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Ohio's Legal Disciplinary Procedures and Rules

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COMMENTS

OHIO'S LEGAL DISCIPLINARY PROCEDURES AND RULES

I. INTRODUCTION

"Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof."[1] So reads the American Bar Association Code of Professional Responsibility, Canon Nine, which further states that an attorney should "strive to avoid not only professional impropriety, but also the appearance of impropriety."[2] The spirit of these is, however, far removed from the reality found within the arena of the legal disciplinary system.

The American Bar Association, in concert with state and local associations, created standards and disciplinary procedures for attorneys and judges to help realize these ideals.[3] Despite this effort, the legal community became increasingly aware of "a scandalous situation that require[d] the immediate attention of the profession."[4] In 1967, the Special Committee of Disciplinary Enforcement, led by former Supreme Court Justice Thomas Clark, was created to evaluate the state of lawyer/judicial discipline in this country.[5] The committee's report [the Clark Report] revealed that "the prevailing attitude of lawyers toward disciplinary enforcement range[d] from apathy to outright hostility."[6] The Clark Report made a series of recommendations to reform the lawyer/disciplinary systems throughout the country[7] and served as the impetus behind both national and state emphases on improving the legal disciplinary system's efficiency and public image. The Clark Re-

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1. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 9-6 (1979).
2. *Id.* (footnote omitted).
3. Report of the Special Committee on Evaluation of Disciplinary Enforcement, 95 ANN. REP. A.B.A. 783 (1970) [hereinafter Clark Report] (examples of standards and procedures recommended by the American Bar Association and adopted by many states are centralized disciplinary procedures with uniform standards at all stages of the proceedings, public proceedings upon certification of the complaint by the proper authority, and flexible sanctions).
4. *Id.* at 797.
5. Clark Report, *supra* note 3.
6. S. TISHER & L. BERNABEI, BRINGING THE BAR TO JUSTICE: A COMPARATIVE STUDY OF SIX BAR ASSOCIATIONS 86 (1977) [hereinafter TISHER].
7. *See infra* text accompanying notes 31–38.

port also served as the outline for the Model Rules of Attorney Discipline,[8] which along with the American Bar Association (ABA) Standards for Lawyer Discipline and Disability Procedures and the Model Rules for Judicial Discipline and Disability Retirement,[9] serve as the normative guidelines for a majority of state legal disciplinary systems.[10] Ohio is one of only three states that has not created a disciplinary process which coincides with the recommended ABA procedures.[11] In fact, Ohio retains certain procedures identified by the Clark Report as "fostering abuse."[12]

In response to increasingly vigorous public criticism that Ohio's procedures have become too politicized, the Ohio Supreme Court, led by former Chief Justice Celebrezze, recently passed a series of amendments to the disciplinary procedures of the ABA[13] and of the Judiciary.[14] These controversial changes have met with criticism from all sides. The overall tone of the Ohio critiques echo a general criticism expressed by Chief Justice Burger: "Any fair-minded examination of the whole picture [of the state of discipline] today will reveal that what we have done falls far short of what is needed."[15] Strong concerns have

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8. ABA STANDING COMM. ON PROFESSIONAL DISCIPLINE, MODEL RULES OF ATTORNEY DISCIPLINE (1979) [hereinafter ATTORNEY MODEL RULES].

9. ABA JOINT COMM. ON PROFESSIONAL DISCIPLINE, MODEL RULES OF JUDICIAL DISCIPLINE AND DISABILITY RETIREMENT (1985) [hereinafter JUDICIAL MODEL RULES].

10. *See* Clark Report, *supra* note 3. Most states have adopted some variation of the five-tier method of legal disciplinary system as outlined in the Clark Report. This five-tier approach outlines a centralized disciplinary system, which employs flexible sanctions and non-attorney/non-judicial members within the disciplinary system. *See infra* notes 31–38 and accompanying text.

11. Samad, *The True Story of Lawyer Discipline in Ohio*: 1967–1983, 18 AKRON L. REV. 363 (1985). Ohio's legal disciplinary system differs from that recommended by the ABA in a number of significant ways. *Id.* For example, Ohio retains a decentralized legal disciplinary system, in which each local bar association retains a relator function and, thereby, concurrent authority with the Disciplinary Counsel's Office. *Id.* at 364.

12. *Ohio Turmoil Sparks New Discipline Plan*, 11 BAR LEADER Mar.–Apr. 6, 6 (1986) [hereinafter *Ohio Turmoil*]. The procedure retained by the Ohio legal disciplinary system, which the ABA cites as fostering abuse, is the decentralized attorney disciplinary system. *Id.* In the decentralized system, the local bar associations and the disciplinary counsel's office share concurrent authority to find probable cause and certify complaints for a hearing by the Complaint Review Board and eventually by the Board of Commissioners. This system fosters abuse because (1) it lacks standardized procedures and sanctions for like offenses; (2) there is a potential for local favoritism in disciplinary proceedings; and (3) there is a general appearance of disorganization and lack of professional standards which this system presents to the public. *See* CLARK REPORT, *supra* note 3, at 820–22. *See also infra* text accompanying notes 93–96.

13. *Amendments to the Supreme Court Rules for the government of the Bar of Ohio: Rule V (Disciplinary Procedure)*, 59 OHIO B. 966 (1986) [hereinafter Bar Amendments].

14. *Amendments to the Supreme Court Rules for the Government of the Judiciary of Ohio Rules I, II and III*, 59 OHIO B. 989 (1986) [hereinafter Judiciary Amendments].

15. Address by Chief Justice Burger, American Bar Association Mid-Year Meeting (Feb. —, 1986).

been expressed by the Ohio State Bar Association,[16] local legal practitioners, the judiciary, and commentators that the amendments are solely cosmetic in nature and will have little or no impact on the legal disciplinary system in Ohio.[17] Conversely, supporters of the changes feel that the amendments, especially those dealing with the public nature of disciplinary hearings, will "help enhance public confidence in the judiciary."[18]

This comment gives a brief overview of the historical development of legal disciplinary procedures, both nationally and in Ohio. Second, it discusses recent changes in Ohio's disciplinary rules in relation to recommended ABA national guidelines and the subsequent impact—or lack thereof—of these changes. Finally, this comment provides an analysis of the current legal disciplinary system in Ohio and suggests possible methods by which Ohio can create a legal disciplinary system which will provide timely, fair, and consistent results, thereby helping to restore public confidence in the legal profession.

II. DEVELOPMENT OF THE LEGAL DISCIPLINARY SYSTEM IN OHIO

The Clark Report, published in 1970, was an evaluation of the status of attorney/judicial discipline at that time.[19] The report presented a dismal picture of the attorney disciplinary system. Attitudes of lawyers toward discipline ranged from "apathy to outright hos-

16. Jacobs, *Ohio State Bar Association Calls for Changes in Discipline Rules*, 5 SUMMARY JUDGMENT 1, 1 (Aug.-Sept. 1986). While the Bar Association agrees with the new rules, criticism has arisen over areas not covered by the rules. *Id.* at 4. These concerns were put into the form of amendments and submitted to the Supreme Court of Ohio on August 3, 1986. *Id.* at 1. The proposed changes are: (1) that a joint Board of Commissioners be created for both lawyer and judicial discipline; (2) that the appointment mechanism for the board provide that each justice individually appoint members of the board so that "no Board can be composed of members chosen by a simple majority of the court;" *id.* at 1; (3) that the current situation, wherein the board continues to review cases brought by the disciplinary counsel which it selected, be corrected to further the separation between adjudicatory and prosecutorial functions; (4) that the disciplinary counsel be appointed by an independent body such as the presiding judges of the courts of appeals; (5) that Certified Local Grievance Committees have concurrent authority with the office of disciplinary counsel to investigate and to prosecute complaints against the judiciary; and (6) that an alternative panel be provided to decide complaints brought against the Ohio Supreme Court members. *Id.* at 4.

17. *Supreme Court Revises Discipline Rules for Lawyers and Judges*, Gongwer News Serv., Inc., Ohio Report, June 4, 1986, at 2 (on file with University of Dayton Law Review).

18. *Chief Justice Calls for Making Disciplinary Hearings Open*, Gongwer News Serv., Inc., Ohio Report, Mar. 19, 1986, at 4, 4 (on file with University of Dayton Law Review).

19. Clark Report, *supra* note 3, at 791. (The Clark Report Committee was charged "[t]o assemble and study information relevant to all aspects of professional discipline, including the effectiveness of present enforcement procedures and practices and to make such recommendations as the Committee may deem necessary and appropriate to achieve the highest possible standards of professional conduct and responsibility.")

tility."[20] In some areas of the country, self-regulation was practically "non-existent."[21] In other areas, discipline was administered by "ad hoc, voluntary committees of local attorneys, with no funding, no professional staff, no formalized procedures, and no systematic record-keeping."[22] Cronyism and the lack of subpoena power also hampered the disciplinary process.[23] In addition, many offenses went without any kind of professional sanctions.[24] The Clark Report warned that if the legal profession continued to ignore public dissatisfaction with the current failure of attorneys effectively to regulate their own behavior, the privilege would soon be lost, and the public would assume control of the legal disciplinary process.[25]

The Clark Report encouraged many jurisdictions to reconstruct their disciplinary procedures to comport with the system recommended by the report.[26] The Report made several general recommendations, with the greatest emphasis on the need for a centralized, statewide agency administering the entire disciplinary system according to uniform procedures at all stages of the proceedings.[27] Another important recommendation concerned the need for adequate funding of the statewide agency.[28] Other recommendations underscored the need for a dis-

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20. Clark Report, *supra* note 3, at 791.

21. TISHER, *supra* note 6.

22. *Id.*

23. *Id.*

24. Samad, *supra* note 11, at 400. "Ohio [has] suffer[ed] from the same problems endemic to disciplinary enforcements predicated upon the ABA Standards and the present Code of Professional Responsibility: failure on the part of lawyers and judges, generally, to report observed misconduct . . . ." *Id. See also* TISHER *supra* note 6.

25. TISHER, *supra* note 6.

26. *Id.* at 87. For example, Massachusetts, Pennsylvania, and Washington D.C. have amended their disciplinary procedures in accordance with ABA guidelines to allow the bar counsel to appeal a decision to dismiss made by an inquiry or hearing committee. *Id.* Michigan, Florida, and Georgia have amended their disciplinary rules to provide that hearing committee proceedings are open to the public. *Id.* at 113. Ten states, including Colorado, Minnesota, and California, have amended their rules to incorporate lay persons into their attorney disciplinary committees. *Id.*

27. Samad, *supra* note 11, at 398 n.231. "Clark viewed too much decentralization as a prime cause for the scandalous situation that he found." *Id.* (citing Clark Report, *supra* note 3, at 801).

28. Clark Report, *supra* note 3, at 815. The Clark Report refers to financing for the disciplinary agency as the "most universal and significant problem in disciplinary enforcement." *Id.* The Clark report further suggests possible sources for such funding. First, the report suggests obtaining funds from the respective state bar, since it has a responsibility to create and maintain the disciplinary standards for the legal community. *Id.* at 816. Second, the report suggests the public as a source for funding since the disciplinary procedure is for the protection of the public—to remove the wrongdoer either temporarily or permanently from a position of responsibility. *Id.* at 817. Lastly, the report mentions that costs might be assessed against the attorney, if charges are sustained, as a prerequisite for filing for reinstatement, as a possible, although not comprehensive, source of financing for the disciplinary system. *Id.* at 819.

ciplinary procedure that would provide a wide variety of sanctions[29] within a structure through which complaints could be processed without the excessive delay caused by unnecessary procedural stages.[30]

The Clark Report suggested a five-tier approach to the structure of the disciplinary system.[31] This approach has been adopted with varying degrees of modification by most states which have revised their disciplinary systems.[32] In brief, the approach is as follows:

(1) A full-time professional "bar counsel" and staff who receive all complaints, investigate them, and have the power to dismiss, informally admonish, or recommend charges against attorneys.[33]

(2) Voluntary panels of attorneys, sometimes known as "inquiry committees," which determine if there is probable cause to proceed.[34]

(3) Secondary voluntary panels, or "hearing committees," which conduct full, trial-type hearings in cases where probable cause has been established.[35]

(4) A central board of attorneys who, along with non-attorney members of the public, are appointed by the court to conduct appellate-type review of the record of the hearing. This board can dismiss the complaint, issue a private reprimand, recommend some form of sanction, or disbar the lawyer.[36]

(5) Final presentation to the highest court of the jurisdiction with a review of the record and oral argument.[37] This system is not administered by or through the local bar associations but is connected to the state system and governed by court rules.[38]

All but three states have reorganized their legal disciplinary systems to reflect the major recommendations of the ABA, particularly in

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29. The Clark Report cites several reasons why flexible sanctions, especially for minor misconduct, are necessary components of an effective disciplinary system. First, outright dismissal of minor misconduct may subject the profession to public criticism that the profession is disinterested in self-regulation. *Id.* at 889. Second, the accused attorney may interpret such dismissal as either acceptance or indifference by the disciplinary agency toward his or her misconduct. *Id.* at 890. Third, failure to keep records of such dismissal may immunize the attorney who repeatedly commits such infractions and receives no sanction. *Id.* Lastly, the disciplinary agency is likely to become frustrated because of inadequate means by which to deal with such infractions and lose their incentive to perform their responsibilities enthusiastically. *Id.* at 891.

30. *Id.* at 826.

31. *Id.* at 792–94.

32. Samad, *supra* note 11, at 363.

33. Clark, *supra* note 3, at 792.

34. *Id.*

35. *Id.* at 794 (these committees, also known as formal hearing committees, conduct formal hearings and submit findings and recommendations to the disciplinary board).

36. *Id.* at 792.

37. *Id.*

38. Tisher, *supra* note 6, at 87–88.

the area of centralization of the disciplinary process.[39] Ohio's failure to conform to this now widely accepted norm can be traced to the peculiar development of its state legal disciplinary system.

In 1952, Benjamin C. Boer, Ohio State Bar Association President, served on a Special Committee created by the ABA to formulate model disciplinary procedures. This committee issued the Phillips Report, which was a forerunner of the Clark Report.[40] The Phillips Report recommended that the authority to discipline all members of the legal profession for cause be vested in the highest court of the state and that adequate records of disciplinary proceedings be kept pursuant to Rule 3.05 of the Model Rules for Disciplinary Procedures.[41] The majority opinion of the Phillips Report was adopted by the ABA.[42] However, Benjamin C. Boer filed a minority report.[43] Boer's minority report was adopted by Ohio through its reformatory rule change of 1956.[44] The minority report contained the following concepts:

(1) A decentralized system, with the local bar association in relator roles[45] playing a larger role in the disciplinary process than that given to them in the Phillips Report.[46]

(2) "[P]ermanent disbarment without the prospect of reinstatement."[47]

(3) Indefinite suspension as a sanction option.[48]

(4) Voluntary resignation from the bar prohibits reinstatement.[49]

While Boer initiated disciplinary reform in Ohio ahead of that stimulated by the Clark Report, the reforms reflected the hybrid disciplinary philosophy.[50] Subsequent studies of Boer's approach revealed that the new system provided a "[d]iscipline [that] was simple and

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39. *Id.* at 363. Ohio differs significantly from the ABA recommendations with regard to decentralization of the investigative and prosecutorial functions, sanction standards, and various other devices the ABA suggests to improve the disciplinary process. *Id.*

40. *Id.* at 364.

41. *Report of Special Committee on Disciplinary Procedures*, 81 ANN. REP. A.B.A. 327 (1956) [hereinafter Phillips Report].

42. *Proceedings of the House of Delegates*, 81 ANN. REP. A.B.A. 119, 127–28 (1956).

43. *Minority Report Special Committee on Disciplinary Procedures*, 81 ANN. REP. A.B.A. 477 (1956) [hereinafter *Minority Report*] (Boer expressed his philosophy regarding legal disciplinary procedures). *See also* Samad, *supra* note 11, at 364.

44. Samad, *supra* note 11, at 364.

45. *Id. See also* Brown v. Memorial Nat'l Home Found., 162 Cal. App. 2d 513, 538, 329 P.2d 118, 133 (1958) (The role of "relator" has been defined as "a party in interest who is permitted to institute a proceeding in the name of the People or the attorney general when the right to sue resides solely in that official.").

46. Samad, *supra* note 11, at 364.

47. *Id.*

48. *Id.*

49. *Id.* (irrevocable resignation did not become the rule in Ohio until 1972).

50. *Id.*

most effective; reinstatement most demanding, not automatic."[51] However, the new system's favorable impression was created by comparison to the former system—a system which was "[i]n microcosm that which Clark disclosed in his report as generally prevailing in the United States—a system that was apathetic, antiquated, decentralized, and deficient."[52]

A prominent study of the Ohio legal disciplinary system of this time mentioned these favorable results, but also revealed certain problems, including (1) the wide gap in sanctions between indefinite suspension and public reprimand, (2) the large number of abortive attempts at discipline, and (3) the excessively lengthy time involved in processing such complaints.[53] However, this study left unanswered questions. For example, the report did not show whether under the localized Ohio system, similar offenses were treated in a standardized manner by Ohio's ninety-five "potential relators."[54] The 1967 study was updated by a 1983 study[55] which established that while disciplinary efforts in Ohio were vigorous, the most serious problem continued to be the decentralization of the relatorship functions.[56]

A third study[57] was conducted in 1985 at the request of former Chief Justice Celebrezze of the Supreme Court of Ohio. The Chief Justice requested the ABA Standing Committee on Professional Conduct to come into Ohio and to evaluate its legal system as a part of the ABA's ongoing efforts to standardize legal discipline in accordance with the ABA guidelines. A report listing thirty-three shortcomings in Ohio's legal disciplinary system, as measured by ABA standards, was issued.[58] Subsequently, Chief Justice Celebrezze appointed a thirty-three member Disciplinary Evaluation Committee, to evaluate the ABA study and to report to the court.[59] The ABA recommendations

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51. *Id.* (quoting O. SCHROEDER, JR., LAWYER DISCIPLINE: THE OHIO STORY 23 (1967)).

52. Samad, *supra* note 11, at 364–65.

53. *Id.*

54. *Id.* at 365–66.

55. *Id.* (The purpose of the study, by Professor Samad of the University of Akron School of Law, was to describe discipline in Ohio for the seventeen years following the Schroeder study, to evaluate the effectiveness of the system, and to suggest reforms to improve the overall system.).

56. *Id.* at 398; *see also* Samad, *An Update/Analysis of Lawyer Discipline in Ohio*, 59 OHIO B. 936, 938 (1986).

57. *See* Samad, *supra* note 56 at 936; *see also Ohio Turmoil*, *supra* note 12.

58. *See* Samad, *supra* note 56, at 936; *see also State Bar Wants Public Comment on Disciplinary Rule Changes*, Gongwer News Serv., Inc., Ohio Report, June 2, 1986, at 1, 2 (on file with University of Dayton Law Review).

59. *Changes in Lawyer Disciplinary System Recommended*, Gongwer News Serv., Inc., Ohio Report, Apr. 7, 1986, at 1 (on file with University of Dayton Law Review) [hereinafter *Changes*]. The Committee was led by Dean Josiah Blackmore of the Capital University School of Law.

included:
(1) centralization of the relatorship function into one statewide agency, i.e. the Disciplinary Counsel's Office; (2) the finding of probable cause by a professional agency external to the relator's office prior to prosecution; (3) "a system of review of complaints before dismissal and prior to filing of a formal complaint;" (4) "hearings open to the public after probable cause is found;" (5) a standard of proof raised to a "clear and convincing" evidence standard, as compared to the former preponderance of the evidence standard; and (6) greater flexibility of sanction options.[60] The Committee completed its review and issued a report containing numerous recommendations for improving the legal disciplinary system in Ohio.[61] These recommendations provided the basis for the amendments to the Disciplinary Procedures as adopted by the Supreme Court of Ohio on June 3, 1986.[62]

The amendments to Ohio's legal disciplinary process are the product of a long and unique historical background. They are equally the product of an intense political factors: (1) the lengthy history of active involvement of the powerful metropolitan bar associations and relators in the disciplinary process, (2) the tense atmosphere that existed between the local and state bar associations and former Chief Justice Celebrezze,[63] and (3) the timing of the enactment of the amendments—an election year. All of these factors must be considered in evaluating the amendments, examining how they differ from ABA Lawyer Disciplinary Standards, and predicting their possible impact on the legal disciplinary system in Ohio.

III. EVALUATION AND ANALYSIS OF THE AMENDMENTS TO THE BAR AND JUDICIARY DISCIPLINARY RULES

Prior to adoption of the June 3, 1986, amendments to the legal disciplinary system by the Ohio Supreme Court, the basic structures of the Judiciary and the Bar Association disciplinary procedures were as follows: A complaint was filed with either the local bar association or the office of the Disciplinary Counsel office by an individual against a

60. Samad, *supra* note 56, at 940 (1986) (providing a comprehensive comparison of Ohio's legal system as compared with ABA standards).

61. *Changes*, *supra* note 59, at 1.

62. *See* Bar Amendments, *supra* note 13; Judiciary Amendments, *supra* note 14.

63. Jacobs, *OSBA Calls for Changes in Discipline Ruling*, 5 SUMMARY JUDGMENT 1 (Aug.–Sept. 1986); *see also Celebrezze and 'His' Court Snub Bar Association Again*, Journal Herald, Sept. 3, 1986, at 8, col. 1. The tension was probably heightened by the unannounced vote on and subsequent rejection by the Ohio Supreme Court of the amendments to the June 3, 1986, amendments as proposed by the Ohio State Bar Association. The period of time between submission and rejection of the amendments was three days.

lawyer or judge.[64] The grievance committee of the local bar association and the Disciplinary Counsel's Office had, and still have, concurrent authority to make probable cause determinations as well as sharing the relatorship role in attorney disciplinary proceedings.[65] In the case of the judiciary, only the Disciplinary Counsel's Office performed these functions.[66] Once either the local grievance committee or the Disciplinary Counsel's Office determined that there was probable cause for formal complaint, the review went to the Board of Commissioners on Grievances and Discipline of the Bar/Judiciary.[67] In the case of the bar, all members of the Board were appointed by the Ohio Supreme Court, with the court designating the chairman and secretary.[68] In the case of the judiciary, all members of the Board were appointed by the Chief Justice of the Ohio Supreme Court, with the Chief Justice designating the chairman and secretary of the Board.[69] In addition, the court also appointed the Disciplinary Counsel.[70] The Board of Commissioners would then evaluate the evidence, reach a decision on the complaint, and forward its findings and decisions to the court. The court would then issue a disciplinary order, usually in accordance with Board recommendations.[71] After the adoption of the amendments to the legal disciplinary procedures, several changes occurred in both the structures of and the procedures within the legal disciplinary process.

A. Amendments to the Rules for the Bar of Ohio

1. The Board of Commissioners on Grievances and Discipline of the Bar

Under the new system, the Board of Commissioners has been increased in size by four members. All new members are to be non-attorney, non-judicial members of the public.[72] All seventeen current mem-

64. *But see* Bar Amendments, *supra* note 13, § 3(b), at 971; Judiciary Amendments, *supra* note 14, § 3, at 991 (these 1986 amendments changed the previous procedures and also contain the pre-amendment language of the statute).

65. Bar Amendments, *supra* note 13, § 4, at 969–74.

66. *But see* Judiciary Amendments, *supra* note 14, § 3, at 991 (amended procedure also containing pre-amendment language.).

67. Bar Amendments, *supra* note 13, § 2, at 967; Judiciary Amendments, *supra* note 14, § 2, at 990.

68. *But see* Bar Amendments, *supra* note 13, § 1 at 966–67 (amended procedure also containing pre-amendment language).

69. *But see* Judiciary Amendments, *supra* note 14, § 1, at 989–90 (amended procedure also containing pre-amendment language).

70. *But see* Bar Amendments, *supra* note 13, § 1, at 966; Judiciary Amendments, *supra* note 14, § 2, at 990 (amended procedure also containing pre-amendment language).

71. *But see* Bar Amendments, *supra* note 13, § 2, at 980–81, Judiciary Amendments, *supra* note 14, § 2, at 998 (amended procedure also containing pre-amendment language).

72. Bar Amendments, *supra* note 13, § 1, at 966.

bers of the Board of Commissioners are to serve out their present terms, with the Ohio Supreme Court appointing the four new public members, two for a term ending in 1989, and two for a term ending in 1990.[73] Further, the Board will now appoint its own secretary and chairman, with the chairman limited to a term of two years. In addition, the Board is now empowered to appoint the disciplinary counsel by majority vote of its members and a majority of the Board of Commissioners on Grievances and Discipline of the Judiciary.[74] However, the jurisdiction of the Board to receive, inquire into, make findings on, and submit recommendations to the Ohio Supreme Court in cases involving complaints of lawyer misconduct remains the same.[75] All of these changes are in accord with ABA recommendations.

There are several positive and negative impacts on the Ohio legal disciplinary system due to the amendments. On the positive side, the addition of four public members to the Board of Commissioners should provide the Board with a new perspective—that of the complainant. Furthermore, public members tend to be more objective[76] with regard to attorney discipline since they are not hindered by the "there but for the grace of God go I" syndrome. Some public members, however, may require additional legal training to provide sufficiently well-informed opinions.[77] Public members on the commission should also enhance the public image and credibility of the Board by providing a "more hospitable environment for complaints"[78] and by bringing a sense of community awareness to the proceedings.[79]

The Board's appointment of its own chairman and secretary, and the Board's appointment of the disciplinary counsel, are a positive step away from Ohio's problem of excessive appointive power centralized in the Chief Justice and the Supreme Court of Ohio.[80] In the past, this

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73. *Id.* at 967.

74. *Id.*

75. *Id.*

76. TISHER, *supra* note 6, at 112.

77. Clark Report, *supra* note 3, at 854–55. The Clark Report suggests a training program with a faculty drawn from "*leading bar counsel across the country*," and using an objective approach that focuses on disciplinary problems from a national instead of a local perspective. *Id.* at 854 (emphasis in original). In addition, the report recommends a training program that provides an opportunity to become acquainted with other professionals involved in disciplinary enforcement throughout the country. *Id.*

78. TISHER, *supra* note 6, at 113.

79. *Id.* at 112.

80. *Ohio Turmoil*, *supra* note 12, at 7. *But see* Jacobs, *supra* note 16, at 4. The Ohio State Bar Association has expressed concern that this new system still does not separate the adjudicatory and prosecutorial functions in a satisfactory manner. *Id.* The bar points out that the Board still reviews cases brought before it by an agent that the Board appointed. *Id.* The Ohio Bar also asserts that the disciplinary counsel should be appointed by an independent body, such as a panel of the presiding judges of the Ohio Courts of Appeals. *Id.*

has been a point of contention between the Ohio Bar and the Chief Justice.[81] Furthermore, the public image of the Board has been tarnished by the potential for cronyism and political maneuvering—characteristics which should never be associated with a legal disciplinary board.

There remains, however, some concern over the amendment clause that allows the current members of the Board of Commissioners and the Disciplinary Counsel to complete their terms of office. The current Board was appointed by the Celebrezze Ohio Supreme Court,[82] and that Board will appoint the new disciplinary counsel and the secretary of the Board and will decide future cases. Therefore, those court-appointed Board members will have an impact on the legal disciplinary process for at least the remaining four years of the Disciplinary Counsel's term of office. In addition, the impact of this "grandfather"[83] clause may extend even further than the actual four-year term of office of the disciplinary counsel since the disciplinary counsel now has the authority to appoint his or her own staff,[84] who then could be retained by a subsequent disciplinary counsel. Further, the role of board secretary is important,[85] with a potential for substantial impact on the disciplinary process.[86]

As a result of this grandfather clause, the immediate reduction of overcentralization of power in the court and in the former Chief Justice is minimal. Since political appointees tend to reflect the political ideology of their appointers, the political viewpoints of the court will, through the grandfather clause, have influence well beyond the intended parameters. This only reinforces the negative public image of the legal disciplinary system as being tainted by political cronyism, which, in turn, damages the credibility of the legal profession as an entity capable of self-regulation.

2. The Disciplinary Counsel

In addition to the changes in the appointment process of the disci-

81. *Ohio Turmoil, supra* note 12.

82. *See* Lowe, *Disciplinary Rules May Change with New Court Lineup*, Columbus Dispatch, Sept. 28, 1986, at 19A, col. 1. Chief Justice Thomas J. Moyer stated in a pre-election speech at the Press Club of Ohio that "[he] would certainly have at the top of [his] agenda as chief justice, changing the judicial disciplinary system in Ohio. It's long overdue." *Id.*

While it is too soon to determine whether the newly elected Chief Justice will take action on the aforementioned position, his stance on this issue creates optimism in that direction.

83. Commonwealth Air Transport v. Stuart, 303 Ky. 69, ___, 196 S.W.2d 866, 869, (1946) (A "grandfather" clause has been defined as a clause which "satisf[ies] the dictates of fairness by affording sanctions for enterprises theretofore established.").

84. Bar Amendments, *supra* note 13, § 3(b), at 969.

85. *See id.* § 3(a), at 968.

86. *Id.*

plinary counsel, the amendments further revise the Office of the Disciplinary Counsel. Specifically, the disciplinary counsel can be removed only for cause by a majority vote of both Boards of Commissioners.[87] Additionally, the disciplinary counsel is to appoint its own staff with approval of the Boards.[88] The disciplinary counsel has concurrent authority with the local bar-certified grievance committees to perform a relator, an investigative, and a probable cause determination function.[89] One requirement which remains the same is that the disciplinary counsel must be a licensed attorney.[90] These amendments comport with the general ABA philosophy in regard to attorney disciplinary procedure,[91] with the major exception of the maintenance by the disciplinary counsel of concurrent relator and probable cause determination authority with the local certified grievance committees.[92]

Once again, there are positive and negative aspects to this portion of the amendments. While greater independence from the court is achieved by allowing the disciplinary counsel the autonomy to select his or her own staff,[93] the practical effect of this amendment is tempered by two factors. First, adequate funding must be available.[94] Adequate funding of the Disciplinary Counsel's Office was one of the primary concerns of the Clark Report.[95] In a survey of Enforcement Systems compiled in 1980, Ohio had a budget of only $98,000 plus local bar dues for an attorney population of 23,018.[96] This data does not indicate a high level of commitment by the court or by the state to the full development and utilization of the Disciplinary Counsel's Office. Rather, it suggests the premise that Ohio is still firmly in favor of the local certified grievance committee as a relator.

The second factor affecting the increased autonomy of the disciplinary counsel is the role of the local bar association certified grievance committee as relator. The local bar associations are powerful, particularly in large metropolitan areas. Again, this data would seem to indicate that the court and the current administration still support a decen-

87. *Id.* § 3(b), at 969.

88. *Id.*

89. *Id.* § 5, at 971.

90. *Id.*

91. *Ohio Turmoil*, *supra* note 12, at 6–7.

92. *Id. See infra* text accompanying notes 101–03.

93. Bar Amendments, *supra* note 13, § 3(b), at 969.

94. Clark Report, *supra* note 3, at 815–19.

95. *Id.*

96. STATE DISCIPLINARY ENFORCEMENT SYSTEMS STRUCTURAL SURVEY 121–23 (M. Shoaf ed. 1980). The insignificance of Ohio's budget is supported by comparison to the budgets of other midwestern states: Michigan—$366,325/17,838 lawyers; Kentucky—$40,000/7,000 lawyers; Indiana—$252,096/8,000 lawyers; Wisconsin—$292,581/11,000 lawyers. *Id.* at 144–63.

tralized, bifurcated system of attorney discipline in Ohio, as advocated by the state and local bar associations.[97] The authority of the Disciplinary Counsel's Office is critically undermined by having to share its authority with ninety-five potential relators.[98] In the current system, the Disciplinary Counsel's Office tends to serve as relator for the smaller bar associations[99] and not those in the large, powerful, metropolitan areas.[100]

3. The Local Certified Grievance Committee

The local grievance committee must now meet the following minimum standards to be certified by the Board of Commissioners and to serve a relator function in the disciplinary process.[101] The grievance committee must:

(1) maintain a permanent office which is open during regular business hours and has a listed telephone number;
(2) have a minimum of one full-time staff person;
(3) have at least fifteen members who meet at least once every other month;
(4) maintain files and records of proceedings and be sufficiently funded by the sponsoring local bar association to perform its duties;
(5) conform to the rules of the Board of Commissioners; and
(6) file the required written reports.[102]

The existence of concurrent authority in a legal disciplinary system between the court counsel and a local bar association is in opposition to ABA recommendations.[103]

Proponents[104] of the bifurcated, decentralized attorney disciplinary process assert that the system has important advantages. First, they assert that maintenance of a local disciplinary process fosters high ethical standards.[105] Second, proponents assert that local participation in the disciplinary process combats apathy.[106] Third, supporters cite "the importance of a local ombudsman role to manage complaints that do not involve clear or substantial violation of a disciplinary rule, but

97. Jacobs, *supra* note 16.
98. Samad, *supra* note 11, at 366.
99. Samad, *supra* note 56, at 938.
100. *Id.*
101. Bar Amendments, *supra* note 13, § 4, at 974.
102. *Id.* § 6(c), at 974.
103. Clark Report, *supra* note 3, at 792.
104. Samad, *supra* note 56, at 940. The principal proponents of the bifurcated disciplinary system are the large metropolitan and state bar associations in Ohio. *Id.* at 941.
105. *Id.* at 940.
106. *Id.*

which, nonetheless involve poor practice."[107] Fourth, advocates of the dual system claim that the monetary savings through use of local volunteers warrant retention of the current system.[108] Fifth, there is the unspoken fear that young, insensitive prosecutors might not be familiar with the reality of the practice of law and so might overregulate it.[109] Statistically, the vast majority of lawyers named in complaints are older, well-established attorneys, who might harbor this concern.[110] An additional reason is that local control of the disciplinary process has existed for a long time in Ohio, and the large metropolitan bar associations are naturally reluctant to give up their authority and a system with which they are satisfied.[111] In an election year, chances are small that a person up for reelection would want to antagonize so many powerful organizations by eliminating such a long-standing practice.

Opponents of the decentralized system also have a great deal of support for their position. The centralized system was promulgated by the ABA[112] and has been adopted by all but three states.[113] The most oft-cited reasons in support of the centralized system are that it reduces the chance of subjectivity and local favoritism in the decision-making process, increases uniformity in the sanctions given as a result of like offenses,[114] and reduces the "appearance of impropriety as well as the fact of impropriety."[115] Additional reasons given in support of the cen-

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107. *Id.*

108. *Id.* However, the amendments do provide for reimbursement for direct expenses incurred by local grievance committees during their investigations. *Id.* The reimbursement is limited to costs for depositions, transcripts, copies of documents, and for necessary travel expenses incurred outside the county of the local bar association. *Id.* Reimbursement does not include the cost of any full-time or part-time investigators, or time of other bar association personnel or attorneys in discharging the local grievance committees' obligations. *Id. See also* Bar Amendments, *supra* note 13, § 5, at 973 (reimbursement for allowable expenses could be quite costly).

109. Samad, *supra* note 56, at 940.

110. Samad, *supra* note 11, at 389.

111. Samad, *supra* note 56, at 941. In addition, the role of relator is vital to the disciplinary process since the relator makes the determination of probable cause which is necessary for a complaint to be certified and to proceed through the disciplinary process. If the relator decides that there is no probable cause, then the matter is dropped. The significance of this role calls for as much standardization in the process as possible.).

112. Samad, *supra* note 11, at 363, 398. In fact, spokesmen for the ABA have stated that they view the Clark reform as "[u]ncompleted in Ohio absent a state-wide, unified disciplinary system."

113. *Id.* at 363.

114. Samad, *supra* note 56, at 938–40.

115. Clark Report, *supra* note 3, at 821. The Clark Report stresses that even if actual impropriety does not occur as a result of a decentralized system, that:

> close personal and political relationships among disciplinary agency members, judges and attorneys accused of misconduct and their counsel cast a shadow of suspicion over every disciplinary proceeding in which charges are not sustained or relatively minor discipline is imposed. The integrity of the disciplinary process in the eyes of the public is undermined.

Id. See also MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 9 (1979).

tralized system are that local grievance committees are vulnerable to external pressures,[116] that there is a severe lack of procedural[117] and substantive guidelines, and that there is a general failure to report misconduct.[118]

Proponents of the dual-track system attempt to rebut these arguments by advocating establishment of guidelines that promote uniformity among the local certified grievance committees.[119] Ohio has adopted such guidelines.[120] However, while such guidelines may promote minimum operating standards, they completely fail (1) to regulate the process used to determine the existence of probable cause and the appropriateness of the dismissal of a complaint, (2) to establish standard procedures, or (3) to address any of the other significant concerns expressed by opponents of the decentralized system. The guidelines for certification of the grievance committee in Ohio serve an administrative function but do not eliminate the disparities created by a bifurcated disciplinary system.

4. Creation of a Complaint Review Board

Under the amendments, the Complaint Review Board is to be composed of nine members, three of whom are to be public members, whose function it is to determine if probable cause exists for the filing of a complaint by the disciplinary counsel or the local bar grievance committee.[121] This amendment is in accordance with ABA recommendations.[122]

Unlike many of the amendments, this amendment has not generated a large amount of controversy.[123] It provides additional, objective

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116. TISHER, *supra* note 6, at 91. *See also* Clark Report, *supra* note 3, at 821. The chairman of a state bar disciplinary committee in an integrated jurisdiction gave a more concrete example of the inherent difficulties which are present when colleagues are responsible for the professional discipline of one another stating:

> We have a case pending against a prominent firm in one of the largest cities . . . . The attorneys are well known throughout the state and to members of the council. The grievance committee recommended action but the council held up action on it and referred it to the ethics committee with the possibility of rewriting the ethics opinion so that this particular firm might not be called.

Id. (This example illustrates the impact that local favoritism can have on grievance committee proceedings, thereby emphasizing the need for objective and established standards at all levels of the disciplinary process.).

117. *Ohio Turmoil*, *supra* note 12, at 7.

118. Samad, *supra* note 11, at 400.

119. Samad, *supra* note 56, at 941.

120. *See supra* notes 101–110 and accompanying text.

121. Bar Amendments, *supra* note 13, § 10, at 976.

122. ATTORNEY MODEL RULES, *supra* note 8, at 3.

123. *Changes Sought in Discipline Rules for Lawyers and Judges*, 58 Gongwer News Serv., Inc., Ohio Report, June 6, 1986, at 1, 1 [hereinafter *Changes Sought*] (on file with Univer-

public member review and an extra safe-guard for determination of probable cause and subsequent certification of the complaint prior to the determination of the need for a full inquiry. It also serves to facilitate the separation of the adjudicative and prosecutorial functions within the disciplinary process.[124] This amendment separation is important since a finding of probable cause is required before the filing of a formal complaint,[125] which triggers the removal of confidentiality from the proceedings.[126]

5. Public Proceedings

The rules provides that "at the time a formal written complaint is certified by the Complaint Review Board . . . that formal complaint, and all subsequent proceedings in connection therewith, shall be public."[127] This amendment is in accord with ABA recommendations.

This provision has, in general, been positively received by the Ohio State Bar Association President and former Chief Justice Celebrezze, both vigorously and publicly voicing their support.[128] All parties concerned feel that lifting the veil of secrecy[129] from the proceedings enhances the legal profession's credibility. The amendment replaces the previous rule which required that all proceedings be held confidential until the Board of Commissioners on Grievances and Discipline made a recommendation to the Supreme Court. This process often encompassed two years[130] and allowed the attorney under investigation to continue the practice of law without his or her clients being informed as to the proceedings.[131]

6. Increased Flexibility of Sanctions/Revised Evidence Standard

The revised provisions now provide for an increased flexibility of sanctions, including a suspension period from six months to two years, and a new requirement of clear and convincing evidence instead of a preponderance.[132] These amendments are in accord with ABA recommendations.

Increased flexibility of sanctions increases the chance that more violations, especially those that are relatively minor in nature, will be

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sity of Dayton Law Review).

124. Bar Amendments, *supra* note 13, § 9(a)–(b), at 994.
125. *Id.* § 9(b)(i), at 976.
126. *Id.* § 23(b), at 983.
127. *Id.*
128. *Changes Sought*, *supra* note 123, at 1–2.
129. Clark Report, *supra* note 3, at 934.
130. *Changes Sought*, *supra* note 123, at 2.
131. *Id.*
132. Bar Amendments, *supra* note 13, § 16, at 979.

officially dealt with instead of ignored.[133] In the past, if the only choice was between a harsh sanction and dismissal of the complaint, and the offense was not "too" severe, the violation was often ignored.[134] With flexible sanctions, minor infractions can be dealt with in an appropriate manner.

There are also definite advantages inherent in the higher burden-of-proof standard which has long been needed to protect the careers and reputations of the attorneys whose actions are being questioned. Further, the new standard is needed to enhance the credibility of the proceedings, both to the attorneys involved and to the public. Enhanced credibility may encourage more private citizens to utilize the disciplinary process when appropriate and may encourage more lawyers to respect and utilize the disciplinary process.

B. Amendments to the Rules for the Judiciary of Ohio

1. The Board of Commissioners on Grievances and Discipline of the Judiciary

Under the new system, the Board of Commissioners on Grievances and Discipline of the Judiciary is composed of nine members, six of whom are active or retired judges of the State of Ohio, two members who are Ohio attorneys, and one member who is neither a judge nor an attorney. The members of the Board are appointed by the Ohio Supreme Court, instead of by the Chief Justice. In addition, only the disciplinary counsel can investigate claims against the judiciary.[135] These amendments are in accordance with ABA recommendations except for the composition of the Board.[136] The ABA recommends that three members of the Board be judges at either the intermediate appellate or the trial level, that three members be attorneys appointed by the Ohio Bar Association, and that three members be neither judges nor attorneys (who are appointed by the governor of the state).[137]

This amendment makes a small step forward in that it moves appointment power from the Chief Justice to the Supreme Court of Ohio as a whole. The power, however, is still too centralized in that all members of the Board are still appointed by the Court; the current members are allowed to finish their terms and to appoint the new disciplinary counsel which generates the same concerns as described above,[138] and

133. TISHER, *supra* note 6, at 114–15.

134. *Id.*

135. Judiciary Amendments, *supra* note 14, § 1, at 989–90. It should be noted that those currently on the Board are to finish out their terms of office.

136. JUDICIAL MODEL RULES, *supra* note 9, at 153.

137. *Id.*

138. *See supra* notes 81–83 and accompanying text.

not enough public members are involved to provide an objective standard.[139] In addition, the question of cronyism tends to arise, especially when the new amendment does not prevent the appointment of retired supreme court judges upon or immediately after retirement. In fact, as suggested by Ohio State Bar Association President Duke Thomas, an entire new committee composed solely of presiding appellate court judges might be advisable for hearing complaints involving Ohio's Supreme Court Justices[140] to avoid "even the appearance of impropriety."[141]

The Ohio State Bar President further suggested that the dual-track legal disciplinary system used for the Ohio Bar also be used for the judiciary.[142] Although the underlying rationale—that this would further protect the public against violations by judges[143]—appears appropriate, the concerns are the same as in the attorney disciplinary system.[144] However, the discrepancy between the two systems—one bifurcated, one unified—gives rise to the question of why there is the need for such a difference.

2. The Judiciary

The same amendments apply to the Judiciary regarding both the creation of the Complaint Review Board[145] and the abolishment of the confidentiality rule, in accordance with ABA recommendations.[146] These amendments serve to protect the public from judicial misconduct as do the attorney amendments and should also enhance the credibility of the profession.

IV. RECOMMENDATIONS

Over the past thirty years, progress has been made toward a more efficient, more credible disciplinary process for members of the legal

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139. TISHER, *supra* note 6, at 113.

140. *Changes Sought*, *supra* note 123, at 1. *See also* Jacobs, *supra* note 16, at 4. The Ohio State Bar Association has voiced a strong concern regarding the situation in which a member of the Ohio Supreme Court is a complainant. *Id.* The Bar Association does not feel that it is appropriate for a respondent or his colleagues to sit on a panel which receives recommendations for his or her discipline. *Id.* The Bar further suggests that a provision be enacted for the disqualification of the members of the Ohio Supreme Court in such a situation and a provision be made for a substitute hearing panel. *Id. See also* Lowe, *supra* note 82. (In support of his assertion that "there's no question that we have the makings of a much better disciplinary system in Ohio," Chief Justice Moyer also cited the aforementioned flaw in the current disciplinary system which may result in a justice taking part in the deliberations of his or her own disciplinary proceedings.).

141. MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 9 (1979).

142. *Changes Sought*, *supra* note 123.

143. *Id.*

144. *See supra* notes 91–92 and accompanying text.

145. Judiciary Amendment, *supra* note 26, § 9, at 994.

146. *Id.* § 22(b), at 1000.

profession. We have come from a system of limited, rigid sanctions which prompted dismissal of all but the most serious complaints, to one of more flexible, creative sanctions which are designed to educate and correct, not to cover up and destroy. The Office of Disciplinary Counsel has grown from a two-lawyer office—with exclusive jurisdiction over advertising and publicity offense and with backup jurisdiction over all cases of misconduct by attorneys and the judiciary—to an office with power to investigate and to prosecute any complaint of which it is aware.[147] Furthermore, Ohio has abolished the confidentiality rule once a formal complaint has been filed.[148] In addition, the recent amendments have given the appointive power for the disciplinary counsel to the Boards of Commissioners on Grievances and Discipline of the Bar and of the Judiciary to the full court (rather than to only one justice),[149] have included non-attorney/non-judiciary members in each Board,[150] and have created a Complaint Review Board for both the Ohio Bar and Judiciary.[151] Progress *has* been made.

However, the legal profession disciplinary process in Ohio has a long way to go if the legal profession is to attain those ideals expressed by the ABA. If the members of the Ohio Bar and Judiciary want to encourage respect for the profession, the law, the courts, and the judges—and to avoid even the appearance of impropriety—more attention must to be given to fair and consistent procedures and less to power structures and election outcomes. While there are positive aspects to the June, 1986, amendments, there are many controversial provisions, and the issue of decentralization was not even addressed by the amendments. The committee narrowly rejected making a recommendation of decentralization to the court,[152] although it was the primary recommendation of the ABA report which prompted creation of the Blackmore Committee.[153]

While the local and state bar associations make valid, albeit minor, arguments in favor of keeping the process decentralized,[154] the arguments are logically and overwhelmingly overcome by arguments in

147. Samad, *supra* note 56 at 938–40.

148. Bar Amendments, *supra* note 13, at 983; Judiciary Amendments, *supra* note 14, at 1000.

149. Bar Amendments, *supra* note 13, at 968, Judiciary Amendments, *supra* note 14, at 989.

150. Bar Amendments, *supra* note 13, at 986; Judiciary Amendments, *supra* note 14, at 989–90.

151. Bar Amendments, *supra* note 13, at 976; Judiciary Amendments, *supra* note 14, at 994.

152. *Changes*, *supra* note 59, at 2.

153. *Id.*

154. *See supra* notes 112–18 and accompanying text.

favor of creating one statewide agency with uniform procedures at all stages of the proceedings to administer the entire lawyer and judiciary discipline system.[155] Consistency in sanctions and procedures, lack of local favoritism, reduction of cronyism, and objectivity—all standards by which laws are administered and legal proceedings conducted—are absent in the legal profession's self-regulating procedures. Not only does this create an unfair and ineffective legal process, it gives the impression of cronyism, disorganization, and a lack of professional standards[156] to the community at large.

Those who suggest that the dual-track system would work if there were a set of adequate, uniform guidelines are simply not being realistic. One only has to sit through a session of Congress to realize how many interpretations can be placed on a seemingly clear set of standards, or on a concisely worded piece of legislation, to realize the impracticality of that suggestion.

Another issue which was addressed in the amendments, but with only partial success, was the overcentralization of power in the supreme court and in the chief justice through their appointive powers.[157] According to Timothy McPike, an ABA expert on professional responsibility and a member of the ABA team which conducted the evaluation of Ohio's legal disciplinary process, Ohio is one of the few states with the problem of too much centralized power.[158] The recent amendments contain provisions that are intended to alleviate this problem. These provisions include appointment of disciplinary counsel by the Board of Commissioners instead of by the court and appointment of the Board of Commissioners of the Judiciary by the court instead of by the Ohio Chief Justice.[159] However, a problem exists in that this clause is "grandfathered" and does not take effect until the current members of both Boards of Commissioners complete their terms.[160] This means that the current Boards, appointed by the Celebrezze Court and the former Chief Justice, appoint the new disciplinary counsel for a four-year term. While the actual negative impact of this situation may be difficult to ascertain at this time, it certainly carries the image of political maneuvering[161] and, for the present, diminishes the impact of the amendments regarding the reduction of centralization of appointive

155. Samad, *supra* note 56, at 940.

156. *See* TISHER, *supra* note 6, at 86.

157. *Ohio Turmoil*, *supra* note 12, at 6–7.

158. *Id.*

159. Bar Amendments, *supra* note 14, at 969; Judiciary Amendment, *supra* note 14, at 989.

160. Bar Amendments, *supra* note 14, at 967; Judiciary Amendments, *supra* note 14, at 990.

161. *See supra* notes 84–92 and accompanying text.

power.

Several changes are needed to make the June 3, 1986, amendments more than cosmetic in nature. The Ohio Supreme Court should:
(1) Centralize the relator function into one statewide agency with uniform proceedings at each stage of the lawyer/judiciary process.[162] This change must occur if the legal profession wants to actually be, *and* wants to appear to be, both ethical and credible in its disciplinary proceedings.
(2) Provide adequate funding so that the one statewide agency can expand the full-time professional staff and hire superior people to do a superior job.
(3) Keep the local and state bar associations as involved as possible on committees and in advisory capacities.
(4) Involve non-attorney/non-judiciary members as much as possible. Select people who are both politically aware and aware of the atmosphere within the community.[163] Further, provide adequate training for lay members as well as for all members of the boards and committees at all stages of the disciplinary process.
(5) Either cause the terms of all current Boards of Commissioners to end as soon as possible, or delay the appointment of a new disciplinary counsel and Secretary of the Boards until the terms of the current members are completed.
(6) Continue to use flexible, creative, and affirmative sanctions, appropriate to the offense, including an order to make restitution to the injured client, if appropriate.[164]
(7) Create an alternative panel to hear complaints involving Supreme Court Justices.[165]
(8) Publicize the accomplishments of the disciplinary agencies to foster a feeling of public confidence in the legal profession and its ability to regulate its own members' behavior.[166]
(9) Retain the remainder of the changes incorporated into the amendments as described in this comment.

V. CONCLUSION

A great deal of courage, perserverance, and persuasion will be necessary to effect some of the above suggested changes, especially the most significant change—abandonment of the bifurcated disciplinary procedure for attorneys. The large metropolitan bar associations, as

162. Samad, *supra* note 56, at 940.
163. TISHER, *supra* note 6, at 112.
164. Samad, *supra* note 56, at 940.
165. Jacobs, *supra* note 16, at 4.
166. Clark Report, 1986, *supra* note 3, at 941.

well as the Ohio State Bar Association, are accustomed to having this authority and are naturally wary of surrendering this power. They fear overregulation by overzealous young attorneys who have never experienced the rigors of actual practice.[167]

However, all of the above concerns and rationales pale beside the negative side effects of the bifurcated disciplinary system.[168] Forty-seven states have managed to adopt some sort of unified, statewide disciplinary process,[169] while Ohio is clinging to a system that has been condemned by the ABA as "fostering abuse."[170] The local and state bar agencies in Ohio are wary of change and there is nothing inherently wrong in proceeding with caution. There is something wrong, however, in refusing to admit that this resistance to change is resulting in unequal justice due to the dispersing of dissimilar sanctions for like offenses and creating "the appearance of impropriety" in attorney disciplinary proceedings.[171] Instead of avoiding the change, the skillful and experienced attorneys who compose the local and state bar associations should support such a change and place their time and talents into creating a legal disciplinary system for Ohio that is a model of efficiency and propriety.

Mary Egan

167. Samad, *supra* note 56, at 940.
168. *See supra* notes 119–20 and accompanying text.
169. Samad, *supra* note 11, at 363.
170. *Id.*
171. MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 9 (1979).