A. CODE OF PROFESSIONAL RESPONSIBILITY: IN DEFENSE OF MEDIOCRITY<sup>†</sup>

HAROLD BROWN

**A**FTER FIVE YEARS of toiling, with three meetings each month, a distinguished committee of the ABA has conceptualized the first general revision of the Canons in this century, including a complete set of Ethical Considerations and Disciplinary Rules.

Since the adoption of the Code of Professional Responsibility by the ABA in August, 1969, to become effective January 1, 1970, three minor amendments were approved in 1970. Although the Code is technically binding only on members of the ABA, it has already been enacted in twelve states and is actively under consideration in numerous jurisdictions.<sup>1</sup>

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<sup>†</sup> This article is reprinted from *Trial Magazine*.

<sup>1</sup> As of June 15, 1970, of the 12 states that have adopted the Code as the standard governing the practice of law to date, the following states have adopted it without change: New Hampshire, Maine, New York, Pennsylvania, Kentucky, Arkansas and Oklahoma. The following states have adopted it with certain amendments: Illinois, Wisconsin, Nebraska, Kansas and Colorado.

In Nebraska the only change that was made in adopting the Code was that it was adopted without DR2-103(D) (5), which was referred to the State Judicial Council for further study. In Kansas the Code was adopted without change, except that the Ethical Considerations were approved in principle rather than adopted.

In the following states the Code has been approved by the state bar association without change, and a recommendation for adoption has been made to the State Supreme Court: Vermont, Connecticut, Rhode Island, South Carolina, Ohio, Indiana and Minnesota.

In the following states the Code has been approved by the state bar association with certain changes and has been recommended for adoption to the State Supreme Court: District of Columbia, Virginia, Florida and Arizona.

Because of the sweeping changes proposed by the new Code, every attorney has an obligation to familiarize himself with its terms, not only as a matter of self-interest, but for the benefit of the profession itself and the society it serves.

At the same time, in spite of its prestigious credentials, the Code is fairly subject to critical appraisal as a whole and in its detailed provisions. While some bar associations may mistakenly gloss over the proposal in brief hearings before unrepresentative committees, it should be emphasized that much more is demanded since the adoption of the Code by court decree will have the effect of binding legislation. As such, the judiciary should first afford the widest latitude to analysis and criticism by every member of the bar and by bar associations.

It would indeed be difficult to quarrel with the platitudes in the newly stated Canons, themselves, each of which simply describes a noble goal, namely:

**Canon 1:** "A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession."

**Canon 2:** "A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available."

**Canon 3:** "A Lawyer Should Assist in Preventing the Unauthorized Practice of Law."

**Canon 4:** "A Lawyer Should Preserve the Confidences and Secrets of a Client."

**Canon 5:** "A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client."

**Canon 6:** "A Lawyer Should Represent a Client Competently."

**Canon 7:** "A Lawyer Should Represent a Client Zealously Within the Bounds of the Law."

**Canon 8:** "A Lawyer Should Assist in Improving the Legal System."

**Canon 9:** "A Lawyer Should Avoid Even the Appearance of Professional Impropriety."

Each of the Canons is then followed by a series of "Ethical Considerations" consisting of numbered paragraphs with discursive exposition of the generalities stated in the respective Canon. Then follow the "Disciplinary Rules" themselves, which speak in statutory form and obviously lay the basis for judicial review of professional misconduct, with a view toward censure, suspension, or even disbarment for their violation.

Perhaps most significantly, there are no procedural provisions to indicate the manner in which the Canons may be implemented, the forum to which resort may be had, and the provisions for judicial review, if any.

Maybe it was intended that each state should adopt its own procedures, whether directly or indirectly through statewide or local bar associations, the Attorney General, district attorneys, special court proceedings, or by the highest court of each state.

As will be seen, the substantive features of the "Disciplinary Rules" are such as to make the procedural matters of crucial importance. Significantly, in states which

have adopted the "Unified Bar," of which there are already over 30 and more are in the offing, it is conceivable that matters of discipline may well repose in completely nonjudicial, as well as nongovernmental, forums.

A copy of the entire Code, including the Canons, the Ethical Considerations, the Disciplinary Rules, and lengthy annotations, consisting of 48 pages in all, can be obtained directly from the ABA in Chicago or quite possibly from various state bar associations.

Although it would hardly be feasible to review all of the Code in this article, it should be stressed that much of its content deserves the staunch support of every member of the bar. The criticism contained in this report should therefore be considered specific, rather than as a broad attack on the Code in its entirety. Such individual matters nevertheless raise such serious questions of morality and judgment that without major revisions, the Code is not to be commended for adoption.

### **Spying on Brother Counsel**

In support of Canon 1, it is broadly stated that a lawyer shall not "Violate a Disciplinary Rule" (DR1-102(A)(1)). Having thus incorporated all of the extensive Disciplinary Rules by reference, it is then ordered that:

"A lawyer possessing unprivileged knowledge of a violation . . . shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation" (DR1-103(A)).

Although the rule is limited to "unpriv-

ileged information," it nevertheless adopts an affirmative duty of reporting all "knowledge of a violation," any neglect of which will in itself subject the nonreporter to the discipline of the Code.

Perhaps for the first time in the annals of Anglo-American jurisprudence, there would thus be enacted a true "Gestapo" informer system, with each attorney legally bound to police his brother attorney. Such a rule would go far beyond the bounds of "guilt by association," since there is no limit as to the source of such "knowledge," so long as it emanates from "unprivileged information."

For example, a later rule provides penalties for the negligent practice of law (DR6-101(A)(1)-(3)), to be discussed further below. Apparently, if an attorney observes the incompetent argument of a motion or trial of a case while innocently sitting in a courtroom waiting for his own matter to be reached, it will be incumbent upon him to volunteer a full report of the "knowledge" so obtained, since failure to report will subject the observer to disciplinary action.

While such a risk can be discreetly avoided by remaining in the courtroom corridor, such a burden cannot be escaped when it is based on observations made during the negotiation of a lease or other contractual matter in which one's opponent apparently displays a lack of "competence."

And since one must be certain to report accurately, hereafter the attorney should make a double set of notes, one on the matter at hand, the other on the conduct of one's opponent, since the reporting at-

torney should be careful to maintain his standing as a grade-A spy. Inefficient reporting of such incompetence may in itself constitute negligence.

Since such obligations of an "official informer" are based on all of the Disciplinary Rules, several of which will be discussed below, every attorney would be well advised to study the Rules meticulously, since it will surely be held that every attorney is "presumed to know the law," both as a prime offender and as a nonreporter of violations by others. Short of committing all the Rules to memory, at the very least, copies should be carried in one's brief case.

Before leaving the objective consideration of this Rule, it may also be asked whether it is a violation for Attorney A to fail to report that Attorney B failed to inform on Attorney C. After all, the standard of conduct now requires that Attorney B fulfill his obligations as an informer.

On the other hand, it is quite possible that such an extension of one's prime obligation as an informer, does not require an investigation as to whether Attorney B actually filed a report.

It would, however, appear the better part of discretion at least to list the names and addresses of all the other attorneys in the courtroom who observed the incompetence of Attorney A, though it is not quite clear as to whether this protective measure should be adopted prior to the observation of Attorney A's incompetent conduct.

Because of the general unfamiliarity of so many attorneys with the intricacies of "information," it might also be helpful to request a report from some with direct ex-

perience in such roles under the Nazi regime, some of whom might be willing to expostulate, albeit anonymously.

A somewhat less efficient source of instruction would be recent college graduates whose experience with "Honor Codes" included similar reporting obligations. After all, every effort should be made to help attorneys to learn how to avoid "conduct that is prejudicial to the administration of justice" (DR1-102(A)(5)), and "even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession" (EC 1-5).

As previously adumbrated, perhaps the most interesting innovation is the command that a lawyer shall not "neglect a legal matter entrusted to him" (DR6-101(A)(3)). In disarmingly simple language, the Rule would now expose all counsel not merely to civil liability for neglect, nor the salutary requirement of adequate insurance to cover professional liability, but now as well to the risk of disbarment.

The hurried conveyancer who overlooks a last minute real estate attachment can no longer find solace in prompt coverage from his personal funds, particularly since the negligence must be reported by the attorney for the attaching creditor, lest the latter himself be in violation.

The commercial practitioner had best become aware that many bankrupt estates are potential claimants under the Antitrust Laws and that overlooking the filing of such a claim could lead to counsel's disbarment. Though the degree of the negligence could mitigate the punishment, the Rule itself would brook no exceptions.

### Determining Competence

Lest such threat be narrowly construed, the companion Rule specifies that a lawyer shall not:

“Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it” (DR6-101 (A)(1)).

Under this Rule, it would be no defense that the matter was successfully concluded without negligence.

There are, of course, some other pitfalls in the Rule, such as the unspecified standards for “competence,” not merely in the attorney’s self-analysis, but also in that of selecting an associate.

Since “competence” must depend on the difficulty of the client’s problem, presumably young attorneys will of necessity spend much time seeking confirmation of their competence and even more to canvass experienced attorneys until they find one of sufficient self-assurance to gamble on his own competence.

Presumably “competence” will be considered in the dynamic sense, not merely in the attorney’s static ability. The skill of a neophyte willing to make a thorough research of the law as well as an exhaustive analysis of the facts, may have to be balanced against that of the leader of the Bar who may first receive the case the night before trial with an investigator’s sloppily prepared file. On the other hand, such a liberal interpretation may not be feasible if “competence” is to be judged in the abstract, as in some Orwellian concept of every attorney’s capabilities.

Finally, the Rules would specifically preclude any contractual provision for exoneration (DR6-102(A)), so that no matter how enthusiastic or confident the client may be, and no matter how insistently he may want the particular attorney, the matter must boldly decline to accept the engagement if any lurking doubt exists.

Such limitation on exoneration should be contrasted with the customary limitations provided in many formal trusts, particularly where a bank or similar institution assumes fiduciary obligations.

Although such full-blown trustees usually require exoneration except for willful neglect or fraudulent self-preference, the attorney who might so provide would thereby violate a Rule, even the “attempt” at exoneration being proscribed.

The supposed justification for these Rules is even more revealing. In one of the Notes, great reliance is placed on the fact that with “concentration within a limited field, the greater the proficiency and expertness that can be developed,” quoting from the Report of the Special Committee on Specialization and Specialized Legal Education, 79 A.B.A. Rep. 582, 588 (1954). Such a thrice “special” pronouncement would appear difficult to contest, were it not for the fact that a general disenchantment with the merits of specialization has at last begun to reach not only the legal, but the medical profession as well. But while general practitioners are content to let specialists live in their own rarefied atmosphere, apparently the specialists have now decided to pre-empt the entire field.

The nonsequitur in the final justification

for this Rule apparently escaped the editorial committee when it simply quoted figures from the Annual Report of the Committee on Grievances of the Association of the Bar of the City of New York (N.Y.L.J. Sept. 12, 1968, at 4, col. 5), to the effect that "of the 828 offenses against clients, . . . 452, or more than half of all such offenses, involved (sic) neglect."

Obviously, that simple quotation from a newspaper summary, justifies the outlawing of "neglect" and the ostracism of any attorney guilty of such conduct. Whether such "neglect" was aggravated or consisted of excusable oversight, will never be known. Nor does the Rule permit any such distinction.

It is as revealing as another blind conclusion to the effect that "If the attorney is not competent to skillfully and properly perform the work, he should not undertake the service," citing a civil liability case, not a disbarment proceeding (*Degen v. Steinbrink*, 202 App. Div. 477, 481, 195 N.Y.S. 810, 814 (1922), aff'd mem. 236 N.Y. 669, 142 N.E. 328 (1923)).

Rather than pursue this inquiry into the competence of the reporters or their obvious preference for the specialist, almost necessarily one associated with a large law firm, it would appear perfectly clear that the Rules on "competence" are completely unworkable, excessively harsh, and ill-designed to accomplish the obviously desirable goal that "A lawyer should represent a client competently" (Canon 6). Perhaps a few comments by an experienced general practitioner may broaden the scope of inquiry.

Empirically it may be assumed that perhaps 90% or more of all attorneys would classify themselves as general practitioners, perhaps by choice and possibly to reflect the nature of the legal services most generally required in the broad stretches of the nation.

But even in the urban centers where large firms abound with a plethora of specialists, it has become quite obvious that the absence of correlation of such services is a serious problem, compounded by the fact that the availability of such services is severely restricted by the financial limitations of most clients.

If this would appear to be a defense of mediocrity, let it be known that in each attorney's sphere of activity, there may well be the finest sense of accomplishment and professionally rendered service.

Perhaps there are other avenues for achieving the goal without categorizing questions of competence as "disbarable offenses." Commencing with higher standards in the law schools or even a radical revamping of curricula, one might more closely examine the standards for admission to the Bar and even consider a more general requirement of clerkships after admission.

Perhaps lawyers should be encouraged to emulate the medical profession where it is customary for the experienced and specialized to donate a substantial portion of their time to instruct and assist neophytes (Canon 1).

Rather than rely on the secret and privately administered rating system of the leading law list—with extensive advertising allowed by those who somehow achieve

such ratings (See DR2-102(A)(6))—thought might be given to establishing community acknowledgement of professional achievement in plans administered on a purely objective basis by bar associations or even governmental authority.

For example, in England, law lists are severely restricted with regard to ratings, advertising, and exclusiveness in their listings; it is the government which designates outstanding members of the Bar as “Queen’s Counsel.”

The encouragement of excellence through appropriate incentives would enhance the image of the Bar and increase its capacity to serve the community.

Such a constructive approach should be contrasted not only with the capital threat of disbarment and the demoralization of a Bar compelled to inform on itself, but also with the very practical outcome that every disgruntled client would have immediate power to blackmail his attorney on fee matters no matter how fairly established or willingly paid in advance. With 50% of most litigants losing their cases, the extent of disappointment may easily turn to wrath for counsel’s supposed incompetence.

Nor can there be ignored the direct effect of the “spying” and “competence” Rules on fee matters in general. Depending on the general incompetence of the Bar in the particular locality, the self-appointed competent attorney may well have to contemplate the loss of as much as 10% of his available hours spent in observing, documenting, reporting, and testifying against brother counsel.

The incompetent attorney will have to allocate from 10% to 20% of his time to

defending against charges of incompetence, seeking out competent associate counsel, and careful study designed to eliminate his own incompetence. Such resulting loss of income must therefore be considered in the light of the Rules on the subject of fees (DR2-106-107).

### Fees

The principal fiat on fees is the prohibition of an agreement, charge, or collection of “an illegal or clearly excessive fee” (DR2-106(A)), the existence of which would be found when “a lawyer of ordinary (sic) prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee” (DR2-106(B)).

Because numerous state and local bar associations also provide minimum fee schedules, the Rule should be considered in the light of such local arrangements. Contrary to the advice of the ABA under the previous Canon 12 that such “minimum fee schedules can only be suggested or recommended and cannot be made obligatory” (ABA Opinion 302 (1961)), many pressures undoubtedly are exerted to enforce such schedules, particularly in the 30 or more states which have adopted the “Unified Bar.”

Ethical considerations aside, all of such measures concerning minimum or maximum fees must be considered in the light of the letter, as well as the spirit of, the federal Antitrust Laws and various state statutes of similar import.

Under the federal statute, both minimum (*U.S. v. Parke, Davis & Co.*, 362 U.S. 29 (1960)) and maximum (*Albrecht*

*v. Herald Co.*, 390 U.S. 145 (1968)) price maintenance constitutes a *per se* violation. Wherever attorneys have subscribed to such schedules, there is an express "contract, combination, or conspiracy" in restraint of trade (15 U.S.C. 1).

Although the violation is even stronger where attorneys are subject to reprimand or censure for infractions, as to price-fixing violations, the Supreme Court has also cast doubt on the mildest arrangements by condemning "consciously parallel action" (*American Tobacco Co. v. U.S.*, 328 U.S. 781 (1945); *Milgram v. Loew's, Inc.*, (3rd Cir 1951) 192 F.2d 579, cert. den. 343 U.S. 929).

Apparently unimpressed by either ethical or economic considerations, the government has recently instituted injunctive suit against a real estate brokers' association and its members where the latter agreed not to accept multiple listings except at the "recommended" commission rates (*Prince George's County Board of Realtors, Inc.* 1969 Trade Cases 45,069).

Aside from the minimum fee schedules of local associations, the ABA Code not only prohibits "clearly excessive fees," but affirmatively requires the policing of such maximum fees by all other attorneys (DR1-103(A)).

There is no known or readily suggested basis for exempting legal services from the impact of the Antitrust Laws. Although some may suggest that many legal matters do not come within the "flow of interstate commerce" now used as the jurisdictional test for the federal statute, such would hardly appear true for most corporate and commercial transactions.

Even as to wholly intrastate matters, many states have adopted their own Antitrust Laws either directly or through enactment of a so-called "Baby" F.T.C. Act (e.g. Mass. G. L. (Ter. Ed.) Ch. 93A).

Although the antitrust law adopted in 1970 by New Jersey would specifically exempt nonprofit associations in recommending fee schedules as guidelines (1970 T.C. 33,301), neither such action nor state adoption of the ABA Code would provide exemption from the federal statute.

Rather than quibble as to the applicability of such anticompetitive regulations, it would seem that of all businessmen, the legal community should do all in its power to "avoid even the appearance of professional impropriety," in the exact words of Canon 9. Perhaps the draftsmen of the Canons will excuse this possible impugning of their competence under Canons 6 and 9, since it would appear obligatory under Canon 1 and DR1-103(A).

Perhaps the other most salient fee matter in the Code is its prohibition of referral fees among lawyers even though the client consents after full disclosure and the total fee does not clearly exceed reasonable compensation (DR2-107(A)(1)-(3)).

Since the rule would permit the division of fees only "in proportion of the services performed and responsibility assumed by each" attorney, at the very least it must be recognized as a radical departure from widespread custom of long duration.

Even if the Code is not adopted in a particular jurisdiction, forwarding counsel would do well to avoid entrapment either under the aegis of the ABA or in the state of the receiving attorney where such a

provision of the Code may have been adopted.

There may, of course, be some question as to whether this entire provision constitutes undue meddling, at least where the client knowledgeably consents and the total fee is reasonable. This is particularly crucial among many trial counsel whose practice consists primarily of referral work.

Such specialists have become increasingly necessary because of the notorious contraction in the number of able trial advocates. Limiting the division of fees in "proportion to the services performed and responsibility assumed by each" would necessarily be a matter of hindsight, would complicate the negotiations after the fact, and would compound the business aspects by the ethical considerations introduced by the Code.

#### **Disclosure of Client's Fraud**

Serious questions are also inherent in the rule concerning representation of a client within the bounds of the law, with regard to the disclosure of a client's fraud on a person or tribunal (DR7-102(B)(1)). Under that Rule, a lawyer who receives information clearly establishing that:

"His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, *he shall reveal the fraud to the affected person or tribunal.*" (Ibid; underscoring supplied.)

It would appear that the underscored portion of the Rule creates an affirmative

duty of disclosure with problems akin to those requiring that an attorney report any violation of the Rules by another attorney.

Aside from the fact that an attorney's duties as an "informer" relate to a client's fraud, as compared with a brother attorney's negligence, even "fraud" is such an all-encompassing term that one may question if, in fact, society's welfare requires such policing of a client by his own attorney.

By contrast, it may be recalled that large segments of the Bar voiced grave protest when the director of the FBI suggested that attorneys had such an affirmative duty to a client's conduct of a treasonous nature.

Weighing such a new principle against the well-established doctrine of absolute confidence between client and attorney, it is to be doubted that such a drastic remedy should be required even in case of a serious fraud.

There will be many who would suggest that, at most, an attorney's duty at that juncture would call for his termination of representation, lest he become a participant in the fraud. Even so, it might then be asked whether the proposed rule would not effectively bar a fraudulent client from obtaining competent legal services. (Cf. Canon 2 regarding the duty to "make legal counsel available.")

At the very least, clients would be entitled to a forthright declaration of such a stringent rule prior to their entrapment by the only expert whom society has provided for confidential disclosure and advice.

Although some may differ, a balancing

of such considerations would appear to indicate that this Rule has exceeded the fair limits of ethical conduct.

### Services for the Middle Class

Finally, in the broadest frame of reference, the drafters of the code have seemingly sought to legislate on a matter of grave importance to society as a whole, namely the means of providing efficient and reasonably priced legal services for the great majorities in the middle class.

While taking cognizance of the fact that the wealthy are well represented and that direct or indirect provision of services for the needy are laudable, the Rules would severely restrict a lawyer's participation in offices or organizations designed to provide legal services for its members (DR2-103(D)).

While excepting from the prohibition such offices as legal aid, public defender, military legal assistance, and bar association referral services, the crucial exception for the general public would hew as closely as possible to the exemption allowed by the Supreme Court in a series of recent cases involving the provision by labor unions or certain social service organizations of free personal legal services for its members. (*United Mine Workers v. Ill. State Bar Association*, 389 U.S. 217, 19 L. Ed. 2d 426, 88 S. Ct. 353 (1967); *Brotherhood of R. R. Trainmen v. Virginia*, 371 U.S. 1, 12 L. Ed. 2d 89, 84 S. Ct. 1113 (1964); *NAACP v. Button*, 371 U.S. 415, 9 L. Ed. 2d 405, 83 S. Ct. 328 (1963)).

The narrow scope of this permitted exception is most evident in the severity of

the condition that such activity will be allowed:

"Only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service, and only if the following conditions, unless prohibited by such interpretation, are met:

a. The primary purposes of such organization do not include the rendition of legal services.

b. The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization.

c. Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

d. The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter. (DR2-103(D)(5))."

Such begrudging concessions to the Constitution, itself, limited to the interpretation in effect at the time of the rendering of the legal services and with the clearly implicit hope of a narrowing of the doctrines already enunciated, reflect a bare bones approach that would shame a carion.

Not content with the severity of the self-interest evident in the general statement of the Rule, the drafters sought to foreclose any seepage by providing the four additional conditions.

It is, indeed, difficult to escape the im-

pression that, given the power, the ABA would have reversed the Supreme Court, heedless of the broad social implications of the Court's rulings in this highly sensitive area.

For it is obvious that aside from services for the wealthy and possibly the poor, it is the broad spectrum of middle America which has been economically foreclosed from reasonable access to competent legal services of a general practitioner, let alone the services of the specialist given such deference in Rule DR6-101(A)(1), discussed above.

In a society of ever increasing sophistication, it is distressing to note that except in such necessary circumstances as a criminal charge, an auto tort, conveyance, or an estate, tens of millions never see a law office in their life-time.

Persons with annual incomes of \$7,500 to \$20,000, probably with a wife and two or more children headed for college, can hardly afford cash fees of \$500 or more, frequently the minimum requirement for competent advice even on business matters with limited complications.

Quite possibly, this economic problem may require a restructuring of established patterns, ranging from extended credit plans, prepayment insurance programs, or even legal clinics supported in whole or in part by governmental funds.

It can hardly be thought that the need of such citizens for legal services, is any the less than that of the labor union members covered by the Supreme Court decisions. And rather than panic at the thought of such an imagined threat to the profes-

sion, lawyers might well find a severe shortage of counsel to meet the demands of such tens of millions of new clients.

One may also speculate that from a completely selfish viewpoint, the rapid growth of the custom of having salaried corporate counsel, may presage far more financial damage to independent practitioners, yet no murmur has been heard on that front.

The basic criticism of the Rule lies in its foreclosure of discussion and debate by all of society, comparable to that which occurred in recent efforts to solve similar medical cost problems. The almost unheralded adoption of the Rules by the ABA and already by 12 states, undoubtedly with many more to come, would become legally binding except for Congressional action or a constitutional ruling by the Supreme Court. It may well be asked whether such conduct by the Bar constitutes a *per se* violation of Canon 9, requiring that:

"A Lawyer Should Avoid Even the Appearance of Professional Impropriety."

Although this discussion has been confined to some of the more controversial provisions of the new Code, to large segments of the Bar there would appear ample justification for vigorous action to defeat its adoption and certainly to subject it to drastic amendment. But much more would seem to be involved.

While proponents of the Code might consider this exposition little more than a defense of mediocrity, the illustrations intended to highlight the deficiencies of the Code were in defense of tenets fundamental to the protection of a free society.

Though few could quarrel with the Canons, themselves, their implementation in the Disciplinary Rules demonstrates such insensitivity to the basic rights of both attorney and client, that many will demand

a total revision. For those who may now or hereafter be subject to such rules of conduct, this discussion will have served a useful purpose if only to make them aware of its Draconian concepts.