Discipline of Attorneys in Maryland

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DISCIPLINE OF ATTORNEYS IN MARYLAND

Because of the degree of intellectual achievement necessary to perform the service, society accords respect to the professional, a respect not given to others who serve perhaps equally vital functions. The talents of the professional, however, are not alone sufficient to sustain his position. Along with the admiration comes, in all areas of the practitioner's life, an expectation of strict integrity commensurate with the acknowledged position. This expectation is exceptionally high regarding the legal profession. One of the foremost philosophers of legal ethics, George Sharswood, maintained:

There is, perhaps, no profession, after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity; in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs the prudence and self-denial, as well as the moral courage, which belong commonly to riper years. High moral principle is his only safe guide; the only torch to light his way amidst darkness and obstruction.

This comment will examine the source of the power to regulate attorneys, new procedures in the bar association's surveillance and prosecution of attorney misconduct, and the standard of conduct judicially imposed through disciplinary proceedings. Discussion of these areas will delineate the profession's attempt in Maryland to assure to the public that lawyers are conscious of, and are vigilant in, their effort to attain the goal that lawyers, like Caesar's wife, be above suspicion.

THE POWER TO REGULATE

The grounds for attorney discipline have been statutorily defined in Maryland since colonial times. By statute "the several magistrates, judges of the several courts within this province" were empowered to discipline:

all practitioners of the law before them . . . who shall use any indecent liberties to the lessening the granduer and authority of their respective courts . . ., according to the nature of the offense either by suspend-

1. See Bar Ass'n v. Agnew, 271 Md. 543, 549, 318 A.2d 811, 814 (1974); H. DRINKER, LEGAL ETHICS 7 (1953) [hereinafter cited as DRINKER].
2. G. SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS 55 (1884) [hereinafter cited as SHARSWOOD].
ing such practitioner of the law from their practice perpetually, or for a time, or to punish such practitioners . . . by fine, at the discretion of such court before whom such offense shall be committed. . . .

The current statute more specifically defines the misconduct for which an attorney may be disciplined. 4

Although the Maryland Court of Appeals has claimed an inherent power to regulate the legal profession 5 and has followed its own rules governing the procedure 6 and grounds for attorney discipline, 7 it has never questioned the legislature's authority to define attorney misconduct and has faithfully applied the disciplinary statute. 8 This apparent abdication by the court in favor of the legislature may be explained by the breadth and imprecision of the legislative definition of attorney miscon-

3. Act of June 6, 1719, ch. IV, § II.


6. Md. R.P. BV1-BV11 have governed procedure in disciplinary cases since 1965. The Court of Appeals has adhered to these rules. See, e.g., Balliet v. Bar Ass'n, 259 Md. 474, 270 A.2d 465 (1970); Bar Ass'n v. Boone, 255 Md. 420, 258 A.2d 438 (1969). These rules were supplemented by additional rules effective February 20, 1975 and have been completely replaced by the new rules effective July 1, 1975. See notes 23-57 and accompanying text infra.


Most states are similar to Maryland in that the practice of law, including professional discipline, is regulated by a combination of legislative and judicial power. See Brotsky v. State Bar, 57 Cal. 2d 287, 270 A.2d 697, 19 Cal. Rptr. 153 (1962); In re Keenan, 310 Mass. 166, 37 N.E.2d 516 (1941); State Bar v. Hartford, 282 Mich. 124, 275 N.W. 791 (1937); Bar Ass'n v. Union Guardian Trust Co., 282 Mich. 216, 276 N.W. 365 (1937); Clark v. Austin, 340 Mo. 467, 101 S.W.2d 977 (1937).

Some states have specific constitutional provisions which determine how the profession will be governed. See Ark. Const. amend. 28; N.J. Const. art. 6, § 2, para. 3. Although the Maryland Constitution has no clear provision in this regard, art. IV, § 18A provides:

The Court of Appeals from time to time shall make rules and regulations to revise the practice and procedure in and the administration of the appellate courts and in the other courts of this state....

In Rheb v. Bar Ass'n, 186 Md. 200, 203, 46 A.2d 289, 290 (1946), the court, after reference to this constitutional provision, concluded: "it may be that matters relating to disbarment or discipline could be covered by [court] rules." The court has since adopted and followed rules governing procedure for disciplinary proceedings and grounds for discipline. See notes 6 and 7 supra. The constitutional provision, however, is not sufficiently clear to be useful in ascertaining the respective functions of the legislature and judiciary in the regulation of attorneys.
duct. Arguably, the terms of the disciplinary statute do not restrict the inherent authority of the judicial branch, and, therefore, the Maryland Court of Appeals has had no reason to challenge the propriety of the statute. Nevertheless, there remains the following question: which branch of government, legislative or judicial, may definitively establish the criteria for attorney discipline? The resolution of the question entails a broad determination of the ultimate source of power to regulate the legal profession.

The Court of Appeals opinion leaves no doubt that it claims an inherent authority to regulate the practice of law. The court offered its broadest statement of this power in *Public Service Commission v. Hahn Transportation, Inc.*, presenting a challenge to the power of the Public Service Commission to adopt a rule forbidding laymen to appear before it in a representative capacity. The court found the rule a valid regulation of those practicing before the Commission. It determined that as a quasi-judicial body, the Commission possessed the same authority to regulate its practitioners as a court possessed over the general practice of law. The power in both the judicial and quasi-judicial bodies was determined to be inherent:

> Under our constitutional system of separation of powers, the determination of what constitutes the practice of law and the regulation of the practitioners is, and essentially should be, a function of the judicial branch of government.


10. There is a dearth of cases in Maryland or other jurisdictions which detail the respective functions of the legislature and judiciary concerning the discipline of attorneys. To answer the narrow question posed in the text, therefore, it is necessary to apply principles governing the regulation of law in a broader sense, which includes control over unauthorized practice of law, admission to the bar (including reinstatement after disbarment) as well as attorney conduct after admission.


The Supreme Court of Missouri in *In re Richards*, 333 Mo. 907, 915, 63 S.W.2d 672, 675 (1933), explained the court's inherent authority as follows:

> [A] primary object essentially within the orbit of the judicial department is that courts properly function in the administration of justice, for which purpose they were created, and in the light of judicial history they cannot long continue to do this without power to admit and disbar attorneys who from time immemorial have in a peculiar sense been regarded as their officers.

*See also* Opinion of the Justices, 279 Mass. 607, 180 N.E. 725 (1932); *Ruckenbroad v. Mullins*, 102 Utah 548, 133 P.2d 325 (1943).


13. *Id.* at 583, 253 A.2d at 852.
Claim of inherent judicial power is also found in *Bar Association v. Boone*,\(^ {14} \) where the court allowed the bar association to appeal from a lower court decision to reinstate an attorney although the statute provided only for appeal by the petitioning attorney.

The Maryland Court of Appeals also recognizes a legislative interest in regulation of the legal profession. *In re Maddox*\(^ {15} \) indicated that the court considers the legislature's authority over admission to the bar to be exclusive. There the Maryland court refused to admit a woman to the bar, saying:

> It is for the General Assembly to declare what class of persons shall be admitted to the bar. We have no power to enact legislation. Courts can only interpret what the legislature adopts. If we should say that females are entitled to be admitted to the bar, when the legislature has not said so, we would exceed our authority and usurp the functions of a different and an independent department of the state government.\(^ {16} \)

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14. 255 Md. 420, 258 A.2d 438 (1969). In justification of its action, the court asserted that "the Court of Appeals has the right and the duty ultimately to supervise the exercise of disciplinary and reinstatement powers of the local courts." *Id.* at 430, 258 A.2d at 443. It quoted from a discussion of a court's inherent authority over attorneys in *In re Keenan*, 313 Mass. 186, 47 N.E.2d 12 (1943):

> The power of the judicial department to adopt appropriate procedure for proceedings for disbarment and for proceedings for admission to the bar extends to the adoption of appropriate procedure for review in such proceedings. It is a necessary implication from the exclusive jurisdiction of the judicial department of control of membership in the bar that the judicial department is not restricted in the matter of review in such proceedings to methods prescribed by statute. If this were not true the judicial department would be restricted by legislative action in the performance of its duties with respect to membership in the bar of which it has "exclusive cognizance."

255 Md. at 431, 258 A.2d at 443. Finally, in allowing the appeal, the court considered it a motion for review by this Court of the judicial inquiry by the Circuit Court for Baltimore County 'in the nature of an investigation by the court into the conduct [and fitness] of one of its own officers.'

*Id.* at 430, 258 A.2d at 444, quoting Braverman v. Bar Ass'n, 209 Md. 328, 336, 121 A.2d 473, 477, *cert. denied*, 352 U.S. 830 (1956). This language, a characterization of the court's inherent power, makes clear the ground for the court's action. See also Bar Ass'n v. Agnew, 271 Md. 543, 546, 318 A.2d 811, 813 (1974), where the court referred to "the statutory pronouncement of this Court's inherent common-law power to regulate the conduct of those attorneys we admit to practice law in Maryland." See also Braverman v. Bar Ass'n, supra.

15. 93 Md. 727, 50 A. 487 (1901). See also Bastian v. Watkins, 230 Md. 325, 329, 187 A.2d 304, 306 (1963), where the court said:

> It has long been recognized that the admission of a resident of Maryland to practice law is a legislative, not a judicial function in that the right may constitutionally be regulated by statute.


16. 93 Md. at 735–36, 50 A. at 490.
The seeming acknowledgment of exclusive legislative power appears inconsistent with the court's assertion of judicial power in *Hahn*. The apparent conflict, however, may be the product of Maddox' use of unnecessarily broad language to justify effeuction of the legislative policy. The *Hahn* court regarded the two powers as compatible, explaining in reference to the power of the legislature to regulate attorneys:

In many states it has been held that the legislative branch cannot constitutionally exercise that judicial function although it may make implementing regulations. In Maryland there has always been a comfortable accommodation in this area.17

Neither *Hahn* nor any other Maryland decision has fully delineated the operation of this "comfortable accommodation" between the legislative and judicial power to regulate attorneys. The Supreme Court of Wisconsin may have found the proper situs of the respective powers. In *State v. Cannon*18 the Wisconsin court explained that the legislature had the power to regulate admission to practice by virtue of the state's police power19 and the courts might fix additional qualifications as they deemed necessary.20 The *Cannon* formulation of the accommodation thus reconciles


18. 206 Wis. 374, 240 N.W. 441 (1932).

19. 206 Wis. at 381, 240 N.W. at 444. The *Cannon* court there said:
That there is a field within which the prescribing of such qualifications constitutes a legislative function cannot be doubted. One of the very important functions of the Legislature is to promote the public welfare and to protect the public from the results of incompetence, imposition, and fraud on the part of those who assume to practice the learned professions and occupations requiring skill and special training. . . . Realizing that those who assume to practice law without the proper learning and good moral character have it in their power to work great harm upon those who have a right to assume that they are properly qualified to advise them in legal matters and to protect them in their legal rights, the Legislature has very properly prescribed certain qualifications which must be possessed by those who become licensed as attorneys at law. . . .

Other cases recognizing that regulation of the practice of law is within the power of the legislature are: *In re Myrland*, 45 Ariz. 484, 45 P.2d 953 (1938); Bryndonjack v. State Bar, 208 Cal. 439, 281 P. 1018 (1929) (directed specifically to admission); Barr v. Watts, 70 So. 2d 347 (Fla. 1953) (admission); *In re Keenan*, 313 Mass. 186, 47 N.E.2d 12 (1943); Sweeney v. Cannon, 23 App. Div. 2d 1, 258 N.Y.S.2d 183 (1965); Danforth v. Egan, 23 S.D. 43, 119 N.W. 1021 (1909); Burns v. State, 129 Tex. 303, 103 S.W.2d 960 (1937). For cases specifically characterizing legislation regulating the practice of law as an exercise of police power, see *Ex parte Steckler*, 179 La. 410, 154 So. 41 (1939) (admission); Bar Ass'n v. Automobile Serv. Ass'n, 55 R.I. 122, 179 A. 139 (1935) (unauthorized practice of law).

20. The *Cannon* court explained:

[I]n order that public interests may be protected, such qualifications constitute only a minimum standard and limit the class from which the court must make its selection. Such legislative qualifications do not constitute the ultimate qualifica-
the two competing powers in a manner consistent with the Maryland cases. It recognizes the inherent judicial power over regulation of the practice of law asserted in *Hahn* and *Boone*, while accommodating a similar legislative interest acknowledged in *Maddox*.

The theory of *Cannon* regarding admission statutes has also been used to explain the effect courts must give to statutes laying out grounds for disbarment.\(^2\) Thus, it is reasonable to conclude that the Maryland legislature can set grounds for disbarment in exercise of its police power.\(^2\) The Maryland court should accept these as determinative of a minimum standard of conduct, but is free to formulate its own rules imposing additional grounds.

**Procedural Reform**

In recent years the Maryland attorney disciplinary system has been totally restructured. The first major changes, made in 1965, altered the process that followed formal filing of charges. The most recent changes, which became fully effective July 1, 1975,\(^2\) re-organized the bar's investigative and prosecutory systems.

Under the pre-1965 system, which was governed solely by statute, any judge of a state court could direct the local bar association or state's attorney to prosecute any attorney whose conduct the judge reasonably believed warranted disbarment.\(^2\) Charges could also be filed on the initiations beyond which the court cannot go in fixing additional qualifications deemed necessary by the courts for the proper administration of judicial functions.

206 Wis. at 397, 240 N.W. at 450. Although a court rarely rules on issues not before it, a strong inference of uncertainty on the part of the court as regards the answer to the text's question is suggested by this language.


22. Some courts have held that courts follow statutory grounds for discipline only out of comity, and that they are enacted only as an aid to the court. Hansen v. Grattan, 84 Kan. 843, 115 P. 646 (1911); Barnes v. Walsh, 145 Me. 107, 72 A.2d 813 (1950); *In re Nevis*, 174 Ohio St. 560, 191 N.E.2d 166 (1963); *In re Greathouse*, 189 Minn. 51, 248 N.W. 735 (1933); State Board of Law Examiners v. Phelan, 43 Wyo. 481, 5 P.2d 263 (1931). The Maryland court does not apparently hold this view. *See* Bastian v. Watkins, 230 Md. 325, 187 A.2d 304 (1963); *In re Maddox*, 93 Md. 727, 50 A. 487 (1901), and *In re Taylor*, 48 Md. 18 (1877). In Comment, *Power of the Courts and Legislature to Regulate the Practice of Law and Procedure*, 36 Mich. L. Rev. 82, 87, 88 (1939), a theory for resolution of conflict between regulations of the legislature and of the judiciary was offered. There it was said:

Any regulation by the Legislature which operates as an encroachment on the powers of a court so that the administration of justice is impaired, either by subjecting events to unscrupulous or incompetent attorneys or which destroys the right of the court to protect itself from those not qualified to practice law, would . . . be an unconstitutional restriction on their jurisdiction.

23. *See* note 45 and accompanying text, *infra*.

tive of any bar association or any group of five or more members of the bar in any court where the attorney was admitted to practice. In either case, the charges were heard before two or more judges of the judicial circuit where the charges were filed. An attorney found guilty and disciplined by the Circuit Court had the right of appeal to the Court of Appeals of Maryland. If the discipline were disbarment and no appeal were taken, the Clerk of the Court of Appeals would strike the name of the accused attorney from the register of attorneys upon receipt of a copy of the lower court order.

The 1965 changes took the form of adoption by the Court of Appeals of the BV Rules. Under these rules, and subsequent amendments prior to 1975, charges could be brought in the Court of Appeals by a bar association acting through its executive council. The Court of Appeals designated at least three judges to hear the case in any state court. The designated judges made a recommendation that the attorney be disbarred, suspended, or reprimanded. The record of the hearing was then transmitted to the Court of Appeals. Any party to the proceeding could file with the Court of Appeals exceptions to the lower court recommendations, and after hearing oral argument, the Court of Appeals made the final decision on the case.

The paramount obligation of the courts to maintain the strict integrity of the bar in their decisions concerning errant attorneys has been repeatedly emphasized. The importance of their decision-making role is highlighted as the only public stage of the disciplinary proceeding. It is obvious, however, that the courts alone cannot preserve an unblemished reputation for the bar. Since they only act after a complaint is filed, the success of their endeavor necessarily depends on effective surveillance of lawyers by the bar association. The standard of minimum conduct enforced by the bar association through its discretionary initiation of the disciplinary proceedings is thus a crucially determinative factor in the moral well-being of the profession.

25. Id. § 13.
26. Id. § 15.
27. Id. § 17. Under this section, the bar association had no right of appeal.
28. Id. § 18.
29. It appears that the statutory provisions remain in effect, unless inconsistent with the later adopted court rules. Md. R.P. 1 h. See Balliet v. Bar Ass'n, 259 Md. 474, 478, 270 A.2d 465, 467 (1970).
30. Md. R.P. BV3 b, BV4 c.
31. Id., BV5 b 1.
32. Id., BV5 b 2.
33. Id., BV5 b 3.
34. See, e.g., note 87 and accompanying text, infra.
35. Md. R.P. BV2 f provides that with certain exceptions, meetings of the Inquiry Committee and Review Board are confidential.
The Old Problems

The old BV rule left the responsibility for policing attorneys divided among various sub-organizations of the local bar association. Since most county bar associations did not have standing grievance committees, when a complaint was submitted to the local bar association under the 1965 rules, an ad hoc committee might have been formed or the matter might have been transferred to the Maryland State Bar Association. The absence of any set procedure or assignment of primary responsibility increased the chance that some disciplinary problems would be overlooked. Moreover, delay was an inevitable consequence of such ill-defined procedure. From the public view, the absence of one organization with ultimate responsibility for protection of the public against unethical conduct by attorneys reflected a lack of sincerity on the part of the profession in its obligation to uphold the strictest ethical standards.

Local responsibility for disciplining attorneys posed special problems. A natural reluctance to take action against a personal friend or professional associate might result in delay, a tendency to ignore marginal cases, and even a distorted evaluation of unethical conduct. Furthermore, when the crucial decision to proceed with a complaint or dismiss it as insubstantial was being made by the governing board of various local associations, the enforced minimum standard of conduct might vary widely throughout the state. Uncertainty regarding evaluation of marginal conduct engendered by the divergent standards is surely detrimental to the moral well-being of the profession.

37. Maryland State Bar Ass'n, REPORT OF THE SPECIAL COMM. ON GRIEVANCE PROCEDURES 2 (1974) [hereinafter cited as GRIEVANCE PROCEDURES REPORT].
38. BV3 did not specify whether the local or state bar should file the charges.
39. Wilbur D. Preston, Chairman, Special Committee on Uniform Grievance Procedures, said:
Regardless of convictions, many matters drag and are not decided for years by the local bar associations or indeed, simply fade into the dim, distant past without any decision having been made.
Address by Wilbur D. Preston, Annual Meeting, Maryland State Bar Association, Ocean City, Maryland, April 22, 1974 [hereinafter cited as Preston] (transcript on file at Maryland State Bar Association, Baltimore).
40. See ABA Special Comm. on Evaluation of Disciplinary Enforcement, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT 24 (1970) [hereinafter cited as CLARK REPORT]. The report quoted the chairman of a state bar association disciplinary committee to illustrate this phenomenon:
The intimacy, the small size and the lack of organization and leadership in many of our small county bars constantly hobble effective procedures. Also, there is the back-scratching phenomenon. For example, some of our bar associations have as few as a half dozen members. For them to discipline one of their own is virtually an impossible task.
Id. at 24. The report further concluded that “[e]ven if objectivity were possible under these circumstances, the public might suspect favoritism or even impropriety when charges are not sustained or discipline short of disbarment is imposed.” Id.
41. Id. at 25-26.
Much of the inefficiency of the former system was the product of inadequate financing which necessitated reliance on a volunteer staff to run most of the local organizations. Since the staff members were not able to devote their full time to the task, often the quality of investigation of any particular case depended on the amount of spare time a working attorney had and was willing to devote to disciplinary work.\(^4\) The ensuing delay exposed the public to harm from an attorney who continued to engage in serious misconduct. The delay was also unfair to the suspect attorney who deserved rapid determination of his guilt or innocence.\(^4\)

Inadequate record-keeping can exist with a professional staff but the problem is aggravated by the time and organizational problems of volunteers. A record of every investigation, regardless of its disposition, benefits the innocent attorney as well as the public and the bar. The record of an investigation absolving an attorney from any improper conduct protects the attorney from future investigations in response to additional complaints regarding the same incident. Without a record of the favorable resolution of the complaint, the attorney may find the incident an obstacle to any application for membership in the bar of another jurisdiction. On the other hand, some complaints may be made about conduct which is improper, but not sufficiently serious to warrant formal discipline. Without a record of each complaint, the cumulative significance of repeated complaints of trivial misconduct may go unnoticed and, consequently, undisciplined.\(^4\)

**The New Solution**

In June of 1974, the State Bar Association approved new rules proposed by the Special Committee on Uniform Grievance Procedures that would totally restructure the investigatory and initial prosecutory stages.

42. *Id.* at 49.

43. *Id.* at 48–52. Increasing the size of the volunteer staff was not the optimal solution because expertise was still absent. When each volunteer handled only an occasional complaint, he did not get the experience necessary to acquire any degree of expertise. Thus, with a part-time volunteer staff, no matter how large, the quality of investigation varied with each individual staff member and inefficiency prevailed. *Id.* at 51.

Given severe time limitations, efficiency required that substantiated complaints and matters requiring limited investigation be given top priority. Complex matters requiring intense investigation to pierce the surface legality were neglected. Often attorneys' uncorroborated explanations of their alleged misconduct were accepted at face value in lieu of independent investigation. Even on relatively simple matters, volunteers could not afford to devote time to finding evidence to substantiate a complaint without some assurance that misconduct is actually present. *Id.* at 52. The negative effect on public confidence of these economies was pointed out in the CLARK REPORT:

The complainant who knows that he has been the victim of misconduct is not likely to be impressed with the quality of professional discipline when he is informed that no action will be taken unless he obtains additional evidence that the disciplinary agency is unable (or to his mind, unwilling) to obtain. *Id.* at 52.

44. *Id.* at 77–81.
of disciplinary proceedings. These rules were adopted by the Court of Appeals, and became effective on February 20, 1975, although the old rules remained in effect until July 1, 1975. Thus, grievance procedures could be instituted under the old system while the new system was being implemented.\textsuperscript{45}

The rules create the Attorney Grievance Commission of Maryland,\textsuperscript{46} a centralized disciplinary agency designed to alleviate the problems discussed above. The Commission has the power to draft rules\textsuperscript{47} to assist in efficient operation of the disciplinary system. The group has been likened to a "Board of Directors" or "Board of Trustees."\textsuperscript{48} They will appoint a lawyer to be the "Bar Counsel," the chief executive officer of the disciplinary system. He assumes ultimate responsibility for efficient coordination of the system. He has authority and funds to hire a professional staff of legal and clerical personnel. The staff will assist in his obligations to consider each complaint filed, initiate investigations when appropriate, prosecute substantiated complaints, and maintain complete records of all proceedings. The Commission will also appoint an Inquiry Committee and a Review Board. The number of attorneys on the Inquiry Committee will be equal in number to the total number of District Court judges.\textsuperscript{49} The number of members each county bar association may choose is determined by the number of District Court judges in that county.\textsuperscript{50} The Review Board consists of 15 attorneys, geographically selected by the Commission.\textsuperscript{51}

All complaints are initially processed by the Bar Counsel. It is his responsibility to gather evidence sufficient for intelligent review by the Inquiry Committee and Review Board. If he finds a complaint "clearly without merit," he may dismiss it on his own authority.\textsuperscript{52} Otherwise, after a full investigation of a complaint by his staff, he refers the complaint to the Inquiry Panel and gives notice to the offending attorney of the proceeding against him. The panel is drawn from the Inquiry Committee and consists of at least three persons, half of whom reside in the district where the challenged attorney is authorized to practice.\textsuperscript{53} It may dismiss the case, or recommend a reprimand or the filing of formal charges. If

\begin{itemize}
  \item[45.] 2 Md. Reg. 212 (1975).
  \item[46.] Md. R.P. BV2. The five members of the Commission, appointed by the Court of Appeals, serve without compensation.
  \item[47.] Md. R.P. BV3 b(i).
  \item[48.] Preston, supra note 39, at 25. The appointments are for three-year terms.
  \item[49.] Md. R.P. BV5 c 1.
  \item[50.] Id.
  \item[51.] Md. R.P. BV5 d. The appointments are for three-year terms. Id.
  \item[52.] Id.
  \item[53.] Md. R.P. BV6 a.
  \item[54.] Md. R.P. BV6 b. Under the rule, this requirement can be waived if impracticable.
\end{itemize}
the panel decides a reprimand or formal charges are warranted, it files a
written report with the Review Board. If the recommendation is not
unanimous, the dissenting members file a minority report. If the Inquiry
Panel votes unanimously for dismissal, it must submit written reasons
with the Bar Counsel and the case is dismissed without consideration by
the Review Board. A less than unanimous vote for dismissal requires
consideration by the Review Board upon submission of the majority and
minority reports. Aided, if it wishes, by oral argument, the Review
Board approves, rejects or modifies the recommendation of the Inquiry
Panel, stating in writing the reason for its decision. If it reprimands, the
attorney may request formal charges and the subsequent hearing. In
response to such request, the Board must either instruct the Bar Counsel
to file charges or withdraw the reprimand and dismiss the complaint.
The filing of charges in the Court of Appeals and the hearing by a panel
of judges designated by the Court of Appeals remains unchanged.

54. Md. R.P. BV6 c 4 (d), BV7 b. The requirement of unanimity in Md. R.P.
BV6 c 4 (c) utilizes the distribution of local and non-local members of the Inquiry
Panel to preclude a biased decision. Preston, supra note 39, at 41-43. It has been
suggested that the Bar Counsel should have some right of appeal if the case is thus
dismissed, since in a three-man panel, the two members local to the offending attor-
ney's place of practice, potentially reluctant to impose discipline on a friend or
acquaintance, may sway the third and dismiss where discipline is warranted. The
Committee, however, deemed it important that the decision to discipline be controlled
at least partially by lawyers of the same judicial circuit as the lawyer under investiga-
tion. They believed, moreover, that if the Bar Counsel, with his staff and rights of
investigation, could not substantiate a case sufficiently to convince the Inquiry Panel,
the case, at that point, should be dropped. Id. at 42, 43.


56. Md. R.P. BV7 c.

57. Md. R.P. BV9-11. Although the centralization of the disciplinary structure
described above solved most of the basic problems of the old system, one problem
collateral to the fragmented structure remained prior to the new BV rules. The 1965
rule, BV4 f 1 provided: "... a final judgment by a judicial tribunal in another pro-
ceeding convicting an attorney of a crime shall be conclusive proof of the guilt of the
attorney of such crime."

The time span between an attorney's initial conviction of a crime, and the
imposition of discipline, after all appeals are completed, where the attorney may be
free to practice law, may extend for years. During this period, the public is exposed
to potential harm from additional unethical or illegal conduct. The public is also likely
to distrust a bar which does not act immediately to remove convicted criminals from
its ranks. The attorney's conviction, moreover, can result in professional ostracism
arising from other lawyers' distrust of the convicted attorney. Other attorneys may
refuse to settle cases with him, entrust him with funds in escrow, or associate with
him of counsel. Thus, even absent further misconduct by the attorney, those who
remain his clients are injured by his inability to render complete legal services. Clark
Report, supra note 40, at 125. Md. R.P. BV16 provides for immediate suspension
of an attorney following conviction of a "crime of moral turpitude." Note also that
the exact procedure for reinstatement is clarified by Md. R.P. BV14.
ATTORNEY DISCIPLINE

TYPES OF MISCONDUCT

The starting point for judicial evaluation of alleged misconduct is the Maryland disciplinary statute. Article 10, § 16, provides:

Every attorney who shall, after having an opportunity to be heard, . . . be found guilty of professional misconduct, malpractice, fraud, deceit, crime involving moral turpitude, conduct prejudicial to the administration of justice, or of being a subversive person, as defined by the Subversive Activities Act of 1949, shall, by order of the judges finding him guilty, be suspended or disbarred from the practice of his profession in this state.58

The misconduct delineated in the statute will be analyzed separately as "professional misconduct" and "non-professional misconduct." "Professional misconduct"59 is limited to conduct as an attorney, involving primarily dealings with clients, the court, or other lawyers, while utilizing privileges and status granted members of the bar. "Nonprofessional misconduct" is any misconduct outside the professional capacity, and is statutorily limited60 to "fraud," "deceit," "crime involving moral turpitude," "conduct prejudicial to the administration of justice" or "being a subversive person."61

Professional Misconduct

The disciplinary standard imposed in an effort to maintain the integrity of the profession is derived from three sources: the disciplinary statute, the Code of Professional Responsibility, and cases imposing discipline for professional misconduct. As noted above, the Maryland disciplinary statute provides that an attorney shall be disciplined if he is found guilty of "professional misconduct" or "malpractice."62 What constitutes "professional misconduct" or "malpractice" has been determined by the court both independently and by reference to the Code of Professional Responsibility.

The early development of the Canons of Professional Ethics reflects the profession's awareness that honored position in society required a

59. This use of the term "professional misconduct" is to demark a category for the purpose of analysis and is not necessarily synonymous with judicial construction of the statutory term "professional misconduct."
60. While those listed are the only grounds enumerated in the statute, the court's power to disbar for non-profession misconduct is probably not confined to those authorized by statute. See text accompanying notes 3 to 22, supra.
61. These five terms have generally been used as the standard for non-professional misconduct. Braverman v. Bar Ass'n, 209 Md. 328, 121 A.2d 473 (1956), cert. denied, 352 U.S. 830 (1956); Fellner v. Bar Ass'n, 213 Md. 243, 131 A.2d 729 (1957); In re Meyerson, 196 Md. 671, 59 A.2d 489 (1948). However neither the statute nor any decision has expressly precluded their application to professional misconduct.
definitive statement as to acceptable professional conduct. The Canons were first adopted by the American Bar Association in 1908. The Canons served as a comprehensive guide to unacceptable professional conduct. However, they were only once referred to in a Maryland case as sanction for the imposition of discipline for "professional misconduct."63 In 1964, the American Bar Association created a committee to study the Canons and recommend changes. In 1969, the American Bar Association adopted the product of the committee's work, the Code of Professional Responsibility. In 1970, the Maryland Court of Appeals adopted the Code as a Court rule,64 thus giving it the force of law.65 The Code consists of the Canons (general ethical principles), Ethical Considerations (broad objectives based on the Canons), and Disciplinary Rules (specific rules of conduct). Under Maryland Rule of Procedure 1230, violation of a Disciplinary Rule warrants the imposition of discipline. Since 1970, the Code has been used as a determinative standard for the imposition of discipline in most cases involving professional misconduct.66 The Preamble to the Code specifies that "[t]he severity of judgment against one found guilty of violating a disciplinary rule should be determined by the character of the offense and the attendant circumstances."67

Almost all of the reported Maryland cases where professional misconduct was found have resulted in disbarment. A brief summary of the offenses that warranted disbarment reveals that most involved misuse of money belonging to a client. In re Williams68 resulted in the disbarment of an attorney representing the wife in a suit for divorce, after he retained for himself $500.00 entrusted to him by his client's husband with instructions to transfer the money to his client. In re Lombard69 involved an attorney who was disbarred for commingling funds of one client in a bank account with funds belonging to himself and those belonging to another

64. Md. R.P. 1230.
68. 180 Md. 689, 23 A.2d 7 (1941).
69. 242 Md. 202, 218 A.2d 208 (1966). Here the court noted a failure to heed Canon 11 which specified that:

[m]oney of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him.

Id. at 207.
client, and for diverting those funds to unrelated uses. In *Bar Association v. Marshall*, the attorney had collected a fee from his client before approval of the Workmen's Compensation Commission, then petitioned the Commission for the fee; upon receipt of the fee from the Commission, he refused, in the face of repeated requests for the money, to reimburse the client. The lower court recommended a one-year suspension for violation of Disciplinary Rule 9-102, but the Court of Appeals disbarred him because he breached not only D.R. 9-102, but "the more serious responsibilities prescribed by Canon 1 and its Disciplinary Rules . . . ." In *Bar Association v. Carruth*, the court found that Carruth had forged his client's signature on a check received in settlement of her claim against an insurance company without her knowledge or prior approval. He then commingled the proceeds with other funds in a bank account, and used that account for his own purposes.

Abuses of the professional position other than misappropriation of client funds has also been subject to severe discipline. In *Rheb v. Bar Association*, the attorney approved his client's fraudulent scheme to sell stock in a corporation having no assets, and was a party to the payment of an alleged dividend out of non-existent profits. He also assisted his client, who was a trustee, to make a secret profit at the expense of the client's principal. *Klupt v. Bar Association* consisted of several incidents of misconduct. Twice the attorney entered judgment by confession against his client's debtor, upon his personal oath that the indebtedness was due and owing. His misconduct lay in his knowledge that the amount of the judgment was larger than the indebtedness and that the debtor has

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70. The facts of Milio v. Bar Ass'n, 227 Md. 527, 177 A.2d 871 (1962), were closely similar to those of *Lombard*. There, while holding that the case was not properly on appeal before it, the court nonetheless indicated that such conduct warranted serious discipline.


73. 269 Md. at 517-18, 307 A.2d at 681. Although the court did not so specify, evidently the D.R. was violated by Marshall's dishonesty in refusing to return funds rightfully belonging to his client (D.R. 1-102(4)). The court suggests that this was "illegal conduct involving moral turpitude." D.R. 1-102(3). Note that Canon I and the corresponding Disciplinary Rules are sufficiently broad to be applied to non-professional conduct. *See Bar Ass'n v. Agnew, 271 Md. 543, 547 n.4, 318 A.2d 811, 813 n.4 (1947).*

74. 271 Md. 720, 319 A.2d 532 (1974). In this case, the Court of Appeals noted the lower court finding of violations of D.R. 1-102 A(3) (prohibiting illegal conduct involving moral turpitude), D.R. 9-102(A) (requiring preservation of the identity of funds and property of a client) and (B)(4) (requiring prompt transfer of funds to the client). *Id.* at 725-26, 319 A.2d at 535.

75. 186 Md. 200, 46 A.2d 289 (1946). The court held in the alternative that Rheb's nonprofessional conduct warranted disbarment. *See* note 93 and accompanying text, *infra.*

76. 197 Md. 659, 80 A.2d 912 (1951).
not signed the confession judgment with intent that it be used under those circumstances.\textsuperscript{77} In a third incident, the attorney knowingly misadvised a prospective client as to the effect of a federal tax lien, and deceived him into signing an executory deed of trust detrimental to his interest.\textsuperscript{78}

Two considerations emerge from the above cases as important in the court's evaluation of an attorney's conduct for disciplinary purposes: the attorney as trustee, and the attorney as a quasi-public official.\textsuperscript{79}

The concept of an attorney as trustee is acknowledged to be at the heart of the attorney-client relationship.\textsuperscript{80} The trustee relationship is necessitated largely by the attorney's specialized knowledge and expertise, which precludes intelligent evaluation of his services on the part of his client. Thus, an attorney's exploitation of his superior knowledge to the detriment of his client's position strikes at the heart of the relationship.\textsuperscript{81}

\textsuperscript{77} As the court explained, "The notes were not intended to be used except in the event of building association loans, to be advanced on completion certificates . . . ." \textit{Id.} at 661-62, 80 A.2d at 913.

\textsuperscript{78} \textit{Id.} at 664, 80 A.2d at 914. A third case of professional misconduct which did not involve misappropriation of client's funds was \textit{Bar Ass'n v. Collins}, 272 Md. 578, 325 A.2d 724 (1974), where the attorney for the Board of License Commissioners bribed members of the board to influence their decisions regarding two applications for alcoholic beverage licenses. Collins was criminally tried, under Maryland bribery laws, but his conviction was reversed on the ground that introduction into evidence of a deposition taken without his presence violated the defendant's constitutional right to confrontation under the sixth and fourteenth amendments. The court recognized no right to confrontation for an attorney in disciplinary proceedings. However, it found the proceeding deficient because \textit{Md. R.P. 413 a 5} (applicable to disciplinary proceedings under \textit{Md. R.P. BV4a}) was not followed. This rule permits a deposition taken in one proceeding to be used in a second proceeding between the same parties only if it was "lawfully taken in the former action." \textit{Id.} The court failed to reach the merits of the case and remanded for further proceedings.

\textsuperscript{79} The two factors discussed in the text have been of primary importance in professional cases. As will be seen, \textit{infra} notes 137-44, lack of truthfulness has been most persuasive as justification for disbarment in cases where no professional misconduct is involved. However, this factor has been important in cases involving professional misconduct as well. A lawyer's truthfulness is tested in the lawyer's dealings with the court and with clients. As an "officer of the court," \textit{Baker v. Otto}, 180 Md. 53, 55, 22 A.2d 924, 926 (1941), an attorney has an unqualified duty to be truthful in his representations to that court. In \textit{Klupt v. Bar Ass'n}, 197 Md. 659, 662, 80 A.2d 912, 913 (1951), it was particularly offensive that while in court suing on a confessed judgment contract, "Klupt deliberately distorted the terms of the contracts, and falsely made oath to a state of facts which he knew, or should have known, to be untrue." The professional duty of truth extends to circumstances where the lawyer is defending himself against charges of misconduct. In \textit{Bar Ass'n v. Marshall}, 269 Md. 510, 520, 307 A.2d 677, 682 (1973), the court's finding Marshall's testimony to be unbelievable was not only determinative of the misconduct charged, but served to aggravate the gravity of the initial offense. For other instances where dishonesty during the disciplinary proceeding was an aggravating circumstance, see notes 114-21 and accompanying text \textit{infra}.


\textsuperscript{81} The court in \textit{Klupt} inveighed against such conduct, saying "Klupt was not merely guilty of volunteering unsound advice; it was shrewdly calculated to capitalize
Accordingly, breaching the trust by misappropriation of funds of a client is considered in Maryland to be "the gravest form of professional misconduct." Other breaches of the fiduciary relationship have also been significant in the court's determination to disbar. In Williams, unknowingly to the wife, the husband had paid Williams a fee of $250.00. The attorney's defense to a charge of misappropriation, that he had contracted with his client for the $500.00 as a fee, was summarily rejected by the court, who called the fee "clearly extortionate, unfair, unreasonable, and one in which an attorney had no right to enter with his client." It further pronounced:

Contracts between attorney and client are subject to the closest scrutiny. If it appears that such contracts are unfair or the client has been overreached, the contract is set aside on principles that govern the conduct of trustees generally.

The court felt that the breach of the fiduciary relationship entailed by the making of such contracts would aggravate rather than excuse the attorney's conduct.

This strict duty to the client invoked by the nature of the services provided by the attorney is supplemented by the lawyer's role as a quasi-public official. One commentator has offered this philosophical view of the lawyer:

[T]he legal profession must be regarded fundamentally as a social-service profession quite as much as teaching or the ministry. It is the function of the lawyer to help preserve the social order, to aid in securing justice, and to promote the welfare of society by protecting it from crime and all other social disorder.

A hint of the conflict is discernible in Maryland case law. In Klupt, where part of the attorney's misconduct was misuse of a judgment of confession signed by his client's debtor, to obtain for his client money that was not owed him, the attorney offered the defense that he had acted "in an excess of zeal for his client," 197 Md. at 662, 80 A.2d at 913. The court rejected the defense, saying "[Z]eal cannot justify a complete disregard of the rights of the opposing parties . . . ."
The attorney’s broader obligation to the public at large is appropriately viewed as adding dimension to the court’s evaluation of the seriousness of alleged misconduct. The need to insure favorable public opinion of the bar is a factor in almost all disbarment decisions. Maryland cases have repeatedly emphasized Lord Mansfield’s immortal declaration that the legal profession must remain “free of all suspicion.” This phrase has been used to justify disbarment to the end of maintaining the public integrity of the bar.

The vigilant guarding of the bar’s reputation by the courts can be attributed partially to a self-interested attempt to maintain the social prestige and honor traditionally associated with the profession, but more significantly to the nature of the attorney-client relationship, as founded upon trust of the attorney by the client. Given that each individual member of society does not have sufficient personal knowledge of an attorney to determine trustworthiness, the bar must guarantee that all of its members merit the client’s undiscerning reliance. Further, courts recognize that through their advocacy and other services, lawyers play an integral part.

The court seemed to be invoking the lawyer’s obligation to the proper administration of justice which, at some point, must limit the extent to which the lawyer can act for the benefit of his client. Admittedly, the claim that Klupt’s behavior could be explained by his enthusiasm for his client’s welfare was somewhat frivolous, and this particular case does not illustrate well the need for a responsible choice between the two obligations.

The importance of keeping the two loyalties in the proper perspective was discussed by Sharswood, supra note 2, at 96, 97:

Counsel have an undoubted right, and are in duty bound, to refuse to be concerned for a plaintiff in the legal pursuit of a demand, which offends his sense of what is just and right. The courts are open to the party in person to prosecute his own claim, and plead his own cause; and although he ought to examine and be well satisfied before he refuses to a suitor the benefit of his professional skill and learning, yet it would be on his part an immoral act to afford that assistance, when his conscience told him that the client was aiming to perpetrate a wrong through the means of some advantage the law may have afforded him. ‘It is a popular but gross mistake,’ says the late Chief Justice Gibson, ‘to suppose that a lawyer owes no fidelity to anyone except his client . . . He is expressly bound by his official oath to behave himself, in the office of attorney, with all fidelity to the court as well as the client . . . The high and honorable office of counsel would be degraded to that of a mercenary, where he was compelled to do the biddings of his client against the dictates of his conscience.


in the legal system. Public distrust of lawyers, resulting in hesitancy to vindicate rights through the utilization of available legal services, is detrimental to the administration of justice.\textsuperscript{88}

\textit{Non-Professional Misconduct}

The ethical obligations of a lawyer are explicitly delineated as an enforceable minimum standard of conduct in the Disciplinary Rules of the Code of Professional Responsibility. Such comprehensive rule-making is possible in regard to a specialized sphere of activity. However, the legal profession has traditionally required more of its members than mere conformity to rules of professional conduct.\textsuperscript{89} Regulation of non-professional conduct and morality is based on the same concerns as that of professional activity. Thus, an attorney's personal life and moral character is subject to professional discipline to the extent that his conduct may have an injurious effect on the public or hinder the administration of justice by lowering the integrity of the bar.\textsuperscript{90}

\textsuperscript{88} See Bar Ass'n v. Agnew, 271 Md. 543, 549, 318 A.2d 811, 814 (1974). For fuller discussion of this principle see notes 133-45 and accompanying text infra.

\textsuperscript{89} This concern for the attorney's conduct outside his professional activities is reflected in the ABA \textit{Code of Professional Responsibility}. See D.R. 1-102 (prohibiting illegal conduct involving moral turpitude) and 8-101 (governing an attorney's conduct as a public official); E.C. 1-5 (exhorting lawyers to be dignified and to refrain from even minor violations of the law); E.C. 9-1 (general duty to promote confidence in the legal system); and E.C. 9-6 (reflect credit upon the profession). See also Healy v. Macauley, 230 Ill. 208, 213, 82 N.E. 612, 614 (1907).

\textsuperscript{90} A court does not have:

the function or right to regulate the morals, habits or private lives of lawyers, who like other citizens are free to act and to be responsible for their acts, but when the morals, habits or conduct of a lawyer demonstrate unfitness to practice law or adversely affect the proper administration of justice, then the Court may have the duty to suspend or revoke the privilege to practice law in order to protect the public.

\textit{In re} Gorsuch, 76 S.D. 191, 197, 75 N.W.2d 644, 648 (1956). See \textit{In re} Lingle, 27 Ill. 2d 459, 468, 189 N.E.2d 342, 346 (1963); Wood v. State \textit{ex rel.} Boykin, 45 Ga. App. 783, 165 S.E. 908 (1932). The Maryland court has not delineated any area of an attorney's private conduct which falls outside its power to regulate. In every case presented, the court has found that the alleged misconduct sufficiently threatened an interest of the bar or public so as to justify imposition of discipline. Courts have generally acknowledged that any type of conduct which might possibly affect a lawyer's professional life provides a court with the authority to discipline. Thus, for example, in Florida Bar v. Hefty, 213 So. 2d 422 (Fla. 1968), an attorney was disbarred for immoral, although not illegal, sexual activities with his stepdaughter. One rather novel justification relied upon was that the members of the bar and their wives and children were to be protected from exposure to the morals of this man at social functions of the bar association. The primary situation in which courts have recognized immunity from professional discipline is where such regulation would infringe upon the constitutional right to free speech. See, e.g., \textit{In re} Sawyer, 360 U.S. 622 (1959); Polk v. State Bar, 374 F. Supp. 784 (N.D. Tex. 1974).
Incorporation of a moral standard which covers all areas of conduct relevant to fitness as an attorney into an enforceable disciplinary system cannot be accomplished through detailed rules. The broad scope of human activity involving complex moral choices makes such a project unfeasible. Instead, the Maryland disciplinary statute sets out categories which characterize conduct that reflects a character not fitting an attorney. As noted above, these consist of "fraud," "deceit," "crime involving moral turpitude," "conduct prejudicial to the administration of justice," and "being a subversive person." This section of the comment will examine the nature of these statutory categories as interpreted by the judiciary. Conclusions reached in that inquiry raise questions about the validity of the Maryland court's reliance on the statutory phrases in its evaluation of attorney misconduct and imposition of discipline.

The initial step in ascertaining the standard of discipline imposed by the statute is to detail the type of conduct found by the court to fall within its sanctions. In Rheb v. Bar Association, an attorney's conviction for failure to file an income tax return was considered to be a "crime of moral turpitude," "conduct prejudicial to the administration of justice" and to involve "fraud or deceit." In Bar Association v. Agnew the same statutory grounds were applied to a plea of nolo contendere to filing a fraudulent tax return. In re Meyerson held that procuring an abortion and a conspiracy to do so were crimes "involving moral turpitude." In Fellner v. Bar Association, after a plea of nolo contendere to the charge of inserting slugs instead of coins into a parking meter, the attorney was disbarred on the grounds of fraud or deceit. In Braverman v. Bar Association, the attorney's conviction under the Smith Act for organizing the United States branch of the Communist Party, which advocated immediate overthrow of our government by force or violence, was held to be a "crime involving moral turpitude" as well as "conduct prejudicial to the administration of justice." In Bar Association v. Frank, an attempt to influence a state's attorney's duty to prosecute several criminal offenses was considered "con-
duct prejudicial to the administration of justice"; and "conduct of the
greatest moral turpitude." In Bar Association v. Rosenberg, an
attorney was disbarred when his perjured testimony before a grand jury
was found to be moral turpitude, "conduct prejudicial to the adminis-
tration of justice," "fraud," and "deceit." Finally, in Bar Association v. Vance, the court deemed forgery of a document to gain access to a
military post exchange "deceit" and imposed a ninety-day suspension.

This summary demonstrates that the statutory terms are closely
related and often used in the alternative. In fact, the court often does not
distinguish the terms. Moreover, further examination of the judicial
language suggests a mutual dependency of definition among "moral turpi-
tude," "fraud," "deceit" and "conduct prejudicial to the administration
of justice."

101. Id. at 538, 325 A.2d at 724, quoting the recommendation of the three-judge
panel.

102. Bar Ass'n v. Rosenberg, 273 Md. 351, 329 A.2d 106 (1974). In this case,
the court upheld the constitutionality of Md. R.P. BV4 f 1 (making a final judgment
of conviction "conclusive proof" of guilt in a disciplinary proceeding) against attack
on due process grounds. Rosenberg argued that since Md. R.P. BV4 provides for
a hearing, it must be a meaningful one, and the failure to hold a hearing on the
 crucial issue, whether the perjury was in fact committed, rendered the disciplinary
hearing meaningless. The court rejected the argument, asserting that the require-
ments of due process were satisfied at the criminal trial. It noted that the attorney
was further protected by BV4 f 2 which allows introduction of any new evidence
at the disciplinary hearing.


104. Other disciplinary cases where attorneys were disbarred for non-professional
misconduct are Bar Ass'n v. Snyder, 273 Md. 534, 331 A.2d 47 (1975), and Bar
Ass'n v. Kerr, 272 Md. 687, 326 A.2d 180 (1974). In Kerr, the attorney was convicted
in another state for mail fraud (deemed a crime of moral turpitude) and disbarred
in Maryland under Md. R.P. BV4 f 1. In Snyder, the attorney was involved in a
complicated scheme whereby he received money from a federal savings and loan
association with intent to defraud. He also made false statements of material fact
to a governmental agency.

105. For example, in Agnew, the court found all the non-professional statutory
labels applicable except "being a subversive person," but did not accord them
individual treatment. Initially the court concluded that "the crime of wilful income
tax evasion involves moral turpitude" and constitutes "conduct prejudicial to the
administration of justice." It appeared to rest its final determination to disbar on
the conclusion that a man is not fit to be a member of the bar when he is found
guilty of a:

crime which is deemed to involve moral turpitude and the offense entails the
employment of dishonesty, fraud, or deceit which is perpetrated to enrich the
offending attorney ... at the expense of his client, the state or any other
individual.

271 Md. at 550, 318 A.2d at 815. See also Bar Ass'n v. Rosenberg, 273 Md. 351,

106. The elements of fraud or deceit appear to be a common link between a finding
of "moral turpitude" and a finding of "conduct prejudicial to the administration
of justice." Rheb asserted that "crimes in the category 'crimen falsi' involve moral
turpitude." 186 Md. at 204, 46 A.2d at 291. A finding that a crime can be classed
This dependency is not a semantic coincidence without further import as regards the nature of the disciplinary statute. Rather, it is indicative of the largely discretionary decision-making called for by the statute. In Meyerson, the court articulated the discretionary nature of the Maryland statute: "The statute has done but little, if anything more, than enact the general rules upon which the courts of common law have always acted."107 In its exercise of discretion, the Maryland court has viewed each term as providing a different approach to the same question: is the person fit to be an attorney?

Generally, the answer to this question is couched in terms of the person's moral fitness.108 For example, in Braverman which involved crimes involving moral turpitude and "conduct prejudicial to the administration of justice," the court ascertained the former statutory term by considering "the nature of the offense as it bears upon the attorney's moral fitness to continue in the practice of law";109 and ascertained the latter term by considering the conduct "complained of in order to determine whether the attorney should continue as a practitioner of a profession which should stand free of all suspicion."110 Thus, a "crime involving moral turpitude" requires an evaluation of moral fitness, while a finding of "conduct prejudicial to the administration of justice" entails a conclusion of general unfitness, suggesting that the latter term encompasses the former.111

The mutually dependent definitions and the commutable nature of the statutory terms produces the result that the statute appears to provide no meaningful standard against which to measure conduct. This is compatible with the notion that the statute is merely a mandate for a discretionary decision as to moral fitness. However, if the statute itself supplies no sub-

"crimen falsi" may be based on a finding that it is "conduct prejudicial to the administration of justice." "Crimen falsi" is defined as:
[involved] the element of falsehood, and [including] everything which has a tendency to injuriously affect the administration of justice by the introduction of falsehood and fraud . . . .

BLACK'S LAW DICTIONARY 446 (4th rev. ed. 1968). Thus, a finding of "conduct prejudicial to the administration of justice," based on the presence of fraud, may lead to a finding that the illegal conduct can be classified "crimen falsi" which warrants the inference that the neighboring statutory term "crime involving moral turpitude" applies.

107. 190 Md. at 675, 59 A.2d at 490, quoting Ex parte Secombe, 60 U.S. (19 How.) 9, 14 (1856).

108. Typical was the court's conclusion in Bar Ass'n v. Frank, 272 Md. 528, 325 A.2d 718 (1973), that his activities "fatally reflect on the moral soundness of the respondent and, therefore, his ability to continue as a member of the legal profession . . . ." Id. at 539, 325 A.2d at 724. Similarly, in Bar Ass'n v. Sugarman, 273 Md. 306, 319, 329 A.2d 1, 8 (1974), the court concluded, "His activities reflect his lack of the basic moral character essential to membership in the legal profession."

109. 209 Md. at 344-45, 121 A.2d at 481.

110. Id. at 345, 121 A.2d at 481.

111. See note 133 infra.
stantive standard, the court, in its discretionary application of the statute, should develop a standard through reason elaborating on the grounds of decision. Such requirement is not satisfied by a simple finding that conduct by a lawyer is found to be a "crime involving moral turpitude," "conduct prejudicial to the administration of justice," or "fraud or deceit" without some discussion of the reasoning behind the labelling and the underlying impact of such conduct on the bar and society. The result of this approach is retardation of the development and refinement of principles underlying the discipline of attorneys. In short, reference to short-hand statutory phrases such as "conduct prejudicial to the administration of justice" should not be used as substitute for analytical consideration of the questionable conduct.

Two decisions which illustrate the retarding effect of the conclusory analysis on the development of principles to guide the disciplining court in the exercise of its discretion are *Fellner* and *Braverman*. The present ambiguity in particular areas of attorney discipline can be traced to these decisions.

The uncertainty created by the *Fellner* decision relates to the significance, for disciplinary purposes, of petty fraudulent crime committed outside the professional capacity. As noted earlier, *Fellner* was disbarred for putting slugs in parking meters. Outside the narration of facts, the opinion was very brief. The court based its decision to disbar on the conclusion that:

> [T]he offense ... was not a casual or thoughtless one. The evidence supports the inference that he resorted to a deliberate and systematic practice of cheating the city by the use of slugs. Morally, the offense was as great as though he had stolen money deposited by others in the meters, and amounts at least to 'fraud or deceit'.

To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong." To this the court added a one-sentence caveat as to the importance of "truthfulness and candor," and noted "[I]t is not without significance, as bearing upon his moral fitness, that he has never yet admitted that he did wrong."
ings determinative of the severity of the discipline? In general, does *Fellner* create a presumption that petty criminal conduct warrants disbarment? Or does the case stand for the proposition that petty criminal conduct does not by itself warrant disbarment, but when aggravated by dishonesty throughout the disbarment proceedings, merits the severe and final discipline?

All of these questions are highlighted by the recent *Vance* decision, where the attorney forged a document giving him access to an army PX. Instead of following the strict stance taken in *Fellner*, the court imposed only a 90-day suspension. It did not attempt to draw any distinction between the nature of the crimes. Rather, it pointed out that while *Fellner* had lied throughout the proceedings, *Vance* had admitted his guilt and fully cooperated with the bar association throughout the disciplinary process. The court found no extenuating circumstances which explained the misconduct. It found only that there were no aggravating circumstances; for example, the misconduct was an isolated instance, his reputation was good, his record otherwise unblemished. Its treatment of *Fellner* indicated that it considered his lack of repentance and denial of guilt to be a critical factor weighting the decision to disbar. The court’s approach in *Vance* strongly suggests that it follows no presumption of disbarment for petty fraudulent crimes. Yet *Fellner* remains good law and can be persuasively used to argue that there is such a presumption. Without clear articulation of the rationale underlying *Fellner*, the ambiguity prevails.

The most difficult type of disciplinary case is that involving non-professional illegal conduct that does not include fraud or dishonesty and single discovery, among professional brethren, of a failure of truthfulness, makes a man the object of distrust . . . and soon this want of confidence extends itself beyond the Bar to those who employ the Bar.  

118. Id. at 84, 327 A.2d at 770.  
119. The court observed “the attitude of respondent stands in sharp contrast to that of [Fellner], who, despite the ample evidence against him, never admitted his guilt, and denied it under oath . . . .” Id. at 84, 327 A.2d at 770. This brief dismissal of *Fellner* on the grounds stated indicates that the court accorded the case no further significance.  
120. The validity of this statement can be questioned in light of Bar Ass’n v. Agnew, 271 Md. 543, 318 A.2d 811 (1974). Arguably, *Vance* fell within the rules enunciated in *Agnew* which established a presumption of disbarment if an attorney commits dishonest acts for personal gain. The terms of the rule as stated in *Agnew* (see note 137 and accompanying text infra) appear to cover the facts of *Vance*. While common sense dictates that disbarment would probably have been inappropriate for *Vance*, the effect of this rule should have been clarified. Cf. note 118 and accompanying text supra.  
121. Uncertainty on this point is especially undesirable, since cases involving only petty crimes always present the option of taking no disciplinary action. In the absence of strong language from the court regarding the importance of controlling petty criminal conduct on the part of lawyers, the disciplining body, in weighing the time and expense of the proceeding against the probability of discipline ultimately being imposed, may decline to prosecute marginal cases to the detriment of the bar and public.
ATTORNEY DISCIPLINE

is not perpetrated against another individual. Examples of such crimes for which attorneys have been disbarred are narcotics violations,\textsuperscript{122} draft evasion,\textsuperscript{123} political crimes,\textsuperscript{124} habitual public drunkenness or drunken driving.\textsuperscript{125} Usually, the moral qualities indicated by a disposition towards such conduct do not directly reflect upon one's fitness to practice law.\textsuperscript{126} Noticeably absent is any evidence probative of the attorney's proclivity to intentionally injure a colleague or other member of the public relying on him as trustworthy.\textsuperscript{127} Thus, imposition of discipline for this conduct must be justified through a more general principle connecting the commission of such crimes by members of the legal profession to hinderance of the successful administration of justice. The indirect relation between this type of misconduct and the legal profession's legitimate interest in protection of the administration of justice places a greater burden on the court to justify imposition of its moral standards through the disciplinary mechanism.

Braverman,\textsuperscript{128} the only Maryland case falling into this category, failed to sustain this burden. Braverman was disbarred after conviction under the Smith Act for advocating the violent overthrow of the United States government. His illegal conduct consisted of organizing the Communist Party of the United States. In justification of its decision, the court drew an initial conclusion that:

[T]he conviction of an attorney of any criminal offense which the law characterizes as infamous establishes \textit{prima facie} his unfitness to be continued on the rolls of members of the bar and is sufficient cause for disbarment.\textsuperscript{129}

The court relied heavily on the terminology of the disciplinary statute, finding Braverman's act a "crime of moral turpitude" and "conduct prejudicial to the administration of justice." Although it defined these phrases as directing an inquiry into the attorney's "moral fitness" to practice law, it limited its moral evaluation of the conclusion that "a conspiracy to violate the Smith Act is not a minor offense, but a crime involving moral turpitude."\textsuperscript{130} This conclusionary analysis suggests that the court was content

\textsuperscript{122} In re Barnett, 35 Wash. 2d 191, 211 P.2d 714 (1949).
\textsuperscript{123} In re Pontarelli, 393 Ill. 310, 66 N.E.2d 83 (1946).
\textsuperscript{124} Braverman v. Bar Ass'n, 209 Md. 328, 121 A.2d 473, cert. denied, 352 U.S. 830 (1956)
\textsuperscript{126} This statement does not apply to an attorney's intoxication while acting within his professional capacity, as the immediate discussion is limited to non-professional misconduct.
\textsuperscript{127} Compare the rationales used when dishonesty is present, notes 135-44 and accompanying text infra.
\textsuperscript{128} Braverman v. Bar Ass'n, 209 Md. 328, 121 A.2d 473, cert. denied, 352 U.S. 830 (1956)
\textsuperscript{129} 209 Md. at 344, 121 A.2d at 481.
\textsuperscript{130} Id. at 345, 121 A.2d at 481.
to rely on the criminal law characterization of the offense as determinative of its moral significance for an attorney. The court's conclusion that commission of any act subject to serious criminal sanction itself reflects unfitness justifying disbarment and may have rested on either of two unarticulated premises. The specific moral failing reflected by the crime, although not itself likely to motivate misconduct in the attorney's professional capacity, may have raised a presumption of a more general moral depravity which included characteristics particularly dangerous in one who undertakes the responsibilities of an attorney. Or, the likelihood that an attorney's moral failing could result in injury to clients or others relying on his integrity may have been deemed irrelevant. Rather, the court may have viewed the necessity of maintaining the general honor and reputation of the bar sufficient to justify disbarment. Since the latter view precludes defenses allowed by the former, these underlying rationale should have been articulated by the court.

In either case, the only conclusion that can be drawn from the decision is that the Maryland court takes a strict view and is likely to disbar for any offense deemed significant by the criminal laws. Broad classification of a crime as "not a minor offense" as solely determinative of the presence of moral turpitude, or as "infamous" to bring about a presumption of disbarment, not only fails to justify the disbarment, but fails to establish any principles or standards that will serve as a guide in future disciplinary decisions. Thus, the value of Braverman as precedent or its contribution to the refinement of law in this area is likely to be minimal.

Since conclusory application of the statutory categories is detrimental to the development of the law of attorney discipline, more effective means to utilize the statutory framework in analysis of individualization of misconduct should be considered. A proper evaluation of the moral fitness of an attorney must be done in the particular context of the legal profession and requires three levels of inquiry: first, a determination of the nature of the attorney's actions; second, consideration of the moral character reflected by such action; and ultimately, evaluation of the potential effect on the welfare of the public and the reputation of the legal profession from retention of the person as a member of the bar. The Maryland disciplinary statute may be seen as an attempt to generalize findings at the first and second levels of inquiry which were instrumental in the determination to disbar.

131. See note 88 and accompanying text supra.

132. Proof of otherwise outstanding moral character might rebut the presumption of general depravity, while such would be irrelevant if the primary concern were public outrage over an attorney's commission of the crime.

133. The term "conduct prejudicial to the administration of justice" as defined in Braverman (see text accompanying note 130 supra) appears to direct a general finding at the third level of inquiry. If this is so, then that term may be seen as encompassing all of the others, which are directed to the first and second levels. Thus, for example, a conviction of a "crime involving moral turpitude" may warrant disbar-
Judicial adherence to the statute insures that the power to disbar is exercised only in cases supported by judicial precedent. The statute thus theoretically protects the lawyer from injury at the hands of an arbitrary court, while at the same time prevents undue leniency. Since the inferences implicit in the statute have withstood years of judicial scrutiny, a court's conclusory reliance on the statutory grounds for discipline without articulation of the findings at the third level of inquiry may be justified.

134. Judicial respect for the concept that the statute should be a restriction of the court's discretion [cf. Rheb v. Bar Ass'n, 186 Md. 200, 203, 46 A.2d 289, 290-91 (1946)] has significantly affected application of the term "crime involving moral turpitude." According to one view, the phrase "moral turpitude" has a definite meaning and can be automatically assigned to the commission of various crimes. Bartos v. United States District Court, 19 F.2d 722 (8th Cir. 1927). Such a view allows automatic inference of depravity merely from commission of the crime. Id. at 724. Proponents of a contrary interpretation contend that moral turpitude can only be inferred from the particular circumstances surrounding each criminal act. Rudolph v. United States, 6 F.2d 487, 488 (D.C. Cir. 1925). See Bradway, Moral Turpitude as the Criterion of Offences that Justify Disbarment, 24 CALIF. L. REV. 9, 17, 18 (1935) [hereinafter cited as Bradway]. Judicial adoption of the former view limits the court's discretion since it requires adherence to precedent in the decision whether or not to assign moral turpitude to a given criminal act. The latter view leaves the court broad discretion, as the crucial determination is made after an evaluation of the attorney's character in light of the circumstances of his criminal act. Maryland attorney disciplinary decisions have adopted the former view presumably as an attempt to curb the discretionary quality of the disciplinary decision. See Callahan v. Bar Ass'n, 271 Md. 554, 318 A.2d 809 (1974); Bar Ass'n v. Agnew, 271 Md. 543, 318 A.2d 811 (1974); Braverman v. Bar Ass'n, 209 Md. 328, 121 A.2d 473, cert. denied, 352 U.S. 830 (1956); Rheb v Bar Ass'n, 186 Md. 200, 46 A.2d 289 (1946).

The term "moral turpitude" has been used in various areas of the law to make various determinations. See Bradway, supra, at 15. The numerous meanings that have been assigned to it are derived from diverse contexts. When a court mechanically designates a crime as one involving moral turpitude because of common-law holding to that effect, it allows irrelevant presumptions and purposes of other areas of the law to substitute for independent analysis of the crime in the context of attorney discipline. Id. at 23. It was suggested that the term "moral turpitude" originates in the criminal law. If this is true, the term may be exceptionally misleading if used as determinative in the area of attorney discipline. For an important theme running through the Maryland cases is that the purpose of disciplinary proceedings is not, as in criminal prosecutions, to punish, but to protect the public and the reputation of the bar. See, e.g., Bar Ass'n v. Agnew, 271 Md. 543, 318 A.2d 811 (1974); Balliet v. Bar Ass'n, 259 Md. 474, 478, 270 A.2d 465, 468 (1970); Braverman v. Bar Ass'n, 209 Md. 328, 336, 121 A.2d 473, 477, cert denied, 352 U.S. 830 (1956). Although clearly some of the same considerations are present in the disciplinary and criminal proceedings, the dissimilar ends preclude automatic application of criminal concepts to a disciplinary problem.

However, adoption of the discretionary view of moral turpitude is not perforce a solution. For without the continuity and restriction of binding precedent, the members of the court may impose their personal moral standard on the respondent attorney. Moral turpitude is a vague term, very broadly defined. See United States
It would seem, however, that a more precise analysis could be successfully combined with adherence to precedent to strike a balance between the interest stability and the obligation that accompanies a discretionary decision.

In recent decisions, the court has shown awareness of this need to better articulate the rationale for its decision in terms of the interests of the profession and the public. The result has been a marked clarification of the law in certain respects. The Agnew decision, the best example of the new trend in the non-professional area, articulated and justified a presumption that had actually been established in the earlier Rheb decision. As Judge Digges stated the rule,

> [w]hen a member of the bar is shown to be wilfully dishonest for personal gain by means of fraud, deceit, cheating or like conduct, absent the most compelling extenuating circumstances, . . . disbarment follow[s] as a matter of course.

The importance of truthfulness in an attorney was noted as a significant factor in judicial evaluation of professional misconduct. As the basis for the rule articulated in Agnew, this quality was shown to be equally significant in the evaluation of fitness in the non-professional capacity. Judge Digges expounded upon the crucial relation this quality bears to the practice of law. He initially examined the nature of the legal profession, finding:

> [f]ew vocations offer as great a spectrum for good and honorable works as does the legal profession. The attorney is entrusted with the life savings and investments of his clients. He becomes the guardian of the mentally deficient, and potential savior for the accused. He is a fiduciary, a confidant, an advisor, and an advocate.

Judge Digges went on to assert that the nature of the responsibilities undertaken by the attorney required that his character for truthfulness be beyond reproach:

> The administration of justice under our adversary system largely depends upon the public’s ability to rely upon the honesty of attorneys

ex rel. Berlandi v. Reimer, 30 F. Supp. 767, 768 (S.D.N.Y. 1939); Drazen v. New Haven Taxicab Co., 95 Conn. 500, 111 A. 861 (1920); In re Pontarelli, 393 Ill. 310, 66 N.E.2d 83 (1946). Given this, automatic assignation to certain crimes on the basis of precedent is the only way to insure any measure of uniformity in application of the term. This approach would be especially appropriate if the confusion created by the diverse uses of the term could be avoided. A resolution of the difficulties posed above may require replacing “moral turpitude” with a phrase of similar import whose meaning is formulated in the context of attorney discipline.

135. An equally important decision in the professional area was Bar Ass’n v. Marshall, 269 Md. 510, 307 A.2d 677 (1973). See notes 79-82 and accompanying text supra.


137. Id.

138. See note 79 supra.

139. 271 Md. at 549, 318 A.2d at 814.
who are placed in a position of being called upon to conduct the affairs of others both in and out of court.\textsuperscript{140}

He explained that discipline of individual attorneys is the mechanism designed to assure maintenance of the bar's integrity:

A court has the duty, since attorneys are its officers, to insist upon the maintenance of the integrity of the bar and to prevent the transgressions of an individual lawyer from bringing its image into dispute.\textsuperscript{141}

Finally, he expressed the court's obligation to the public regarding the dishonest attorney. To do other than disbar him would

impliedly represent to the public that the attorney continues to possess the basic qualities of honor traditionally associated with members of the bar of this state.\textsuperscript{142}

The court's detailed rationale for according such weight to the quality of truthfulness explained its refusal to accept as mitigating the claim that cheating the government showed less depravity than injuring another individual through fraud.\textsuperscript{143} Thus, a rational basis was laid for the principle that "there is no significant moral distinction" between cheating an individual or the public in general.\textsuperscript{144} This treatment contrasts favorably to the isolated assertion in \textit{Fellner} that "[m]orally, the offense was as great as though he had stolen money deposited by others in the meters . . . ."\textsuperscript{145}

In sum, the \textit{Agnew} court carefully considered the elements of Agnew's conduct which, in light of the underlying nature of the legal profession and the objectives of the disciplinary proceeding, indicated his unfitness to be an attorney. It incorporated these elements in a general principle expressing a presumption of disbarment for comparable conduct. The statement and justification for the rule, although predicated on the facts

\textsuperscript{140} Id. at 549, 318 A.2d at 814.

\textsuperscript{141} Id.

\textsuperscript{142} Id. at 549–50, 318 A.2d at 815, where the court quoted from Bar Ass'n v. Marshall, 269 Md. at 519–20, 307 A.2d at 682.

\textsuperscript{143} Judge Digges also refused to attach any significance to Agnew's defense that his misconduct was outside his professional capacity, proclaiming:

[t]he professional ethical obligations of an attorney, as long as he remains a member of the bar, are not affected by a decision to pursue his livelihood by practicing law, entering the business world, becoming a public servant, or embarking upon any other endeavor.

271 Md. at 550, 318 A.2d at 815.

\textsuperscript{144} Id. Judge Digges claimed that \textit{Fellner} "laid to rest" any doubts as to his conclusion that "cheating one's client and defrauding the government are reprehensible in equal degree." \textit{Id.} at 550, 318 A.2d at 815. \textit{Fellner} equated illegally failing to pay the government with actually stealing government money. \textit{Agnew} equated illegally failing to pay the government with stealing from a client. To progress from \textit{Agnew} to \textit{Fellner} requires the additional assumption that to cheat another individual entails no greater moral depravity than to cheat the government.

of Agnew, were sufficiently broad to apply to a variety of misconduct. Thus, the Agnew opinion and its rule not only facilitated the court's task in Callahan, a tax evasion case decided the same day, but also relieved the court of the obligation of further explanation in Bar Association v. Kerr involving mail fraud, and Bar Association v. Snyder involving an officer's fraudulent receipt of money from a savings and loan association.

**Trends**

This comment has considered three aspects of the legal profession's responsibility of self-regulation: the formulation of ethical standards, investigation of alleged ethical infractions, and judicial evaluation of the significance of proven deviations from ethical conduct. The disbarment statute, it was concluded, allows the court sufficient discretion to act inclusively in all cases. In fact, however, few Maryland cases have presented difficult questions for judicial resolution. Generally, the severity of the misconduct has rendered the decision to disbar unavoidable. The serious nature of the cases presented can be attributed to two circumstances. First, the situation suggests that the bar association has been negligent in its pursuit of non-flagrant ethical violations. Second, until 1965, cases were only heard by the Court of Appeals on the attorney's appeal from the circuit court decision. Thus the court was not apt to hear cases involving lesser

146. See note 137 and accompanying text supra.

147. Bar Ass'n v. Callahan, 271 Md. 554, 318 A.2d 809 (1974). There the court simply stated the Agnew rule and concluded:

As no useful purpose would be served by repeating here the reasons given for reaching this conclusion, we need only address ourselves to the question of whether the respondent has produced sufficient evidence of "compelling exculpatory explanation" which would justify the imposition of less than the extreme sanction. Id. at 556, 318 A.2d at 810.

148. 272 Md. 687, 326 A.2d 180 (1974). There the court was able to conclude: The respondent here was convicted of fraud, a crime plainly involving moral turpitude; it is a crime which we have just recently made clear will result in disbarment for the perpetrator who is a member of the bar of this State unless there are present very compelling circumstances which justify a lesser sanction. Bar Ass'n v. Agnew, 271 Md. 543, 553, 318 A.2d 811, 817 (1974). Id. at 690, 326 A.2d at 182.

149. 273 Md. 534, 331 A.2d 47 (1975). In this case the court refined the Agnew rule by clarifying the concept of "personal gain." The attorney argued that he derived no personal gain from the fraudulent transaction but rather gave money to his invalid brother. The court rejected this claim, asserting:

The fact that Snyder's share of the surplus was paid to his brother does not negate the concept of personal gain. The Internal Revenue Service regarded this as income constructively received by him and taxed it accordingly. Additionally, the payment relieved him of what might have been at least a moral obligation to assist in this support of an invalid brother. Id. at 537, 331 A.2d at 48.

150. See notes 27-30 and accompanying text supra.
infractions where the lower court hearing resulted in only a light penalty or acquittal.

Recent enactment of rules restructuring the bar's regulatory system should effect a more rigorous enforcement of a strict ethical standard. The ensuing charges may require the court to redefine the obligations of the lawyer in terms of the discordant pressures today exerted on those in position of responsibility. The demarcation of acceptable conduct may involve greater exercise of judicial discretion as the court is confronted with novel abuses of the lawyer's privilege. The call for discretionary action will place a greater burden on the court to support its decisions with careful analysis of the import of the alleged misconduct for the bar and public.

As lesser ethical infractions are brought for the court's evaluation, suspension may often seem the appropriate sanction. Yet one must consider whether suspension is really consistent with the goals of the disciplinary procedure. It was concluded that the critical determination made by the court has been: is the respondent fit to be an attorney? Arguably, if he is not fit, the protection of the public demands that the attorney be removed until it is determined that he is rehabilitated. The use of suspension, with automatic reinstatement at its termination, without a hearing to determine rehabilitation or present fitness, is not a measure designed to protect the public from the potential abuses of the suspect attorney. Such a device functions more efficiently as punishment of the attorney. Yet Maryland decisions are rife with pronouncements that the purpose of disciplinary proceedings is not to punish, but to protect the bar and the public.¹⁵¹

On the other hand, if suspension were not an alternative disciplinary measure, and the court could only disbar or reprimand, or acquit, the choice, in regards to a slight ethical infraction, would become a very difficult one. Weighing the significance of the infraction against the attorney's loss if disbarred, the court could, in the interests of fairness to the attorney, choose not to discipline (or only to reprimand). Yet such a decision might lower the bar's standard of integrity through the apparent condonation of such offense. Resolution of this conflict between theory and practical necessity requires acknowledgment by the court that the imposition of discipline is partially designed as a deterrent, and as such, actually is punishment. The attorney who is suspended merits the punishment because of his misconduct and serves as an example to other attorneys that such conduct will not be tolerated.

¹⁵¹ See note 134 supra. This principle has been used generally to deny attorneys subject to disciplinary proceedings the constitutional rights granted criminal defendants. See Bar Ass'n v. Sugarman, 273 Md. 306, 329 A.2d 1 (1974) (denial of right against self-incrimination); Fellner v. Bar Ass'n, 213 Md. 243, 131 A.2d 729 (1957) (denial of right to stand mute without prejudice granted criminal defendant); Braverman v. Bar Ass'n, 209 Md. 328, 121 A.2d 473, cert. denied, 352 U.S. 830 (1956) (denial of right of free speech under first amendment).
There are only two occasions upon which the Maryland Court of Appeals has used the sanction of suspension. Thus, guidelines as to when this measure is appropriate have yet to be developed. Other states have used suspension freely, in many cases where Maryland has automatically disbarred. The strict Maryland stance is commendable, and the recent recognition of suspension as an appropriate sanction should not result in increased leniency. In other words, suspension should be utilized as an alternative to, not a substitution for, disbarment.

In sum, the Maryland bar has responded to the public demand for increased confidence in the legal profession with basic alterations in the investigative system. Effectuation of these innovations will probably increase the number of disciplinary cases prosecuted in the courts and will thus shift the responsibility to the court to make increasingly difficult decisions, weighing the need for fairness to the individual attorney against the need for integrity in the profession. The rationale of these decisions must refine the principles underlying attorney discipline to facilitate continued maintenance of the legal profession as a public trustee.
