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Twenty-Five Years Later-For Better or Worse

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TWENTY-FIVE YEARS LATER—FOR BETTER OR WORSE?

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I. INTRODUCTION

Twenty-five years ago, the practice of law in this nation was not a heavily self-regulated profession, as it is today.[1] State bar associations, which once operated in a small guild atmosphere, have become full-fledged administrative bodies. When bar associations came into existence in the late nineteenth century, they concentrated on setting admission requirements.[2] Today, every state has admission requirements involving age, educational requirements, and skills examinations.[3] In contrast to their earlier period, bar as-

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1. Bar associations originally developed as social clubs, although they were also concerned with the profession of law. "[E]arly rules setting uniform fees and regulating the admission of lawyers to practice came from the bar associations." CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 2.3, at 34 (1986). *See* GLENN R. WINTERS, BAR ASSOCIATION ORGANIZATION AND ACTIVITIES 4 (1954) (discussing origins and history of lawyers' organizations and noting early purpose of organizations as law library associations). *See generally* ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES (1953) (surveying history of lawyers and lawyering).

2. CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 1.3, at 8 (1986).

3. JOHN F. SUTTON, JR. & JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY OF LAWYERS 52 (1990). In the early 1900s most states required a three-year apprenticeship, and some states required bar examinations. West Virginia was the first state to make law school compulsory, in 1928. Currently, almost all states require graduation from ABA-

sociations today concentrate more on providing social programs, educating members, and regulating the profession. This essay will discuss other fundamental changes in the legal profession that have occurred during the past twenty-five years.[4]

II. COMPOSITION OF THE BAR

Between 1960 and 1980 the number of lawyers doubled.[5] In 1960 there were 285,000 practicing attorneys in the United States,[6] a number that had increased to 744,000 by 1991.[7] There were few women in the law in the 1960s. During the 1970s, the number of women in the profession increased from 4 percent to 14 percent.[8] By 1991, 19 percent of practicing attorneys were women.[9] Unfortunately, minorities have not fared so well as women.[10] From 1972 to 1980 the percentage of nonwhite practicing lawyers rose from 1.9 to 4.2 percent,[11] a ratio that remains constant today.[12] The large number of attorneys and the increasingly diverse membership

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approved law schools. *See* SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR & NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 1992-93, at 10-14 (1992) (detailing legal education requirements of all states, District of Columbia, and U.S. territories).

4. *See generally* Vincent R. Johnson & Virginia Coyle, *On the Transformation of the Legal Profession: The Advent of Temporary Lawyering*, 66 NOTRE DAME L. REV. 359, 360-68 (1990) (cataloguing changes in law practice).

5. GEOFFREY C. HAZARD, JR. & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 53 (2d ed. 1988). "For every two lawyers in 1970, there were three in 1980—an increase of 50%." *Id.*

6. CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 1.4, at 9 (1986). *See* GEOFFREY C. HAZARD, JR. & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 53 (2d ed. 1988) (reporting growth in number of licensed lawyers).

7. United States Dep't of Commerce, Statistical Abstract of the United States 629 (1992). *See* Peter Roorda, *The Internationalization of the Practice of Law*, 28 WAKE FOREST L. REV. 141, 141 (1993) (asserting that 780,000 attorneys practice in United States in 1993).

8. GEOFFREY C. HAZARD, JR. & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 54 (2d ed. 1988). "In 1982, 82,000 lawyers and judges were female—14% of the profession." *Id.* By 1983, 15.3% of practicing attorneys were female. United States Dep't of Commerce, Statistical Abstract of the United States 392-93 (1992).

9. United States Dep't of Commerce, Statistical Abstract of the United States 392-93 (1992).

10. *See* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 1.4.2, at 9 (1986) (noting underrepresentation of minorities).

11. *Id.* § 1.4.2, at 9-10 (citing Statistical Abstract of United States).

12. United States Dep't of Commerce, Statistical Abstract of the United States 392-93 (1992) (noting minority ratio of 3.5% in 1983 and 4.2% in 1991).

constitute further evidence of the change in the bar from a "club" to "big business" over the past quarter-century.

III. METAMORPHOSIS OF LAWYERING INTO A BUSINESS

Twenty-five years ago lawyers could not make information about themselves widely available to prospective clients.[13] Then, in 1977, the United States Supreme Court, in *Bates v. State Bar of Arizona*,[14] held that banning advertising by attorneys was an unconstitutional infringement on the right of commercial free speech.[15] Thus, since 1977, lawyers have been able to advertise their services through all forms of the media, including newspapers, television, and radio—to the extent that today attorneys constitute one of the largest single advertising blocs in the Yellow Pages. This ability to advertise has placed lawyers on an equal footing with other businesses and has contributed greatly to the commercialization of the legal practice.[16]

In addition to media advertising, since *Shapero v. Kentucky Bar Association*[17] was decided in 1988, lawyers have been allowed to solicit potential clients known to need legal services through direct-mail solicitation that is neither untruthful nor deceptive.[18] The Texas Legislature recently moved to restrict such solicitations by passing revisions, effective September 1, 1993, to the Texas Barratry Statute and the Uniform Traffic Act.[19] The barratry amend-

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13. *See generally* Terry Calvani et al., *Attorney Advertising and Competition at the Bar*, 41 VAND. L. REV. 761, 761-88 (1988) (discussing history and future of attorney advertising).

14. 433 U.S. 350 (1977).

15. *Bates*, 433 U.S. at 383-84.

16. *See generally* L. Harold Levinson, *Making Society's Legal System Accessible to Society: The Lawyer's Role and Its Implications*, 41 VAND. L. REV. 789, 791-92 (1988) (discussing law as business).

17. 486 U.S. 466 (1988).

18. *Shapero*, 486 U.S. at 479. The ABA Model Rules permit telephone solicitation only in certain circumstances. *See* MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.3 (1993), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 90 (1993) (allowing recorded telephone messages). The Texas Rules prohibit all telephone solicitation. TEX. DISCIPLINARY R. PROF. CONDUCT 7.01 (1989), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. (Vernon Supp. 1993).

19. *See* Mark Hansen, *Texas Makes Solicitation a Felony*, A.B.A. J., Sept. 1993, at 32, 32 (noting that "[t]he new law, which makes direct solicitation a third-degree felony, is by far the toughest anti-barratry legislation in the country").

ment prohibits lawyers from sending letters to injured parties or to relatives of wrongful-death victims, from writing to criminal defendants or their relatives, and from contacting civil lawsuit defendants, all within thirty-one days of the accident or event.[20] The traffic act amendment prohibits the release of accident reports for 180 days from the date of the accident.[21]

The barratry act and traffic act legislation had broad support from all members of the Texas bar and passed without opposition.[22] The purpose of these amendments was to limit direct-target mailings to potential clients. Since *Shapero*, a market for the products of companies that compile lists of arrest records, accident reports, and recent court filings had developed.[23] Some lawyers made it a practice to purchase copies of these lists and to send letters soliciting legal business immediately to involved parties. This type of direct-target mail solicitation reflected poorly on the profession and on all attorneys.[24]

In addition to legislative regulation of solicitation, the State Bar of Texas will, in the fall of 1993, propose amendments to the advertising rules, which could become effective in early 1994.[25] The proposed rules would ban "mottos, slogans, jingles, or other content appealing 'primarily to emotions.'"[26] Furthermore, the proposed rules would require that a copy of the advertisement be filed with the State Bar of Texas before it could be aired.[27] New regulations notwithstanding, with the continuing stagnant economy and the expansion of advertising, lawyers will continue to develop marketing strategies to obtain new business.[28]

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20. Barratry Act, 73rd Leg., R.S., ch. 723, 1993 Tex. Sess. Law Serv. 2832 (Vernon) (to be codified as an amendment to TEX. PENAL CODE ANN. § 38.12).

21. *Id.* at 2835 (to be codified as an amendment to TEX REV. CIV. STAT. ANN. art. 6701d § 45(a)).

22. Litigation on the constitutionality of these statutes is not only anticipated, but has already begun. Mark Hansen, *Texas Makes Solicitation a Felony*, A.B.A. J., Sept. 1993, at 32, 32.

23. *Id.*

24. *Id.*

25. Lonny Morrison, *Where Do We Go from Here*, 56 TEX. B.J. 546, 546 (1993).

26. Vincent R. Johnson, *Advertising: How Far Can We Go?*, SAN ANTONIO LAW., Fall 1993, at 5, 5-6.

27. Mark Hansen, *Texas Makes Solicitation a Felony*, A.B.A. J., Sept. 1993, at 32, 32.

28. *See* L. Harold Levinson, *Making Society's Legal System Accessible to Society: The Lawyer's Role and Its Implication*, 41 VAND. L. REV. 789, 802-06 (1988) (discussing future lawyer-client relationships and lawyer as entrepreneur).

The advent of computer-based technology has had a dramatic impact on how legal firms conduct business. Today, the average law firm uses computers for administrative purposes, word processing, billing, and other operations-oriented tasks.[29] Such an idea was unthinkable twenty-five years ago.[30] Litigation firms, especially, have benefited from the power of data processing.[31] Furthermore, younger attorneys are computer-literate upon entering the practice.[32] Not only must today's lawyer cope with "faxed" pleadings and with electronic filings, but also with law libraries that are now on nationwide computer databases as well as on CD-ROM.[33] The rate of technological change is not expected to slow in the foreseeable future.[34]

IV. THE CHANGING ROLE OF THE LAWYER: FROM "GP" TO "SPECIALIST"

Twenty-five years ago there were not only fewer lawyers, but fewer laws. Most attorneys were general practitioners handling a variety of problems for their clients, much as the family doctor did. Today it is commonplace for lawyers to specialize in certain practice areas such as patent, tax, securities, family, and personal injury law, reflecting a movement toward specialization also seen in the medical profession.[35] Many state bar associations have adopted certification processes so that lawyers can be designated as "certi-

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29. Jim Meyer, *The New Lawyering: Microsoft's Bill Gates Looks at Computers' Impact*, A.B.A. J., Aug. 1993, at 56, 58.

30. Vincent R. Johnson & Virginia Coyle, *On The Transformation of the Legal Profession: The Advent of Temporary Lawyering*, 66 NOTRE DAME L. REV. 354, 369 n.33 (1990).

31. Jim Meyer, *Bill's Dad Looks at Lawyering*, A.B.A. J., Aug. 1993, at 59, 59.

32. *Id.*

33. *See* Martha Middleton, *The Virtual Library Looms*, NAT'L L.J., July 12, 1993, at 1, 30 (commenting on electronic transfer of information); *Law Libraries: Researchers Plug In*, NAT'L L.J., July 12, 1993, at S1, S2 (discussing CD-ROM technology and legal research).

34. *See generally* Richard D. Marks, *Futuredocs: The Video Revolution in Briefs, Contracts, and Wills*, A.B.A. J., Aug. 1993, at 52 (discussing computer-based advances expected in practice of law in next 12 years); Jim Meyer, *The New Lawyering: Microsoft's Bill Gates Looks at Computers' Impact*, A.B.J. J., Aug. 1993, at 56, 56-60 (exploring market in legal technology forecast by technology companies).

35. *See* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 5.5, at 203-06 (1986) (discussing growing specialization in practice of law).

fied" in specific areas.[36] No general prohibition against a general practice of law exists; however, with the potential of growing malpractice liability and the difficulty of keeping abreast of all the laws, many attorneys have developed limited, or at least focused, areas of practice.[37]

Often the role of a lawyer has been, and continues to be, that of counselor, advisor, or negotiator, rather than advocate. In recent years, as an alternative to their clients' incurring rising litigation costs, lawyers have developed alternatives to dispute resolution.[38] Bar associations have been instrumental in developing highly successful alternative dispute resolution (ADR) programs involving mediation and arbitration.[39] In fact, these practice areas have become new specialties in the legal profession, as evidenced by numerous attorney advertisements mentioning these services.[40]

V. THE LAWYER'S IMAGE

Twenty-five years ago lawyers were considered to be professionals, to some extent public servants, and leading citizens in the com-

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36. Specialization has led to numerous issues involving advertising. *See* Peel v. Attorney Registration and Disciplinary Comm'n, 110 S. Ct. 2281, 2292-93 (1990) (holding that state bar associations may not impose broad restrictions on attorneys' advertising their certifications). State bar programs have developed determinations of who can claim a specialty. *See* TEX. DISCIPLINARY R. PROF. CONDUCT 7.01(b), (c) (1989), *reprinted in* TEX. GOV'T CODE ANN., tit.2, subtit. G. app. (Vernon Supp. 1993) (detailing restrictions on advertising of specialties). *See generally* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 5.5, at 204 n.18 (1986) (providing general description of state plans). While advertising practice in general areas of law is acceptable, if an advertisement indicates a specialty, the advertisement must comply with state disclaimer requirements. MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.4 (1992), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 93 (1993); *see In re* R.M.J., 455 U.S. 191, 207 (1982) (striking down requirement for approved language to describe areas of practice).

37. *See* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 5.5, at 203 & n.9 (1986) (asserting that lawyer specialization may expose general practitioners to legal malpractice and disciplinary hazards).

38. *See id.* § 13.6, at 727-30 (discussing mediation). In recent years, over 90% of all civil matters in federal courts were disposed of without trial. *Id.* § 13.5.1, at 711.

39. Texas was one of the first states to enact ADR legislation and remains a leader in this area today. The Texas Alternative Dispute Resolution Procedures Act is found at TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001-.073 (Vernon Supp. 1993); *see id.* § 154.001 (stating that it is policy of state to "encourage the peaceable resolution of disputes").

40. *See Peel*, 110 S. Ct. at 2292-93 (allowing advertisements by nationally approved organizations).

munity. Visions of Spencer Tracey and Katherine Hepburn in "Adam's Rib," Gregory Peck in "To Kill a Mockingbird," and Raymond Burr as "Perry Mason" on television defined the role of lawyers in society—fine, upstanding defenders of justice for all.[41] Today, many, if not most, Americans agree with former Vice-President Quayle's comments to the American Bar Association House of Delegates in August 1991: "Does America really need 70% of the world's lawyers?"[42]

A recent ABA survey of the public's view of the profession gave lawyers only a 40 percent "favorable" rating, while physicians received a 71 percent "favorable" rating.[43] The only professionals rated lower than lawyers were stockbrokers and politicians.[44] Of interest from the survey was the report that the greater an individual's involvement with lawyers and the legal system, the lower the individual's opinion of the legal profession.[45]

While it is hard to pinpoint the time when the image of modern lawyers began its downward spiral, the Watergate hearings of the early 1970s, involving so many formerly esteemed members of the bar, undoubtedly fanned the flames of lawyer-bashing.[46] Lawyer advertising in all forums and well-publicized multimillion-dollar jury verdicts fueled the fire.[47] Today, criticizing lawyers is almost a

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41. The majority view holds, "Compared to lawyers in the past, today's attorney is less caring and compassionate. This is based on the percentage replying that today's lawyer is no longer a leader in the community (56%), a defender of the underdog (55%), and a seeker of justice (64%)." Gary A. Hengstler, *Vox Populi*, A.B.A. J., Sept. 1993, at 60, 62.

42. *See There Oughta Be a Wiser Law*, PLAIN DEALER (Cleveland), Aug. 30, 1992, at 6C. Mr. Quayle asked, "Is it healthy for our economy to have 18 million new lawsuits coursing through the system annually?" *Id. But see* Ward Blacklock, *Lawyer-Bashing: It's Time to Turn the Tide*, 24 ST. MARY'S L.J. 1219, 1221 (1993) (refuting Vice President Quayle's assertion by noting United States ranks 35th in per capita lawyers).

43. *See* Gary A. Hengstler, *Vox Populi*, A.B.A. J., Sept. 1993, at 60, 62.

44. *Id.*

45. *Id.*

46. *See* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 1.1, at 3-4 (1986) (stating that decline in public esteem for lawyers coincides with declining esteem for many of our public institutions).

47. *See* Lonny Morrison, *Where Do We Go from Here?*, 56 TEX. B.J. 546, 546 (1993) (discussing current rule-making climates that allow greater attorney promotion). Undoubtedly, the public perceives lawyers as greedy. "In the public mind, most lawyers are motivated by money. Three-fifths of respondents (63%) said lawyers make too much money, 59 percent said lawyers are greedy, and 55 percent said it is fair to say that most lawyers 'charge excessive fees.'" Gary A. Hengstler, *Vox Populi*, A.B.A. J., Sept. 1993, at 63, 63.

national pastime. Current movies such as "Cape Fear" and "The Firm," depicting lawyers' greed, and television shows such as "L.A. Law" define the public's image of the legal profession today. Few seemed disturbed—in fact, some audiences applauded—when, in the 1993 film "Jurassic Park," an attorney was devoured by a Tyrannosaurus Rex![48]

VI. REGULATION OF THE LEGAL PROFESSION

As bar associations attempt to combat the negative image of today's lawyers, many of these organizations have turned to increased enforcement of disciplinary rules to police the legal profession.[49] Twenty-five years ago, lawyers practiced their profession under the auspices of thirty-two canons of professional behavior.[50] One commentator stated, "[T]he Canons grew out of the revolt against unregulated industrialization in the United States. Public attention was focused on the vigorous efforts lawyers were making to help their corporate clients evade regulatory legislation, forcing lawyers to adopt in self-defense a body of ethical rules."[51] Although states had the authority to discipline attorneys, these as-

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48. *The T-Rex Craze: Where's the G-rated Marketing?* NEWSDAY, June 21, 1993, at 36; Kenneth Turan, *Picking Some Big Bones with "Jurassic,"* LOS ANGELES TIMES, June 11, 1993, at F1.

49. Recently, the Texas Rules of Disciplinary Procedure were revised extensively to develop a more sophisticated and elaborate process for lawyer discipline. *See* TEX. R. DISCIPLINARY P., *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. (Vernon Supp. 1993). Attorneys may be disciplined through administrative proceedings involving both lawyers and laypersons. They may opt for a trial by jury in district court. *See id.* pts. II & III. The main thrust of the revisions was to make the system more accessible to the public. *See id.* pt. VI. The Texas Bar Association has appropriated more than one-third of its annual budget for 1993-94 for lawyer regulation. *See Supreme Court Approves State Bar Budget*, 56 TEX. B.J. 670, 670 (1993).

50. "Prior to the twentieth century, the American bar's ethical governance remained largely a matter of professional traditions and community norms, punctuated by an occasional judicial disciplinary action." GEOFFREY C. HAZARD, JR. & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 92 (2d ed. 1988). The first codification of standards of ethics was accomplished by the Alabama Bar Association in 1887. *Id.* at 93. These standards were the backbone of the American Bar Association's Canons of Professional Ethics, adopted in 1908. *Id.* The 32 original canons of professional behavior subsequently were amended, in part, and supplemented by an additional 15 canons. THOMAS D. MORGAN & RONALD D. ROTUNDA, PROFESSIONAL RESPONSIBILITY 11 (5th ed. 1991). The Canons of Ethics are reprinted in THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 574-85 (1993).

51. Mary J. Frug, *The Proposed Revisions of the Code of Professional Responsibility: Solving the Crisis of Professionalism, or Legitimating the Status Quo?*, 26 VILL. L. REV.

pirational guidelines were too general for effective sanctioning of attorney conduct.[52]

In 1969 the ABA promulgated the Model Code of Professional Responsibility (the "Code").[53] The purpose was to propose a more specific set of rules, more amenable to enforcement, for adoption by each state to bring nationwide uniformity to lawyer discipline.[54] At the beginning of the 1980s the Code had been adopted in every jurisdiction, with variations.[55] The Code consists of nine canons or axiomatic norms, disciplinary rules which are mandatory in character, and ethical considerations which are aspirational.[56] Lawyers may be subject to discipline for breaking a disciplinary rule, whereas the ethical considerations represent an unenforceable, but basic, consensus of proper behavior.[57]

Despite the Code's widespread adoption and its considerable advancement over the Canons of Ethics, dissatisfaction with the Code still existed.[58] Therefore, on August 2, 1983, the ABA House of Delegates adopted the Model Rules of Professional Conduct (the

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1121, 1122 (1980-81). *See generally* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 2.6.2, at 53-56 (1986) (discussing 1908 Canons of Ethics).

52. In response to complaints that the Canons were vague and outdated, ABA President, and later United States Supreme Court Justice, Lewis F. Powell, appointed a special committee in 1964 to study the Canons and recommend changes. *See* John F. Sutton, Jr., *Introduction to Symposium—The American Bar Association Code of Professional Responsibility*, 48 TEX. L. REV. 255, 263-64 (1970) (commenting on lack of specificity of old canons and restating them to pinpoint specific rule of conduct). *See generally* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 2.6.3, at 56-58 (1986) (emphasizing immediate national adoption of Code).

53. MODEL CODE OF PROFESSIONAL RESPONSIBILITY (1981), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS OF PROFESSIONAL RESPONSIBILITY 143-221 (1993).

54. *See id.* at Preliminary Statement, *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS OF PROFESSIONAL RESPONSIBILITY 144 (1993) (stating preliminary objective of Code).

55. *See* Mary J. Frug, *Introduction: The Proposed Revisions of the Code of Professional Responsibility* 26 VILL. L. REV. 1121, 1121 n.1 (1980-81) (exploring adoption of Model Code in light of proposed changes to Code).

56. MODEL CODE OF PROFESSIONAL RESPONSIBILITY, Preliminary Statement (1981), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS OF PROFESSIONAL RESPONSIBILITY 144-45 (1993); *see* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 2.6.3, at 58-59 (1986) (discussing anatomy of Code).

57. MODEL CODE OF PROFESSIONAL RESPONSIBILITY, Preliminary Statement (1981), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS OF PROFESSIONAL RESPONSIBILITY 144-45 (1993).

58. Less than 10 years after the Code was promulgated, the ABA, in 1977, appointed a new "Commission on the Evaluation of Ethical Standards." *See* CHARLES W. WOLFRAM,

"Rules"),[59] which consist of fifty-four black-letter statements followed by explanatory comments concerning lawyers' duties, responsibilities, and conduct.[60] Disciplinary authorities no longer have to find that an attorney's conduct falls below acceptable levels; now, the line is brighter: if a rule is broken, a lawyer can be disciplined by the state bar.[61] As of June 1993, thirty-seven states, including Texas, along with the District of Columbia and the Virgin Islands, have adopted the Rules, although with variations.[62]

In addition to the direct regulation of the legal profession through disciplinary rules, other forms of indirect regulation of lawyers exist. The most immediate vehicle for disciplining lawyers is the judiciary's inherent power to sanction an attorney's conduct. Such sanctions include civil and criminal contempt.[63] Because federal and state criminal statutes apply to lawyers as well as nonlawyers, practicing attorneys must ascertain constantly whether they or their clients are violating criminal laws.[64] For example, advising a client involved in an ongoing criminal enterprise may constitute aiding and abetting.[65] Further, attorneys are always subject to civil liability, in contract and tort, to redress a client's injuries caused by

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MODERN LEGAL ETHICS § 2.6.4, at 60-61 (1986) (discussing background of dissatisfaction with Code).

59. MODEL RULES OF PROFESSIONAL CONDUCT (1992), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 1-101 (1993).

60. *Id.*; *see* CHARLES W. WOLFRAM, MODERN LEGAL ETHICS § 2.6.4, at 63 (1986) (outlining taxonomy of Rules).

61. MODEL RULES OF PROFESSIONAL CONDUCT, Scope ¶¶ 5-6 (1992), *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 6 (1993) (creating basis for discipline, depending on all circumstances). Only the Model Rules of Professional Conduct are considered authoritative; their subsequent Comments are merely guides to interpretation. *Id.* ¶ 9, *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS OF PROFESSIONAL RESPONSIBILITY 7 (1993).

62. Standing Committee on Ethics and Professional Responsibility, American Bar Association, Status of the ABA Model Rules of Professional Conduct (June 1, 1993) (on file with the *St. Mary's Law Journal*).

63. *E.g.*, FED. R. CRIM. P. 42; FED. R. CIV. P. 11. *See* TEX. GOV'T CODE ANN. § 82.061 (Vernon 1988) (allowing fine or imprisonment of attorney for contempt of court).

64. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(d) & cmts. 6 & 7, *reprinted in* THOMAS D. MORGAN & RONALD D. ROTUNDA, 1993 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY at 9, 11 (1993).

65. *Id.*; *see* Clark v. State, 261 S.W.2d 339, 347 (Tex. Crim. App. 1953) (noting that attorney who aids offender becomes accessory to crime).

attorney malpractice.[66] Additionally, legislatures in the past decade have expanded lawyers' duties to clients and third parties.[67] These civil statutes are now available to injured individuals seeking redress.[68] Indirect regulation of professional conduct will always exist, but these measures, while deterrents to attorney misconduct, will not suffice to replace self-regulation of the profession under the law of discipline.

VII. CONCLUSION

As society has changed over the last twenty-five years, so has the legal profession. What was once a small, select group of professionals is now a multibillion-dollar business which is allowed to advertise. Coupled with these changes is heightened regulation of conduct by state bar associations. With the advent of the Model Rules of Professional Conduct, a means of effective lawyer-discipline is more readily available to the states to show the public that self-regulation is effective. Without effective self-regulation, the profession is certain to face additional regulatory efforts by state legislators. It is hoped that continuing efforts of state bar authorities nationwide to enforce professional standards strictly will enhance the reputation and image of lawyers in future decades.

66. JOHN F. SUTTON, JR. & JOHN S. DZIENKOWSKI, PROFESSIONAL RESPONSIBILITY OF LAWYERS 135 (1990).

67. *Id.*

68. *See* DeBakey v. Staggs, 605 S.W.2d 631, 633 (Tex. App.—Houston [1st Dist.] 1980) (concluding that legislature intended Deceptive Trade Practices Act to cover legal services), *aff'd*, 612 S.W.2d 924 (1981).