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COMMENTARY

Scrap ABA Proposal To Centralize N.J.'s Attorney-Discipline System

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The American Bar Association's Standing Committee on Professional Discipline deserves criticism, and kudos, for its report on the New Jersey attorney-discipline system.

Its recommendation for a centralized professional body to handle every ethics grievance without regard to severity will detract from the professionalism of practicing law in New Jersey. Ending volunteer attorney participation will also erode the integrity of attorney ethics in New Jersey by creating a gap between practicing attorneys and the attorney ethics system.

But the ABA report includes some excellent suggestions for improving our system, namely: promoting alternatives to discipline for minor misconduct, permitting discipline by consent at all stages of the ethics proceeding and adopting probation as a sanction.

At present, volunteer attorney members of the local District Ethics Committees investigate and prosecute matters that are not deemed extremely serious. Matters deemed extremely serious, or appropriate for handling by the Office of Attorney Ethics, typically involve misappropriation

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of client funds or similar conduct that usually results in disbarment, or very complex matters that would require an enormous commitment of time.

I support continuing with volunteer attorneys at the district ethics level and having the OAE continue handling the more serious and time-consuming cases.

The invaluable experience and knowledge gained by volunteer attorneys handling matters at the local district ethics committee level is certainly worth preserving. Attorneys should be part of the ethics system, and we should be actively engaged in the development, application and enforcement of the Rules of Professional Conduct.

There is no doubt that serving on the local DEC requires a substantial time commitment and effort by volunteer attorneys. But I would argue that such a sacrifice is worthwhile.

Handing over the reins to a central professional office likely would create a distrust between attorneys and the ethics system. Having the "ethics police" breathing down the necks of all attorneys, regardless of the severity in the alleged infraction, would create an atmosphere of "us against them" and would detract from the professionalism of practicing law in New Jersey.

The report's primary reason for the recommendation of centralizing all investigations with the OAE is a "lack of public

confidence" in the current system and alleged "unevenness in diligence." This claim appears to be anecdotal and without factual support.

The report contains no substantiation of these claims, nor proof that a central professional body actually would do a better job or be more objective.

I would however, strongly support the report's recommendation that we expand and promote alternatives for discipline, including diversion and probation.

As suggested in the report, prior misconduct of an attorney should not necessarily make a lawyer ineligible for referral to an alternative to discipline program. Minor misconduct should be treated accordingly, and not with the "one strike and you're out" philosophy currently in place. At present, if an attorney has any prior finding of unethical conduct (regardless of severity), he or she is ineligible for diversion.

As the report indicates, this rule should be discarded. Cases should be adjudicated on a case-by-case basis and should not be hamstrung by artificial barriers to diversionary treatment. Rather, all forms of discipline, depending upon each particular case, should be available for the factfinder's consideration. The Disciplinary Review Board, and in cases of disbarment and certain other serious instances the New Jersey Supreme Court, will be the ultimate gatekeeper on appropriate discipline, in any event.

The report suggests that discipline by consent should be encouraged at all stages of the proceedings. This is another great recommendation. Having handled numerous attorney ethics cases, I know that the public is benefited and protected when the parties can consent to discipline in exchange for a respondent's admission to misconduct. The report properly states that, "the sixty-day rule is overly rigid and impedes the process of seeking and obtaining discipline on consent."

In many instances, the respondent is unaware of the importance of the situation,

or ramifications of the misconduct, until after an investigation or hearing is commenced. At present, the respondent can only agree to discipline on consent in minor misconduct situations, within 60 days of the time the respondent files an answer to the ethics complaint.

This rule creates an artificial barrier to appropriately disposing of cases that can easily and quickly be finalized, once all the facts are apparent. Implementing this change also would greatly reduce the current backlog of ethics cases.

The Court should also consider adopt-

ing the report's suggestion that probation be implemented as a sanction. This new disciplinary alternative would be especially appropriate for inexperienced attorneys who lack bad intent and might benefit from supervision for a brief period of time. It might also be appropriate for attorneys who have experienced a severe personal problem or loss, but otherwise have a stellar ethics history. In addition, probation likely would assist respondents and the OAE in handling minor misconduct cases more efficiently, helping to further reduce the backlog. ■