



John T. Berry

Back to Basics

Improving Ethics and Professionalism

“No system of justice can rise above the ethics of those who administer it.”

[National Wickersham Commission on Law Observances and Law Enforcement, 1929]

Eleven years ago, the American Bar Association’s McKay Commission completed a study of lawyer regulation that found that there was a major need to look beyond prosecution alone to reach out to those lawyers who were having problems in their dealings with clients. More creative solutions were advocated to protect the public and to help these lawyers.

On May 8th, 2003 the State Bar of Michigan in conjunction with the Attorney Grievance Commission and the Attorney Discipline Board will be taking a step in that direction by conducting a diversion program or ethics school for lawyers who have had minor discipline complaints filed against them. Such complaints may include allegations of minor neglect or a breakdown in communications. They involve little or no harm to clients. The main idea of the program is to locate all contact points between lawyers and clients that cause disputes and find ways to avoid or at least minimize the potential problems. This kind of program has been established in several other states with tremendous success in reducing subsequent client complaints and in building a better relationship between the discipline agency, the Bar, and lawyers’ clients. Serious disciplinary complaints deserve serious discipline, but complaints that occur due to poor law office management procedures or poor

stress management procedures can be reduced significantly by the use of such classes.

It has been my pleasure to help set up several of these programs around the country and to be a frequent teacher. They are unlike any other class we all have been part of. Participants usually start with a wide variety of attitudes ranging from tremendous irritation, anger, or anticipation to even boredom or disinterest. None of these emotions are unexpected. Once it is made clear that the purpose of the day is to share information and resources so that they can avoid future complaints, and enjoy their practices more, participants’ moods become much more relaxed. I, for one, cannot wait for the first class. Here is what’s in store for the attendees at the State Bar’s Ethics School.

- 8:00–8:30 a.m.
Registration
- 8:30–8:40 a.m.
Introduction and Overview
- 8:40–9:00 a.m.
Overview of Lawyer Discipline System
- 9:00–10:15 a.m.
Attorney/Client Relationship
- 10:15–10:30 a.m.
Break
- 10:30–11:30 a.m.
Fee Agreements/Avoiding Disputes
- 11:30–Noon
Substance Abuse and Stress Management
Lawyers and Judges Assistance Program
- 12:00–12:45 p.m.
Lunch
- 12:45–1:30 p.m.
Trust Accounting and Handling
Client Property
- 1:30–2:30 p.m.
Law Office Management/Technology
- 2:30–2:45 p.m.
Break
- 2:45–3:15 p.m.
Conflicts of Interest
- 3:15–3:45 p.m.
Professionalism and Civility

3:45–4:00 p.m.

Current Issues in Ethics

4:00–4:45 p.m.

Wrap-up and Testing

Let me share some observations from previous schools that I’ve been privileged to teach:

- In numerous classes, lawyers attending have come to realize that the source of difficulties with their clients is stress and/or alcohol problems and they have sought help, which saved their careers and lives;
- Almost to a person the instructors (practicing lawyers, bar leaders, discipline agency staff, etc.) have left with a newfound appreciation for those in our profession who receive discipline complaints and the clients who file them.
- Recidivism rates decline dramatically for lawyers who go through this program when compared to those who receive only a minor discipline sanction;
- There are no perfect human beings, nor are there any perfect organizations, whether they are discipline agencies or bar associations. By learning from each other in our successes and failures we become a stronger profession.
- In reviewing the purpose of such programs, I’d like emphasize what these programs are not. They are not a convenient way out of serious ethical violations. Serious cases will continue to be prosecuted and the focus will remain on determining the appropriate level of discipline.
- Ethics programs do, when administered wisely, help lawyers to provide more competent, ethical, and professional services to their clients.

I applaud all involved in establishing this program. It is one example of a Return to Basics, as envisaged in the Bar’s Strategic Plan, which was approved by the Representative Assembly on February 22, 2003. What do you think? ♦

Editor’s note: see related article on page 28.

Share your thoughts/concerns

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