第五章　律師之不當執業

壹、關鍵概念

一、不當執業行為與法律倫理

可以這樣的認為，不論哪一種行業，那種行業的行為必然有該行業的正當行為與不當行為。在律師這種行業下，自然也就不會有例外。律師的不當執業行為，在美國要到了20世紀的70年代，才引起美國律師界的注意；而我國則慢了至少三十年，要到21世紀才受到法律界人士的注意。這主要的是為他人代理案件從事訴訟的律師，一時之間成了法庭上的「被告」，這類型的訴訟在各國相互「傳染」之下，就如同任何一個國家內的「社會運動」（Social Movement）一樣，風起雲湧的，在短短的二、三十年間，形成了一股「高潮」。這樣的現象，無論是在絕對數量上或是相對數量上，在任何一個國家的歷史上，似乎都沒有見到過。中國大陸學者王進喜在其著作中有如下的說明[1]：

導致這一現象的原因很多，如律師的數量不斷增長、消費者運動高漲、委託人的教育程度不斷提高、律師業務工作的專業化不斷增強等。以美國為例，1995年的一個資料顯示，美國律師和保險業在律師不當執業問題上的花費在當時已超過每年40億美元。在傳統上，律師不願意代理其他人對自己的同行提起訴訟，這被有些學者稱為沉默的共謀，意思是說這是為了維護律師這個職業團體的利益。但是現在這種情況已經徹底發生了轉變，律師不當執業訴訟的威懾作用不再僅是理論上，而是成了現在律師業務中的一個重要組成部分。因為許多律師認識到向那些受到律師侵害的人提供法律服務是他們的倫理義務。律師群體規模的不斷擴大和層次化的加深，也使得律師在針對同行的訴訟中不再猶豫。一些律師已經專門代理這些案件，成為律師的律師，

[1] 王進喜，法律倫理的 50 堂課，台北，五南圖書公司，2008 年，第 50 頁。

從而形成了一個新的專業方向……。雖然通常認為律師不當執業是一種侵權行為，但是從法院的意見來看，對此卻並沒有什麼統一的公式可循。有的學者認為從範圍上來看，律師不當執業的範圍很廣，包括律師違反對委託人承擔信託責任的行為、以執業為幌子故意從事欺詐的行為，或者其他損害第三者的行為等等，甚至有的判例將律師不當執業行為界定為僅僅影響到法院的行為。但是從發展趨勢來看，律師不當執業行為包括所有不符合職業標準的行為。如此一來，界定律師職業行為標準的律師職業行為守則就發揮了重要作用。律師們現在認識到，隨著律師職業行為規則的不斷深入，標準的不斷提高，律師面對不當執業訴訟的風險也在不斷提高。

從發展趨勢來看，律師不當執業訴訟與傳統的自律性的懲戒模式相比，是一種更為有效的律師管制手段。它將極大地促進律師協會和律師事務所對律師的管理，從而保證其為委託人提供有效的法律服務。

不當法律行為與法律倫理的關連，在於違反倫理的行為通常也可能引發不當執業訴訟。從另一方面來說，不當執業訴訟也大多以違反倫理的情事為依據。這兩者並不相同，但常常有連帶關係。

二、十大不當執業行為

美國加州律師甘迺迪（Brian Kennedy），在其著作美國法律倫理（American Legal Ethics）之中，引用「美國律師協會」（American Bar Association）所作的一項研究，顯示以下十大不當律師執業行為，所引起之訴訟，最為引人側目[2]：

㈠錯失最後期限。

㈡壓力與藥物濫用（substance abuse）。

㈢與委託人的關係不佳。

㈣篩選委託人不當（ineffective client screening）。

㈤研究與調查不適當。

㈥利益衝突。

[2] 郭乃嘉譯，Brian Kennedy 著，美國法律倫理，台北，商周出版，2005 年，第 134 頁。

㈦不當涉入委託人的事務。

㈧工作文件檔案不齊備（Lack of adequate documentation of work）。

㈨急於向委託人催收律師費。

㈩對於不當執業行為的威脅控訴無動於衷。

三、不當執業行為之發生

基本上，在日常的訴訟案子的處理上，如果每一位律師只需要處理或負責少數的幾件案子，對每件案子的處理就不致於有不必要的「不當行為」之發生。然而，事實上，因為各國的訴訟案子在20世紀中葉以來，大量的幾乎以等比級數的方式來增加，更重要的是個人意識的覺醒，使得個人權利的保障呼聲，較歷史上任何時期都要明顯。因而，各國的律師業務的競爭相當的激烈；要「生存」，就得「大量經營」（Volume Business）。世界各國的情形，均是如此；台灣自然也不例外[3]：所謂的「大量經營」是指接大量類似的案子，用最快的速度處理案件，好接更多的案子。有好幾個領域的法律業務都得以「工廠」的模式經營，處理案子的方式有如製造業的生產線，這些恰巧也是不當執業行為最常發生的領域。不論是專門處理人身傷害、不動產、催收債務，以及破產或家事法的事務所，每個月都得處理數百件的案子才能獲利，否則事務所就難以維持。律師私底下聊天時會這麼說：「我在一家家事法事務工廠上班。」意思就是他們在一家有家事法訴訟「生產線」的事務所上班。此種工廠式的工作模式就是造成在例常事務上出現不當執業行為的原因，律師業的劇烈競爭則是元兇。

另一個相關的原因，常被訴訟律師用來解釋為什麼不當執業訴訟會增加。既然有訴訟，就有輸贏，敗訴的當事人要怪當然要怪律師，告律師不當執業也就理所當然。雖然律師宣稱是敗訴的當事人心有不甘怪罪律師，才會造成不當執業訴訟增加。

與不當執業訴訟增加的原因有所關連的另一個原因，就是律師與委託人的關係不良。對委託人的調查顯示，有三分之一的受訪者覺得，

3　同前註，第 149 頁。

他們的律師沒有照顧到他們真正關切的事項。這是一個問題。如果法律工作變成是以「法律事務工廠」經營的「生意」，律師和委託人就不大可能有密切的人際關係。律師與委託人因而產生距離，這個「距離」可引起不信任，甚至是強烈的敵意。當律師與委託人對彼此沒好感、缺乏信任，發生不當執業行為的機率也比較高。說得明白點，我們比較可能跟自己討厭的人打官司。

四、不當執業訴訟／Malpractice Suits[4]

Suits against lawyers for malpractice were once a rarity. That is no longer so. The level of competence of lawyers is probably no lower today than in the recent past. The growth in legal malpractice claims is probably due to the same changes in attitudes toward professionals that has made suing doctors more acceptable — less awe and greater realism about their work and their place in society. Most of the successful malpractice cases have been for especially egregious conduct, such as the deliberate and willful neglect of a client matter to the extreme detriment of the client or gross incompetence. Part of the reason for this is in the legal requirements for a legal malpractice claim. The dissatisfied former client must show both that the attomey was at fault and that, but for the attorney's misconduct, the client would have prevailed on the underlying claim — usually shown by a "trial within a trial" on the mishandled claim.

Most lawyers carry malpractice insurance, but the rate for such insurance is far below that of physicians. Bar organizations maintain "client security funds" that are designed to reimburse clients who lose money as a result of improper conduct of lawyers and who are unable to recover their loss otherwise. However, few of these funds provide full compensation.

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4 William Burnham, Introduction to the Law and Legal System of the United States, 4thed, (St. Paul, MN.:Thomson/West, 2008) , p159.

五、不當執業之構成要素／Constituents of Malpractice[5]

The cause of action for legal malpractice based on negligence has four elementsL (1) a duty owed by the defendant to the plaintiff; (2) a breach of that dury, shown through a failure to exercise reasonable care; (3) losses suffered by the plaintiff; and (4) proximate cause between the defendant's negligent conduct and the plaintiff's losses. Concerning Element 2, a failure to exercise reasonable care involves determining whether the lawyer's conduct was less than what a similarly situated, reasonable lwayer would have done. And, as is the case with any claim of negligence, there umst be proximate cause: a direct link between the unreasonable act and the alleged harm. As a general rule, making a mistake, even a big mistake, would not result in malpractice if the plaintiff could not prove that the loss suffered was caused by the lawyer's misconduct. For instance, if a lawyer were to incompetently draft a will for a client who ended up spending every last penny before dying, there would be no malpractice case since a correctly drafted will would have resulted in the asme outcome for the heirs (no inheritance).

Most lawyers carry malpractice insurance, but the rate for such insurance is far below that of physicians. Bar organizations maintain" client security funds" that are designed to reimburse clients who lose money as a result of improper conduct of lawyers and who are unable to recover their loss otherwise. However, few of these funds provide full compensation.

六、非律師不當執業之懲戒／Punishment behind Non-Lawyer Malpractice[6]

If non-lawyer members of the legal team, such as paralegals, are so unregulated as to be unlicensed in their own field－much less unlicensed to

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[5] Kent D. Kauftman, Legal Ethics, (Clifton Park, N.Y.:Delmar Learning, 2004) , p.325.

[6] 1bid, at 326.

practice law－how could they be held liable as professionals for their misdeeds? The answer lies in the fact that malpractice is a tort; it is a particular kind of negligence. A court will not refuse to hold someone liable for negligence simply because the defendant had no legal right to do what he or she did incompetently. A license entitles one to engage in a profession, but it does not insulate the professional against professional negligence. Likewise, the lack of a license does not prevent the tortfeasor from being accountable for performing improper acts. Remember from Chapter 3 that a jurisdiction's highest court cannot sanction a non-lawyer for engaging in the unauthorized practice of law because the non-lawyer is not a member of the bar and, therefore, not subject to professional discipline. It can, however, issue a cease and desist order to the nonlawyer practicing law without a license and then hold him or her in contempt of court for a violation of the court's order.

Despite the lack of a regulating court's ability to discipling a non-lawyer, a jury could still find that his or her incompetent, unauthorized practice of law constituted negligence.

貳、案例檢選

TOGSTAD v. VESELY, OTTO, MILLER & KEEFE

Supreme Court of Minnesota, 1980.291 N.W.2d 686.

PER CURIAM.

This is an appeal by the defendants from a judgment of the Hennepin County District Court involving an action for legal malpractice. The jury found that the defendant attorney Jerre Miller was negligent and that, as a direct result of such negligence, plaintiff John Togstad sustained damages in the amount of $610,500 and his wife, plaintiff Joan Togstad, in the amount of $39,000. Defendants (Miller and his law firm) appeal to this court from the denial of their motion for judgment notwithstanding the verdict or,

alternatively, for a new trial. We affirm.

In August 1971, John Togstad began to experience severe headaches and on August 16, 1971, was admitted to Methodist Hospital where tests disclosed that the headaches were caused by a large aneurism on the left internal carotid artery. The attending physician, Dr. Paul Blake, a neurological surgeon, treated the problem by applying a Selverstone clamp to the left common carotid artery. The clamp was surgically implanted on August 27, 1971, in Togstad's neck to allow the gradual closure of the artery over a period of days…

In the early morning hours of August 29, 1971, a nurse observed that Togstad was unable to speak or move. At the time, the clamp was one-half (50%) closed. Upon discovering Togstad's condition, the nurse called a resident physician, who did not adjust the clamp. Dr. Blake was also immediately informed of Togstad's condition and arrived about an hour later, at which time he opened the clamp. Togstad is now severely paralyzed in his right arm and leg, and is unable to speak…

About 14 months after her husband's hospitalization began, plaintiff Joan Togstad met with attorney Jerre Miller regarding her husband's condition. Neither she nor her husband was personally acquainted with Miller or his law firm prior to that time. John Togstad's former work supervisor, Ted Bucholz, made the appointment and accompanied Mrs. Togstad to Miller's office. Bucholz was present when Mrs. Togstad and Miller discussed the case.

Mrs. Togstad had become suspicious of the circumstances surrounding her husband's tragic condition due to the conduct and statements of the hospital nurses shortly after the paralysis occurred. One nurse told Mrs. Togstad that she had checked Mr. Togstad at 2 a.m. and he was fine; that when she returned at 3 a.m., by mistake, to give him someone else's medication, he was unable to move or speak; and that if she hadn't

Consequently, based on the testimony of Mrs. Togstad, i.e, that she requested and received legal advice from Miller concerning the malpractice claim, and the above testimony of Hvass, we must reject the defendants' contention, as it was reasonable for a jury to determine that Miller acted negligently in failing to inform Mrs. Togstad of the applicable limitations period…

There is also sufficient evidence in the record establishing that, but for Miller's negligence, plaintiffs would have been successful in prosecuting their medical malpractice claim. Dr. Woods, in no uncertain terms, concluded that Mr. Togstad's injuries were caused by the medical malpractice of Dr. Blake. Defendants' expert testimony to the contrary was obviously not believed by the jury. Thus, the jury reasonably found that had plaintiff's medical malpractice action been properly brought, plaintiffs would have recovered.

Based on the foregoing, we hold that the jury's findings are adequately supported by the record. Accordingly we uphold the trial court's denial of defendants' motion for judgment notwithstanding the jury verdict…

Affirmed.

參、案例研析

一、事實（FACT）

時序到了1971年的8月John Togstad（本案之原告）開始感覺到嚴重的頭痛，到了8月16日就到「美以美醫院」（Methodist Hospital）入院檢查，結果顯示頭痛是因為左邊內部的頸動脈腫瘤所造成的「動脈瘤」（aneruism）引起嚴重的頭痛。「主治醫師」（Attending Physician）Paul Blake是一位「神經外科」（neurosurgeon）專業醫院，做了手術，在他的脖子上移入了一個「固定夾」（Clamp），這是8月27日的事情。到了8月29日，一位護士發現到Togstad沒有辦法講，也無法移動。此

時，護士就呼叫「住院醫師」（resident physician），但是住院醫師並未調整「固定夾」。在呼叫住院醫師的同時Paul Blake醫師也立即的被告知Togstad的情況。Blake醫師大約是在一小時之後趕到病房；此時他打開了「固定夾」。而Togstad至此已是在他的右臂及右腳造成了嚴重的麻痺而且也不能言語。

在John Togstad住院約十四個月後，Joan Togstad（亦為原告）開始與律師Jerre Miller會面而談到她丈夫的情形。在那之前Joan以及他的先生與Miller及他的律師事務所均不熟識。這樣的會面乃是由John之前工作的督導Ted Bucholz為Joan作的安排並且陪同Joan到Miller的辦公室。當Joan Togstad與Miller討論Togstad的情事時，Bucholz是在現場的。Togstad太太在聽到她先生麻痺之受醫院護士們之間有關她先生的情況時，Togstad太太開始懷疑醫院護士及醫師的處理有所不當。

其後，一位「醫學專家」（Medical Expert）作證時，指出醫生及醫院未能「定期的」（Reguarly）「監視」（Monitor）John Togstand的情況，是有「過失」（Negligent）的。同時，在未能給予護士充分的「指示」（Order）亦是有過失的。而且未能及早解開「固定夾」以及未能指派值班護士來適時的操作「固定夾」……在在都說明了醫院的過失。另外對於醫院的不當執業，其「消滅時效」（Statute of Limitations）是兩年。在一年又二個月過去後，Togstad太太開始起疑的是「醫事不正執業」（Medical Malpratice），因為由醫院護士的行為舉止及陳述，說明了醫院方面並沒有指派護士來監視Togstad（原告先生）的情況。

此外，Togstad在Bucholz的陪同下會見了Vesely,Otto,Miller and Keefe律師事務所的律師Jerre Miller。Togstad太太告訴了Miller所有的有關發生在醫院的事情，其中也包括了醫院護士所談論Togstad先生的情形。而且也有可能的有關醫院的處理過程。在會談中Tgostad太太並沒有攜帶任何的醫院紀錄。Miller律師與Togstad交談了約45至60分鐘，也問了一些問題，並且作了筆記。在會談後，Herre Miller聲稱Togstad太太被告知：他不認為Togstad有一個好的法律訴訟的原因，然

中文附錄

附錄一　律 師 法

修正日期：民國 99 年 01 月 27 日

第 1 條

Ⅰ律師以保障人權、實現社會正義及促進民主法治為使命。

Ⅱ律師應基於前項使命，本於自律自治之精神，誠實執行職務，維護社會秩序及改善法律制度。

第 2 條

律師應砥礪品德、維護信譽、遵守律師倫理規範、精研法令及法律事務。

第 3 條

Ⅰ中華民國人民經律師考試及格並經訓練合格者，得充律師。有左列資格之一者，前項考試以檢覈行之：

一、曾任法官、檢察官。

二、曾任公設辯護人六年以上者。

三、曾在公立或經立案之私立大學、獨立學院法律學系畢業，而在公立或經立案之私立大學、獨立學院法律學系或法律研究所專任教授二年、副教授三年，講授主要法律科目三年以上者。

四、曾在公立或經立案之私立大學、獨立學院法律學系畢業或經軍法官考試及格，而任相當於薦任職軍法官六年以上者。

Ⅱ前項第一款、第二款及第四款者免予訓練。

Ⅲ第二項檢覈辦法，由考試院會同司法院、行政院定之。

第 4 條

Ⅰ有下列情事之一者，不得充律師：

一、曾受一年有期徒刑以上刑之裁判確定，並依其罪名足認其已喪失執行律師之信譽，經律師懲戒委員會懲戒除名。但受緩刑之宣告，

緩刑期滿而未經撤銷或因過失犯罪者，不在此限。

二、其他曾受本法所定除名處分。

三、曾任公務人員而受撤職處分，其停止任用期間尚未屆滿，或現任公務人員而受休職、停職處分，其休職、停職期間尚未屆滿。

四、經教學醫院證明有精神障礙或其他心智缺陷，致不能勝任律師職務。

五、受破產之宣告，尚未復權。

六、受監護或輔助宣告，尚未撤銷。

Ⅱ有前項第一、二款情事，其已充律師者，撤銷其律師資格。

Ⅲ有第一項第三、四、五、六款情事，其已充任律師者，停止其執行職務。

第 5 條

經律師考試及格者，得請領律師證書。

第 6 條

請領律師證書，應具聲請書及證明資格文件，報請法務部核明後發給之。

第 7 條

Ⅰ律師得向各法院聲請登錄。

Ⅱ律師應完成職前訓練，方得登錄。但曾任法官、檢察官、公設辯護人、軍法官者，不在此限。

Ⅲ前項職前訓練之實施方式及退訓、停訓、重訓等有關事項，由法務部徵詢全國律師公會聯合會意見後，以職前訓練規則定之。

第 8 條

各法院及各該法院檢察署，應置律師名簿；應記載事項如左：

一、姓名、性別、年齡、住址。

二、律師證書號數。

三、學歷及經歷。

四、事務所。

五、登錄年、月、日及其號數。

六、加入律師公會年、月、日。

英文附錄

附錄一

ABA CANONS OF PROFESSIONAL ETHICS

Preamble

In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not construed as a denial of the existence of others equally imperative, though not specifically mentioned.

1. The Duty of the Lawyer to the Courts.

It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the

Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. The Selection of Judges.

It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protect earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court.

Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. When Counsel for an Indigent Prisoner.

A lawyer assigned as counsel for an indigent prisoner ought not to ask

附錄二

ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY

PREAMBLE

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.

In fulfilling his professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which he may encounter can be foreseen, but fundamental ethical principles are always present to guide him. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Model Code of Professional Responsibility points the way to the

aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum 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. The 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 Consideration 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.

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, the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Model Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule, 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. 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.

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 or moral standards or of other relevant factors 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. 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.

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. A lawyer should, upon request serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.

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