

# New York Judiciary Law Section 90(10) Should Be Amended to Permit Public Access to Attorney Disciplinary Proceedings After a Prima Facie Determination Has Been Made That an Attorney Has Engaged in Conduct Violative of the Code of Professional Responsibility

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## CODE OF PROFESSIONAL RESPONSIBILITY

*New York Judiciary Law section 90(10) should be amended to permit public access to attorney disciplinary proceedings after a prima facie determination has been made that an attorney has engaged in conduct violative of the Code of Professional Responsibility*

“Does America really need 70% of the world’s lawyers?”<sup>1</sup> Unfortunately, this statement typifies the public’s current attitude towards the legal profession.<sup>2</sup> The public’s lack of trust and confidence in both attorneys and the judicial system<sup>3</sup> has created an overall discontent with the legal profession.<sup>4</sup> In fact, in recent years, the legal profession’s reputation has spiraled downward.<sup>5</sup>

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<sup>1</sup> Fred R. Shapiro, *Battle of the Quotes*, 79 A.B.A. J. 62, 63 (Dec. 1993) (quoting Dan Quayle’s speech before American Bar Association on August 13, 1991).

<sup>2</sup> See, e.g., John C. Buchanan, *The Demise of Legal Professionalism: Accepting Responsibility and Implementing Change*, 28 VAL. U. L. REV. 563, 563 (1994) (recognizing that Dan Quayle’s statement adequately represents 20th century public opinion of legal profession and negative perception in media); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN’S L. REV. 85, 104-05 (1994) (explaining that primary source of dissatisfaction is large number of lawyers in United States which is evidenced by proliferation of jokes upon this fact); Thomas L. Browne, *Not Laughing at Lawyer Jokes May Get Respect as Punch Line*, CHI. LAW., Jan. 1996, at 66 (noting that author received apology after disclosing that he practices law); Gary A. Hengstler, *Vox Populi The Public Perception of Lawyers: ABA Poll*, 79 A.B.A. J. 60, 60 (Sept. 1993) (explaining that negative perception of legal profession is demonstrated in comedy routines, commercials, movies, and political speeches).

<sup>3</sup> Cf. *In re Pier*, 472 N.W.2d 916, 917 (S.D. 1991) (stating that “[t]he foundation of an attorney’s relationship with clients and the legal system is trust”). See generally COMMITTEE ON THE PROFESSION AND THE COURTS, FINAL REPORT TO THE CHIEF JUDGE 1, 2 (Nov. 1995) [hereinafter CRACO REPORT] (noting New York’s Chief Judge Judith Kaye’s recognition that “public confidence in the entire legal system has seriously eroded”).

<sup>4</sup> See Thomas W. Overton, Comment, *Lawyers, Light Bulbs, and Dead Snakes: The Lawyer Joke as Societal Text*, 42 U.C.L.A. L. REV. 1069, 1099 (1995) (noting that lawyer jokes represent public’s discontent with legal profession); cf. Hengstler, *supra* note 2, at 62 (noting that public opinion poll showed that twice as many people would not use “honest” and “ethical” to describe lawyers than those who would).

<sup>5</sup> See CRACO REPORT, *supra* note 3, at 1 (finding that “[t]he late 1980’s and early

The secrecy of attorney disciplinary proceedings is a primary source of the public's skepticism.<sup>6</sup> While the main objective of such proceedings is to protect the public and to maintain the quality and integrity of the legal profession,<sup>7</sup> this objective is difficult to achieve when the public is foreclosed from observing the

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1990's witnessed a conspicuous rise in public disparagement of lawyers and the judicial process"); Ward Blacklock, *Lawyer-Bashing: It's Time to Turn the Tide*, 24 ST. MARY'S L.J. 1219, 1219 (1993) (observing increase in criticism of lawyers and judicial system); see also Buchanan, *supra* note 2, at 563 (noting widespread negative perception of legal profession); Cris Puma, *The Missing Link: Does Lawyer-Bashing Warrant Additional Protection for Lawyers?*, 19 J. LEGAL PROF. 207, 207 (1994-95) (emphasizing public's use of lawyer-bashing as medium "to express dissatisfaction with the legal profession"); Re, *supra* note 2, at 86 (stating that dissatisfaction with legal profession is "widespread and pervasive"); Hank Grezlak, *New PBA Head Tackles Lawyer-Image Problem; Stevens Cites Need for Better Public Communication, Respect in Profession*, PA. L. WKLY., May 9, 1994, at 9 ("[o]ver the past few years the image of lawyers has taken a beating"); Robert N. Weiner, *Close to Home: How D.C. Deals with Bad Lawyers*, WASH. POST, Mar. 15, 1992, at C8 (recognizing that "lawyer bashing" has become commonplace).

<sup>6</sup> See David B. Dellenbach, Note, *Barnard v. Utah State Bar and Public Access to Private Entities Which Carry Out Governmental Functions: Is This Bar a Private Club?*, 1992 UTAH L. REV. 1021, 1021 (1992) (suggesting that secrecy of attorney disciplinary proceedings lends itself to public distrust of profession); see also Renee Cordes, *ABA Panel Urges Greater Openness in Discipline Systems*, CHI. DAILY L. BULL., May 21, 1991, at 1 (stating that aggrieved clients feel slighted because grievances are settled "behind closed doors by lawyers for the benefit of lawyers").

<sup>7</sup> *Howard v. State Bar of Calif.*, 793 P.2d 62, 65 (Cal. 1990) (emphasizing concern of protecting public and integrity of legal profession in attorney disciplinary proceedings); *In re Kunz*, 524 N.E.2d 544, 547 (Ill. 1988) (noting that attorney disciplinary proceedings serve to "protect the public and to safeguard the integrity of the legal profession"); *In re Lenz*, 484 N.E.2d 1093, 1095 (Ill. 1985) (recognizing that disciplinary proceedings serve to "safeguard the public, [and] to maintain the integrity of the profession"); *Daily Gazette Co. v. Committee on Legal Ethics of W. Va. St. Bar*, 326 S.E.2d 705, 712 (W. Va. 1984) (declaring that "[d]isciplinary proceedings are 'an increasingly important method of demonstrating the trustworthiness of the legal profession and ensuring the effectiveness of the judicial process'"); *Anonymous Attorneys v. Bar Ass'n of Erie County*, 41 N.Y.2d 506, 509, 362 N.E.2d 592, 595, 393 N.Y.S.2d 961, 963 (1977) (noting that disciplinary proceedings are intended to protect society from lawyers who fail to maintain necessary standards of integrity); *Committee on Legal Ethics of W. Va. St. Bar v. Mullins*, 226 S.E.2d 427, 429 (W. Va. 1976) (stating that "the primary purpose of the ethics committee is not punishment but rather the protection of the public and reassurance of the public as to the reliability and integrity of attorneys"), *overruled by*, *Committee on Legal Ethics of W. Va. St. Bar v. Cometti*, 430 S.E.2d 320, 330 (1993); see also Mary M. Devlin, *The Development of Lawyer Disciplinary Procedures in the United States*, 7 GEO. J. LEGAL ETHICS 911, 934-36 (1994) (noting that lawyer discipline serves to protect public confidence in legal system as well as legal system's reputation); Janine C. Ogando, Note, *Sanctioning Unfit Lawyers: The Need for Public Protection*, 5 GEO. J. LEGAL ETHICS 459, 462 (1991) (stressing dual function of attorney discipline as protecting lawyer's images and restoring reputation of legal profession).

actual operation of the disciplinary proceedings.<sup>8</sup>

The recent trend in the majority of states, however, has been to allow public access to attorney disciplinary proceedings<sup>9</sup> in order to restore public trust in the legal profession.<sup>10</sup> Nevertheless, New York has repeatedly refused to lift its long-standing ban on public access.<sup>11</sup> New York's Judiciary Law, section 90(10),<sup>12</sup> main-

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<sup>8</sup> See *Daily Gazette Co.*, 326 S.E.2d at 711 (observing that confidential attorney disciplinary proceedings "shroud[] in secrecy that which is intended to be carried on for the public's benefit"); see also Wendy J. Thurm, *The First Amendment, Attorney Discipline and Public Accountability - Doe v. Supreme Court of Florida and the Florida Bar* 734 F. Supp. 981 (S.D. Fla. 1990), 26 HARV. C.R.-C.L. L. REV. 240, 253 (1991) (emphasizing that secrecy breeds suspicion that grievance committees are "not acting evenhandedly"); Gary Spencer, *Public Lawyer Discipline Urged; Proceedings Should be Open After Finding of Cause*, N.Y. L.J., Mar. 6, 1995, at 2 [hereinafter *Public Lawyer*] (noting that blanket confidentiality in disciplinary matters is inconsistent with public interest); Gary Spencer, *Reforms Urged by State Bar Task Force; Open Disciplinary Hearings, Fee Arbitration Endorsed*, N.Y. L.J., Sept. 8, 1994, at 1, 9 [hereinafter *Reforms Urged*] (stating that New York's system of confidential disciplinary hearings is criticized as one "designated to shield unprofessional attorneys from public inspection and exposure").

<sup>9</sup> According to the American Bar Association Center for Professional Responsibility, as of January 1, 1996, 34 out of 51 jurisdictions allow some form of public access to disciplinary proceedings before final adjudication. American Bar Association, *Public Access to State Disciplinary Proceedings (1996)* [hereinafter *ABA Statistics*] (unpublished statistical chart, on file with the *St. John's Law Review*); cf. Gary Spencer, *State Bar Opposes Any Public Discipline Procedures*, N.Y. L.J., June 27, 1995, at 1, 4.

The stage of the proceedings at which public access is permitted varies. For example, Oregon authorizes public access from the time of the filing of the initial complaint. *ABA Statistics, supra*, at 7. Other states prohibit public access until a finding of probable cause is made or until the complaint is dismissed. *Id.* The majority of states withhold public access until the filing of formal charges. *Id.* A minority of states, however, maintain confidentiality until final disposition of the complaint, and then will only allow public access if the final adjudication is public censure, suspension, or disbarment. *Id.*; see also *Developments in the Law—Lawyers' Responsibilities and Lawyer's Responses*, 107 HARV. L. REV. 1547, 1599 (1994) [hereinafter *Lawyers' Responsibilities*] (outlining various stages at which public access to disciplinary proceedings is permitted).

<sup>10</sup> See *Lawyers' Responsibilities, supra* note 9, at 1604 (suggesting that public access to disciplinary proceedings will enhance public opinion because public will be able to witness existence of attorney discipline); *People-Friendly Courts New Rules for Lawyers and Juries Will Help*, BUFF. NEWS, Nov. 19, 1995, at F8 (supporting notion that "[a]n open procedure after a finding of probable cause can help re-instill public confidence in the legal profession"); *Public Lawyer, supra* note 8, at 2 (suggesting that open disciplinary proceedings "would enhance governmental accountability and public confidence in people on whom great deal of reliance and trust is placed").

<sup>11</sup> See Gary Spencer, *Bar Opposes Disclosing Misconduct Complaints*, N.Y. L.J., June 30, 1992, at 1, 6 [hereinafter *Bar Opposes*] ("For nearly 50 years, Judiciary Law Section 90(10) has barred the disclosure of misconduct complaints unless the

tains confidentiality in all aspects of attorney disciplinary proceedings unless the final disposition is a public sanction.<sup>13</sup> If New York continues to adhere to its current policy, the public will eventually lose all trust and confidence in the legal profession, possibly to the point where it cannot be restored.<sup>14</sup> There-

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Appellate Division imposes a public sanction, a system the State Bar has repeatedly defended against efforts to provide greater public access to disciplinary proceedings."); Gary Spencer, *State Bar Cautions Against Providing More Public Access*, N.Y. L.J., Apr. 20, 1992, at 1 [hereinafter *State Bar Cautions*] (noting that Committee on Professional Discipline believes Judiciary Law 90(10) "strikes an appropriate balance between the need of the public to be protected and informed and the rights of those attorneys accused of misconduct but not yet found to have violated the Disciplinary Rules").

In New York, each judicial department has promulgated its own rules regarding access to disciplinary proceedings. See ABA Statistics, *supra* note 9, at 7. In the First Department, hearings are kept confidential until final discipline, N.Y. R. Ct. § 605.24 (McKinney 1996), but the respondent-attorney can file a written waiver. *Id.* at § 605.24(B). In the Second Department, all proceedings are closed until final adjudication, unless the court provides otherwise. *Id.* at § 691.6. Pursuant to § 90(10) of the Judiciary Law, Third Department disciplinary proceedings are confidential. *Id.* at § 840.2. The Fourth Department follows Judiciary Law § 90. *Id.* at § 1022.17 (stating that a violation of any disciplinary rule or court standard governing attorney conduct constitutes professional misconduct within the meaning of § 90(2)).

<sup>12</sup> N.Y. JUDICIARY LAW § 90(10) (McKinney 1996).

<sup>13</sup> Judiciary Law § 90(10) provides in relevant part that:

[A]ll papers, records and documents ... upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential ... . [I]n the event that charges are sustained by the justices of the appellate division ... the records and documents in relation thereto shall be deemed public records.

*Id.* In New York, all matters relating to allegations of attorney misconduct in violation of the Code of Professional Responsibility are handled confidentially through the New York State Grievance Committees of the respective judicial departments. See Michael A. Gentile, *The Role of the Disciplinary Committee in Resolving Conflicts and Other Ethical Violations*, 348 PRAC. L. INST. 191, 193 (1988).

Attorneys with complaints filed against them may receive either public sanctions or private sanctions. *Id.* at 200. Public sanctions include public censure, suspension or disbarment. *Id.* at 201. Private sanctions include, *inter alia*, dismissals, dismissals with cautionary language, letters of caution, and letters of admonition. *Id.* at 196. When private sanctions are issued, the public is precluded from merely knowing that a complaint has been filed. *Id.* at 194 (discussing methods of handling grievance and disciplinary proceedings in New York and detailing different forms of sanctions available).

<sup>14</sup> See *Florida Bar v. McCain*, 361 So. 2d 700, 709 (1978) (Sundberg J., concurring) (stressing that "[t]he enforcement of judicial rulings is solely dependent upon their acceptance by the people. This acceptance will persist only so long as people have confidence in the institution which renders the decisions under which they must live."); see also John Caher, *Plan Would Open Lawyer Conduct Probes*, TIMES UNION, July 25, 1996, at B2 (quoting Michael Cardozo, president of the Association of the Bar of the City of New York) ("Clients must be confident that lawyers con-

fore, it is submitted that New York needs to change its policy in order to recapture the public's faith in the legal profession and the judicial system.

Chief Judge Judith Kaye is among the numerous proponents of public access to attorney disciplinary proceedings in New York.<sup>15</sup> Notably, in 1993 the Chief Judge appointed the Committee on the Profession and the Courts ("Craco Committee")<sup>16</sup> to conduct an extensive study of the legal profession in New York.<sup>17</sup> Two of the Craco Committee's principal objectives were to ascertain the sources of public dissatisfaction with the legal profession and to propose recommendations to address the situation.<sup>18</sup> In 1995, the Committee issued a report<sup>19</sup> which embodied numerous recommendations<sup>20</sup> to increase public confidence in the legal profession.<sup>21</sup>

The Craco Committee's most significant recommendation suggested that the public be given access to attorney disciplinary proceedings after a prima facie case of an ethical violation was shown to exist against the respondent-attorney.<sup>22</sup> By maintain-

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tinue to be qualified to handle their matters, are attentive to their needs and perform their services effectively and efficiently with high ethical standards and respect for the justice system.").

<sup>15</sup> See Gary Spencer, *Court Officials Endorse New Practice Procedures*, N.Y. L.J., July 25, 1996, at 1, 7 [hereinafter *Court Officials*] (discussing Chief Judge Kaye's involvement in recent proposal to open proceedings to public); *Open the Process; The State Legislature has a Chance to Stop Protecting Lawyers from Public Scrutiny*, THE POST-STANDARD, Aug. 5, 1996, at A-10 [hereinafter *Open the Process*] (noting that "proposal supported by [Chief Judge] Kaye ... would open disciplinary proceedings to public view once formal charges are filed by the local grievance committee").

<sup>16</sup> The Craco Committee, composed of 16 members appointed by Chief Judge Kaye in 1993, was headed by Louis A. Craco. See *Court Officials*, *supra* note 15, at 1; see also CRACO REPORT, *supra* note 3, at 3 (disclosing method of appointing members and identifying constituency of Committee).

<sup>17</sup> See generally CRACO REPORT, *supra* note 3, at 4-9 (detailing Committee's method of investigation).

<sup>18</sup> CRACO REPORT, *supra* note 3, at 2.

<sup>19</sup> See generally CRACO REPORT, *supra* note 3, at 2.

<sup>20</sup> The Craco Committee offered several suggestions for improving all aspects of the legal profession. See CRACO REPORT, *supra* note 3, at 21-57 (articulating twenty proposals to improve professionalism, client satisfaction, attorney discipline, and court management).

<sup>21</sup> CRACO REPORT, *supra* note 3, at 2.

<sup>22</sup> CRACO REPORT, *supra* note 3, at 48-51. But see *Bar Opposes*, *supra* note 11, at 6 (noting State Bar Committee Chairman Martin Minkowitz' fear that "[f]ew can be expected not to understand 'probable cause' as 'probable guilt'" and stressing that "[t]hat is exactly the outcome that would unfairly prejudice the innocent attorney").

This is not the first time legislation has been proposed in an attempt to permit

ing confidentiality until this stage, the possibility that a frivolous complaint would needlessly injure an attorney's reputation would be greatly diminished.<sup>23</sup> Moreover, once it is established that legitimate grounds for a full hearing exist, the public's desire to be fully informed could be satisfied.

In contrast, those who oppose open disciplinary proceedings believe that an interim suspension of the attorney would best serve the community; the suspension would simultaneously protect the public and safeguard the attorney's reputation.<sup>24</sup> This

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public access to disciplinary proceedings. In 1970, the American Bar Association issued a report proposing that attorney disciplinary proceedings be accessible to the public only when the violation involved a criminal conviction or when the respondent-attorney requested a public proceeding. See AMERICAN BAR ASS'N SPECIAL COMM. ON EVALUATION OF DISCIPLINARY ENFORCEMENT, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT 138 (1970) [hereinafter Clark Report]. In 1991, the American Bar Association made a second attempt at publicizing disciplinary proceedings. See AMERICAN BAR ASS'N SPECIAL COMM. ON EVALUATION OF DISCIPLINARY ENFORCEMENT, LAWYER REGULATION FOR A NEW CENTURY (1992) [hereinafter McKay Report]. The McKay report, however, proposed that public access to attorney disciplinary proceedings be permitted upon the filing of the initial complaint. *Id.* at 34-35. While the Clark Report and McKay Report proposed reforms of attorney disciplinary proceedings, the Craco Report is New York's attempt at reform on a local level.

<sup>23</sup> See Mary M. Devlin, *supra* note 7, at 928 (stating that after probable cause is established, danger that allegations are frivolous subsides); Jeanne Gray & Mark I. Harrison, *Standards for Lawyer Discipline and Disability Proceedings and the Evaluation of Lawyer Discipline Systems*, 11 CAP. U. L. REV. 529, 547 (1982) ("The renewed confidence and credibility in the disciplinary process from the public's perspective far outweighs the risk of unjustified criticism and the potential loss of professional reputation."); Thurm, *supra* note 8, at 256 (quoting ABA MODEL RULES OF LAWYER DISCIPLINARY ENFORCEMENT commentary to Rule 16) ("The confidentiality that attaches prior to a finding of probable cause ... is primarily for the benefit of the respondent, and protects against publicity predicated upon unfounded accusations."); see also *Lawyers' Responsibilities*, *supra* note 9, at 1602 (indicating that states allowing public access to attorney disciplinary proceedings suggest that attorneys' fears of frivolous complaints may be unsupported); Douglas S. Brierly, *Should Veil on Disciplinary Proceedings Be Lifted?; Yes: The Public's Confidence Will Be Bolstered*, N.J. L.J., May 16, 1991, at 11, 26 (finding that "[a]ccording to estimates from the Office of Attorney Ethics, district ethics committees are able, even before docketing, to screen out approximately 80 percent of ethics inquiries and informal complaints as frivolous or as patently not involving claims of unprofessional conduct"). *But see Murray Testifies Against Giving Public Early Access to Disciplinary Proceedings Against Attorneys*, N.Y. ST. BAR NEWS, Oct. 1993, at 1 (expressing strong opposition to open access because "unsubstantiated claims could do irreparable harm to the reputation of attorneys").

<sup>24</sup> See Gary Spencer, *Mixed Reviews on New Matrimonial Rules*, N.Y. L.J., Sept. 7, 1993, at 1, 6 (noting that the State Bar, American Academy of Matrimonial Lawyers and four other local bar associations complained that open disciplinary proceedings would ruin innocent reputations, whereas suspension of attorney would simultaneously protect public and also attorney reputations); *State Bar Cautions*, *supra*

reasoning is unsound, however, because it does not account for the numerous additional reasons weighing in favor of public access to disciplinary proceedings. Principally, the public not only needs to be shielded from "unsavory attorneys,"<sup>25</sup> but it has a legitimate interest in knowing which attorneys have grievances pending against them, as well as the nature of those grievances.<sup>26</sup> For instance, prospective clients, who may have already suffered some type of injury, should not be vulnerable to avoidable injuries which may result from their attorney's conduct simply because they were denied the opportunity to discover the history of their attorney's unethical conduct. Although not all lawyers with a history of breaching their professional duties pose a threat to the public,<sup>27</sup> the risk of potentially irreparable harm to current or future clients is too high to permit pending grievances to escape the knowledge of these clients.<sup>28</sup> Furthermore, if the public learns of the disciplinary proceeding but is without access to it, and the court fails to discipline the attorney who violated the Code of Professional Responsibility,<sup>29</sup> the public may perceive the court's inaction as supportive of the lawyer's unethical conduct.<sup>30</sup> This is clearly the perception that the courts and the legal

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note 11, at 4 (suggesting that summary suspension instead of open disciplinary hearings will result in same outcome of protecting public); *cf. Lawyers' Responsibilities*, *supra* note 9, at 1602 (acknowledging attorneys frequently cited argument that publication of frivolous complaints "would seriously damage the named attorneys' reputations, and therefore their livelihoods").

<sup>25</sup> *Disciplinary Needs*, NAT'L L.J., Oct. 26, 1987, at 12.

<sup>26</sup> See Dick Cooper, *Court to Lift Lid on Lawyer Complaints; Charges of Misconduct Soon to be Made Public*, DENVER POST, July 11, 1990, at 1A; Brierly, *supra* note 23, at 11 (questioning how "client's right to choose the 'best' available attorney" can be "advanced if those members of the public seeking legal representation lack the knowledge reasonably required to make an informed decision"); Daniel Wise, *Report Backs Opening Disciplinary Matter*, N.Y. L.J., Apr. 20, 1992, at 1, 5 (noting that "substantial numbers" of serious complaints ... are currently shielded from the view of persons who may be coming to those attorneys for legal advice").

<sup>27</sup> See Ogando, *supra* note 7, at 462 (noting that disciplinary measures allow "the attorney to remedy any of his deficiencies or problems or allow[s] him to find an occupation in which he is competent").

<sup>28</sup> *Id.* at 461-62. "The clients suffer the most harm from an incompetent attorney because ... the clients could lose any potential legal interest they once had." *Id.* at 462 n.24.

<sup>29</sup> The American Bar Association has promulgated two sets of model professional responsibility rules: The Code of Professional Responsibility and the Model Rules of Professional Responsibility. New York has adopted the Code of Professional Responsibility, effective January 1, 1970, with certain amendments incorporated within. See generally N.Y. JUDICIARY LAW (McKinney 1992).

<sup>30</sup> See Ogando, *supra* note 7, at 462-63 (discussing effect of judicial inaction on public's view of judicial system); see also Wilburn Brewer, Jr., *Due Process in Law-*



profession must try to avoid.

Finally, there seems to be a dichotomy between proceedings concerning attorneys and proceedings concerning private citizens. Attorneys are afforded protections which are not available to the general public. Specifically, an attorney is protected from public scrutiny of his or her disciplinary proceeding, while private citizens are subjected to the public eye from the moment a lawsuit is initiated against them.<sup>31</sup> Such disparate treatment is barren of any logical explanation.

Public trust is the essence of the legal profession.<sup>32</sup> It seems ironic that attorneys question the public's lack of trust in the legal profession and the judicial process while they simultaneously exclude the public from disciplinary proceedings.<sup>33</sup> The public, deprived of information with which they could make educated judgments about the legal system,<sup>34</sup> inevitably develops suspicion and distrust about how the process is being conducted.<sup>35</sup> Moreover, by excluding the public from these proceedings, attorneys are not held accountable to the public for their conduct;<sup>36</sup> thus,

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*yer Disciplinary Cases: From the Cradle to the Grave*, 42 S.C. L. REV. 925, 940 (1991) ("Public examination encourages the necessary judicial self-restraint and ensures that the system operates fairly."); CRACO REPORT, *supra* note 3, at 44 (explaining that complainants receive terse letters advising of committee's actions, but offering no explanation for the lawyer's conduct or suggestions of alternate dispute resolution mechanisms, and remarking that there is little doubt as to why "attorney discipline system is held in" low regard).

<sup>31</sup> See Brierly, *supra* note 23, at 26 (discussing special treatment of attorneys); Kathy Barrett Carter, *State Ethics Panel Finds Lawyers Must Move to Open Discipline System*, STAR LEDGER, Dec. 12, 1993, 1993 WL 3938498 at \*8 ("We live in an open society. Why is a lawyer treated different from any other person?"); *Open the Process*, *supra* note 15, at A10 (opining that argument against public access to protect reputation of attorney is ironic because lawyer's job is often to "challenge the actions and reputations of others").

<sup>32</sup> See Re, *supra* note 2, at 113-14, 131 (stating that key goals of legal profession are to serve public and administer justice and explaining that public's negative perception of legal profession will improve if lawyers adhere to "fundamental precepts" of honesty and integrity); *Disciplinary Needs*, *supra* note 25, at 12 (explaining that public trust is essential to legal system).

<sup>33</sup> See Cordes, *supra* note 6 (quoting Raymond R. Trombadore, Chairman of ABA's Comm. on Evaluation of Discipline) ("It's very difficult to ask people to trust a system and then tell them nothing about the system.").

<sup>34</sup> See Thurm, *supra* note 8, at 252 (emphasizing capability of public to recognize distinctions among sanctions imposed upon attorneys and to make its own judgments).

<sup>35</sup> See *supra* notes 6-8 and accompanying text (discussing negative effects of confidential attorney disciplinary proceedings on public's perception of legal profession and judicial process).

<sup>36</sup> See *Disciplinary Needs*, *supra* note 25, at 12 (remarking that in order to pre-

the public is deprived of retaining any type of control over the profession. If attorneys with pending complaints are not answerable to the public, there is little or no incentive for them to avoid unethical conduct in the future.<sup>37</sup>

It appears that the Craco Committee has struck an appropriate balance between safeguarding the public and insulating attorneys' reputations from the detrimental effects of unfounded complaints.<sup>38</sup> Although it is not suggested that allowing public access to attorney disciplinary proceedings will completely restore the public's trust and confidence in the legal profession, it is a positive step toward reestablishing the credibility of what was once a respected profession.<sup>39</sup>

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serve confidence in legal profession, attorneys "must account publicly and periodically to those whose trust is essential to maintain that system"); Brierly, *supra* note 23, at 26 (noting importance of public accountability of lawyers). *But see* Bob Hohler, *SJC Eases Access To Lawyer Charges*, BOSTON GLOBE, Feb. 3, 1993, at 20 (expressing concern of Elaine Epstein, President of Massachusetts Bar Association, that allowing public access will cause attorneys to practice defensively and to be overly cautious).

<sup>37</sup> See Stuart R. Lundy, *Re: Disciplinary Hearings*, N.J. L.J., June 6, 1991, at 24 ("Publishing pending disciplinary proceedings may prevent attorney misconduct by making the public aware, at the earliest opportunity, that disciplinary proceedings are pending against an attorney."). The Craco Report explained that allowing public access to disciplinary proceedings is in the interest of both the public and the legal profession, because as the public gains information, the legal profession "benefits from increased public confidence in the integrity and effectiveness of the bar's ability to police itself." CRACO REPORT, *supra* note 3, at 50-51.

<sup>38</sup> Dellenbach, *supra* note 6, at 1048 (acknowledging that fine line exists between "public's interest in disclosure and an attorney's interest in privacy"). *But see Bar Opposes*, *supra* note 11, at 6 (opining that "acquittal after disclosure of a complaint would not restore the lawyer's reputation or earning ability.").

<sup>39</sup> See Ogando, *supra* note 7, at 462-63 n.31 ("Today many lawyers find themselves defending their profession rather than being respected for it.").

