



CHIEF JUSTICE
PASCAL F. CALOGERO, JR.
JUDICIAL ADMINISTRATOR
HUGH M. COLLINS, PH.D.

Supreme Court

STATE OF LOUISIANA
1555 POYDRAS STREET
SUITE 1540

New Orleans

70112-3701

TELEPHONE (504) 568-5747
FAX (504) 589-0321

MEMORANDUM

TO: CHIEF JUSTICE PASCAL F. CALOGERO
SUPREME COURT OF LOUISIANA

JUSTICE HARRY T. LEMMON
SUPREME COURT OF LOUISIANA


JUSTICE CATHERINE D. KIMBALL
SUPREME COURT OF LOUISIANA

JUSTICE BERNETTE J. JOHNSON
SUPREME COURT OF LOUISIANA

JUSTICE JEFFREY P. VICTORY
SUPREME COURT OF LOUISIANA

JUSTICE CHET D. TRAYLOR
SUPREME COURT OF LOUISIANA

JUSTICE JEANNETTE T. KNOLL
SUPREME COURT OF LOUISIANA

FROM: TIMOTHY J. PALMATIER,
CHIEF DEPUTY JUDICIAL ADMINISTRATOR 

DATE: SEPTEMBER 15, 2000

RE: SUPREME COURT COMMITTEE ON THE PREVENTION OF LAWYER
MISCONDUCT, PRESENTATION AT
ADMINISTRATIVE CONFERENCE - SEPTEMBER 19, 2000

In preparation for the Conference presentation by the Supreme Court Committee on the Prevention of Lawyer Misconduct, please find attached a summary sheet (Attachment "A") which lists, by priority and presenter, the numbered decision to be presented as reported in the original Report of the Committee dated June 28, 2000 (Attachment "B").

Please be advised that, at present, Mmes. O'Neill, Hogan, Holt, and Jupiter as well as Messrs. Ciolino, Smith, Stallworth, Brown, Plattsmier, Charbonnet, Hardin, Neuner, and Marvin, plan to attend the scheduled Conference.

TJP/mlr
Attachments

cc: Members, Supreme Court Committee on the Prevention of Lawyer Misconduct
Hugh M. Collins, Ph.D., Judicial Administrator
Ms. Sandra Vujnovich, Executive Assistant to Chief Justice Pascal F. Calogero, Jr.

COMMITTEE ON THE PREVENTION OF LAWYER MISCONDUCT

SUMMARY SHEET

<u>Decision #</u>		<u>Member</u>
<u>HIGHEST PRIORITY</u>		
16	Amend RPC to require lawyers to maintain client trust accounts in banks with overdraft notification to ODC	Plattsmier
3	Request the law schools to implement a three-hour legal professions course	Ciolino
4, 11	Include ethics on essay bar exam	Ciolino
10	Increase MPRE passing grade from 75 to 80	Ciolino
13	Require first year admittees to obtain 15 CLE hours in ethics, professionalism, and law office management	Hogan
<u>PRIORITY</u>		
9, 14	LSBA study internship/mentoring programs	Hardin
17, 18	LSBA study mandatory malpractice insurance and/or fidelity bonding	Hardin
<u>OTHER REQUESTS</u>		
5, 6	Disciplinary Board distribute information and videotapes to law schools	Brown
7	Disciplinary Board, LSBA, and Bar Foundation distribute information about speakers bureaus to law schools	Brown
15	LSBA & Bar Foundation study incentive of legal education debt reduction to encourage attorneys to practice public service law	Brown
<u>CONTROVERSIAL ISSUE</u>		
1	Require National Character & Fitness Assessment application to be completed prior to law school	Holt/Smith

ENDORSEMENT OF THESE TASKS WHICH HAVE ALREADY BEEN UNDERTAKEN

- 2 Orientation on ethics/professionalism during first year of law school
- 8 LSBA distribute handbook with RPC, Rule XIX to new admittees
- 21 Allow law office management courses to qualify for CLE credit



VOTED AGAINST

- 12 Mandatory Bridging the Gap
- 19 Random client trust account audits
- 20 Mandatory additional one hour of ethics within 15 CLE credits

REPORT

OF THE

SUPREME COURT COMMITTEE
ON THE PREVENTION OF LAWYER MISCONDUCT

June 28, 2000

SUPREME COURT COMMITTEE ON THE PREVENTION OF LAWYER MISCONDUCT

Honorable Chet D. Traylor (Chair)
Justice, Louisiana Supreme Court
301 Loyola Avenue
New Orleans, LA 70112
(504) 568-5744
FAX (504) 568-5718

Lila Tritico Hogan
P.O. Box 1274
Hammond, LA 70404
(504) 542-7730
FAX (504) 542-7756

Professor Dane S. Ciolino
Loyola University School of Law
7214 St. Charles Avenue
Campus Box 901
New Orleans, LA 70118
(504) 861-5550
FAX (504) 861-5733

Sibal S. Holt
P.O. Box 3477
Baton Rouge, LA 70821
(225) 383-5741
FAX (225) 383-8847

Professor N. Gregory Smith
LSU School of Law
Paul M. Hebert Law Center
Baton Rouge, LA 70803
(225) 388-8701
FAX (225) 388-5937

Clare F. Jupiter
650 Poydras Street, Ste. 2000
New Orleans, LA 70130
(504) 561-8933
FAX (504) 561-6050

Vice Chancellor Arthur E. Stallworth
Southern University Law Center
Post Office Box 9294
Baton Rouge, LA 70813
(225) 771-2552
FAX (225) 771-2474

Mr. Charles B. Plattsmier
Chief Disciplinary Counsel
4000 S. Sherwood Forest Blvd.
Suite 607
Baton Rouge, LA 70816
(225) 293-3900
FAX (225) 293-3300

Professor Terry A. O'Neill
Tulane University School of Law
6329 Freret Street
New Orleans, LA 70118-5670
(504) 865-5963

Mr. Bernard L. Charbonnet, Jr.
2140 Rue Royale
New Orleans, LA 70116
(504) 949-0996
FAX (504) 949-1001

Donald R. Brown
1216 Stubbs Avenue
Monroe, LA 71201
(318) 388-4303
FAX (318-388-4176

Mr. Harry S. Hardin, III
201 St. Charles Avenue, 49th Floor
New Orleans, LA 70170-5100
(504) 582-8170
(504) 582-8583

Mr. Frank X. Neuner, Jr.
P.O. Drawer 52828
Lafayette, LA 70505-2828
(318) 237-7000
FAX: (318) 233-9450

Retired Judge Charles A. Marvin
1007 East Chrislo Drive
Minden, LA 71055
(318) 377-0780

Ms. Elizabeth Erny-Foote
P.O. Box 1632
Alexandria, LA 71309-1632
(318) 445-4480
FAX (318) 487-1741

Mr. Julian R. Murray, Jr.
Suite 1000
One Galleria Blvd.
Metairie, LA 70001
(504) 833-5600
FAX (504) 833-8080

STAFF:

Mr. Timothy J. Palmatier
Chief Deputy Judicial Administrator
1555 Poydras Street, Suite 1540
New Orleans, LA 70112-3701
(504) 568-5745
FAX (504) 599-0321

INTRODUCTION

The regulation of the practice of law encompasses more than just an effective disciplinary board and functioning regulatory scheme. The Committee established by the Louisiana Supreme Court to study mechanisms designed to prevent lawyer misconduct considered its mission to include expansive consideration of all areas related to the delivery of legal services. In that regard, the Committee examined issues germane to pre-law school admittance, law school subject matter, bar examination testing, early post-admission challenges for young lawyers, and desirable changes to the Rules of Professional Conduct and/or Supreme Court Rule XIX targeting specific areas of ongoing concern.

Working groups of the Committee generated 21 separate recommendations for consideration by the Committee as a whole. Upon subsequent review and study, many of the recommendations were approved, others consolidated or modified, and still others referred for additional study by the Louisiana State Bar Association.

A significant portion of the recommendations included in this report deals with the educational component. Education, both at the law school level and at the post-admission level, has been addressed. Because representation of the Committee included law school ethics professors, members of the organized Bar, as well as individuals associated with the disciplinary system, the Committee strongly believes that there exists a favorable climate within all three groups targeting enhanced emphasis on education of ethics and professionalism rules.

Finally, the Committee believes strongly that those recommendations which have carried their unanimous approval should be considered for immediate implementation. The concepts of internship, mentoring, fidelity bonding, and mandatory malpractice coverage will obviously require additional study and considerable thought. The remaining recommendations can be more easily implemented and generate early beneficial results.

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DECISION 1

REQUIRE NATIONAL CHARACTER AND FITNESS ASSESSMENT APPLICATION PRIOR TO COMMENCEMENT OF LAW SCHOOL

Commentary: The recently implemented National Character and Fitness Assessment is conducted on second-year law students. If someone is going to be excluded from taking the Louisiana bar exam based upon this assessment, it would make more sense to conduct this inquiry prior to admission to law school. The student would know in advance of investing the money and time in a law school education whether he will be allowed to take the bar exam.

ACTION OF THE COMMITTEE:

The Committee by majority recommends that such assessment be undertaken as part of the admissions process at the law schools. When a student is accepted, he would be provided with the character and fitness assessment application which must be completed prior to the commencement of law school.

One member abstained.

Professor Greg Smith, who did not attend the last meeting of the Committee at which the vote was taken on all the Decisions in this report, dissents, with written comments included at his specific request in Attachment "A."

DECISION 2

RECOMMEND EACH LAW SCHOOL AND THE LOUISIANA STATE BAR ASSOCIATION HAVE AN ORIENTATION DURING THE FIRST YEAR ON ETHICS AND PROFESSIONALISM TOPICS

Commentary: The Committee considered requesting that the law schools and the Louisiana State Bar Association have a series of orientation lectures during the first year of law school covering the issues of ethics, professionalism, and law practice, including the realities of law practice, availability of career opportunities in the legal field, and the financial difficulties faced by solo and small firm practitioners. (Perhaps Mississippi and Georgia programs could be used as models) The topics are simply too important to wait until the second or third years. They should be taught from the very beginning while the students are still enthusiastic and imbued with a sense of idealism.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends to the Supreme Court that it forward correspondence to the deans of the law schools in the state, and the Louisiana State Bar Association with a recommendation for such an orientation program during the first year of law school.

DECISION 3

REQUEST LAW SCHOOLS TO REQUIRE A MINIMUM OF THREE (3) HOURS OF ETHICS

Commentary: Presently, only Tulane Law School has a three-hour legal professions course. Considered the advisability of such a requirement at all law schools in the state.

ACTION OF THE COMMITTEE:

The Committee unanimously and strongly recommends the Supreme Court request that the law schools implement a required three-hour legal professions course.

DECISION 4

REQUEST LAW SCHOOLS TO EMPHASIZE MORE RELEVANT AND PRACTICAL ETHICS TOPICS IN LEGAL PROFESSIONS COURSES

ACTION OF THE COMMITTEE:

The Committee considered this matter and incorporates its recommendation under Decision 11.

DECISION 5

REQUEST THE LOUISIANA ATTORNEY DISCIPLINARY BOARD TO DISSEMINATE INFORMATION TO THE LAW SCHOOL PROFESSORS TEACHING LEGAL PROFESSIONS

Commentary: The Committee considered that the Supreme Court request the Disciplinary Board and the Disciplinary Counsel to regularly disseminate to the law schools - specifically to those professors teaching legal ethics - the number and nature of cases in which attorneys are being disciplined or diverted, the rules violated, and the discipline imposed for those violations. The law professors, of course, read the advance sheets and see the reported decisions by the Supreme Court disciplining attorneys. However, for the most part these cases are flagrant and self-evident. The Disciplinary Board and Disciplinary Counsel could perform a very valuable service by seeing that law students have the opportunity to evaluate the more mundane and subtle violations. Knowing how to avoid the smaller problems in all likelihood will reduce the number of more serious infractions.

ACTION OF THE COMMITTEE

The Committee unanimously recommends to the Supreme Court that it instruct the Disciplinary Board and the Disciplinary Counsel to act in accord with the above commentary.

DECISION 6

REQUEST THE LOUISIANA ATTORNEY DISCIPLINARY BOARD TO PREPARE VIDEOTAPE(S) OF THE DISCIPLINARY PROCESS AND A SIMULATED DISCIPLINARY HEARING AND DISTRIBUTE IT TO THE LAW SCHOOL PROFESSORS TEACHING LEGAL PROFESSIONS

Commentary: If the law students could see a simulated disciplinary hearing, it would help them understand Louisiana Supreme Court Rule XIX.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends to the Supreme Court that it instruct the Disciplinary Board to provide and disseminate a videotape of a simulated disciplinary hearing.

DECISION 7

REQUEST THAT THE LOUISIANA ATTORNEY DISCIPLINARY BOARD, LOUISIANA STATE BAR ASSOCIATION, AND LOUISIANA BAR FOUNDATION, DISTRIBUTE INFORMATION ABOUT ITS SPEAKERS BUREAUS TO THE LAW PROFESSORS INCLUDING THOSE TEACHING LEGAL PROFESSIONS, AND REQUEST THAT THE LAW SCHOOLS UTILIZE THESE SPEAKERS

Commentary: The Committee considered that the Supreme Court request the Disciplinary Board, Louisiana State Bar Association, and Louisiana Bar Foundation to disseminate information about its Speaker's Bureaus to all law professors, particularly those who teach legal professions (ethics) and a list of topics designed for 50-minute classes. The members would be available to speak at the law schools and develop topics for presentations. There are many experienced and qualified attorneys who would volunteer to serve. The presentations should not be limited to ethics classes. There are many courses taught in the law schools where it would be very effective to weave in a guest speaker to discuss some of the ethical issues related to the substantive law. Further, the law school professors who teach legal professions would be urged to use these speakers at least once a semester.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends that the Supreme Court make the request as outlined above.

DECISION 8

ENDORSE LOUISIANA STATE BAR ASSOCIATION'S DISTRIBUTION OF THE FREE LOUISIANA LAWYERS' HANDBOOK TO ALL NEW ADMITTEES

Commentary: Each new admittee should receive a free *Louisiana Lawyers' Handbook* which would include the Rules of Professional Conduct, Supreme Court Rule XIX, and "The Louisiana Lawyer and Other People's Money."

ACTION OF THE COMMITTEE:

The Committee unanimously recommends that the Supreme Court endorse the Louisiana State Bar Association's plan for distribution of the free *Louisiana Lawyers' Handbook* to all new admittees.

DECISION 9

REQUEST THE LOUISIANA STATE BAR ASSOCIATION STUDY THE CONCEPT OF AN INTERNSHIP AND/OR MENTORING PROGRAM

Commentary: While an internship program has merit, there are many complex issues which would need to be addressed. The Louisiana State Bar Association House of Delegates passed a resolution in June, 1999 requesting a committee be established to study the internship issue. The Committee believes this program needs further study.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends that the Supreme Court recommend to the Bar Association the appointment of a Committee to study the concept of an internship and/or mentoring program.

DECISION 10

INCREASE PASSING GRADE ON MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION FROM 75 TO 80

Commentary: While approximately half of the states using the MPRE accept a grade of 75, the remaining states require grades of 80 to 85. If we are attempting to emphasize the need for ethical conduct by attorneys practicing in Louisiana, it seems that we should at the very least require a mid-range passing grade on the MPRE.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends to the Supreme Court that it increase the MPRE passing grade to 80.

DECISION 11

INCLUDE ETHICS AS A SUBSTANTIAL SUBJECT ON FUTURE ESSAY BAR EXAMINATIONS

Commentary: At present, the essay bar examinations do not contain any questions regarding legal ethics. Rather, the Admissions Committee accepts evidence that the applicant has successfully passed the Multistate Professional Responsibility Examination (MPRE). While the committee favors the continued use of the MPRE, we considered whether there should be an additional ethics section on the essay bar exam which would include the provisions of Rule XIX, professionalism, the difference between the Louisiana Rules of Professional Conduct and the ABA Model Rules, and practical issues such as how to:

- a. open and operate a client trust account;
- b. establish a calendar (tickler) system;
- c. communicate with clients;
- d. set fee arrangements, send engagement letters, and establish billing procedures;
- e. avoid and/or obtain help for substance abuse problems;
- f. supervise staff;
- g. organize files;
- h. utilize a conflicts check system;
- i. handle a disciplinary complaint;
- j. terminate representation; and
- k. return files.

These issues cover the great majority of disciplinary complaints and would help the law student identify ethical issues faced daily in the practice of law.

ACTION OF THE COMMITTEE:

The Committee by majority recommends approval of the above proposal. However, the Committee on Bar Admissions should retain its discretion on how best to incorporate the issues on the essay examination.

Professor Greg Smith, who did not attend the last meeting of the Committee at which the vote was taken on all the Decisions in this report, dissents, with written comments included at his specific request in Attachment "A."

DECISION 12

EXPAND BRIDGING THE GAP INTO A MORE COMPREHENSIVE SKILLS PROGRAM EMPHASIZING ETHICS, LAW OFFICE MANAGEMENT, AND PROFESSIONALISM, AND MAKE IT MANDATORY

Commentary: The Committee considered whether every lawyer should be trained in the basics of law office management, including how to set up and manage a client trust account, fee arrangements and billing procedures, calendar or tickler systems, and communicating with clients. The training can be part of Bridging the Gap and should also include practical sessions in ethics, Rule XIX, and professionalism. Before admission to the bar, every new admittee would be required to attend the greatly expanded Bridging the Gap.

ACTION OF THE COMMITTEE:

The Committee voted against this in favor of Decision 13.

DECISION 13

REQUIRE FIRST YEAR ADMITTEES TO OBTAIN 15 CLE HOURS IN SPECIALLY DESIGNED COURSES IN ETHICS, PROFESSIONALISM, AND LAW OFFICE MANAGEMENT

Commentary: The current waiver of Mandatory Continuing Legal Education for first-year admittees should be eliminated. These lawyers should be required to obtain 15 CLE hours, but specially designed to train the lawyers in ethics, professionalism, and law office management. Participation in the Bridging the Gap program may be used to meet this CLE requirement. These CLE programs should emphasize potential topics, such as how to:

- a. open and operate a client trust account;
- b. establish a calendar (tickler) system;
- c. communicate with clients;
- d. set fee arrangements, send engagement letters, and establish billing procedures;
- e. avoid and/or obtain help for substance abuse problems;
- f. supervise staff;
- g. organize files;
- h. utilize a conflicts check system;
- i. handle a disciplinary complaint;
- j. terminate representation; and
- k. return files.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends to the Supreme Court that it implement the above proposal.

DECISION 14

STUDY CONCEPT OF NEW ADMITTEES, AS A CONDITION OF ADMISSION, NAMING AN EXPERIENCED PRACTITIONER AS A 12-MONTH MENTOR

Commentary: The Committee considered whether before admission to the Bar, each admittee would be required to register a twelve-month mentor with the Court. The mentor would be a Louisiana lawyer in good standing who has practiced law for over five years. Guidelines for mentoring can be written by this Committee if the Supreme Court approves this program. The mentor would be immune from liability.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends that the Supreme Court recommend to the Bar Association that it study this mentoring concept in conjunction with the internship program discussed in Decision No. 9.

DECISION 15

REQUEST THE LSBA ACCESS TO JUSTICE PROGRAM AND LOUISIANA BAR FOUNDATION STUDY PUBLIC SERVICE OPPORTUNITIES FOR LAWYERS, WITH LEGAL EDUCATION DEBT REDUCTION AS AN INCENTIVE

Commentary: The Committee considered the issue of lawyer overcrowding contributing to lawyer misconduct. Apparent general consensus is that there is a causal relationship, but little consensus as to what the remedy is at the law school level. The Supreme Court ultimately controls the number of attorneys admitted to practice in the state. It has to be recognized that there are only so many lawyers that can be absorbed into society without there being a deleterious effect. At the same time, the Committee members recognize there is a large percentage of the population badly in need of legal services, particularly in the inner-city and rural areas. In that sense, it could be argued that there are not enough lawyers. The real problem seems to be in the allocation of attorney resources.

There are probably law students who have an interest in serving those segments of society that are presently not being reached, but the students are faced with the economic realities of servicing the debt which they have incurred to obtain their legal education. In the last 15 years, the state has increased the number of lawyers practicing by almost 50%, but little, if anything, has been done to improve the availability of legal services to the poor and disadvantaged. However, the proliferation of lawyers has contributed to lawyer misconduct and the public disillusionment with the legal profession.

The Committee considered whether the Supreme Court should use its considerable influence to encourage the creation of more scholarships, or forgiveness of tuition debts, for those students who agree to spend a given number of years practicing public service law. The source of these additional funds could range from the Louisiana Legislature, the Louisiana Bar Association, the Louisiana Bar Foundation, law firms, and individual lawyers. In the state law schools, the public through its tax dollars, is already underwriting a portion of the cost of educating law students. The

private law schools should be urged to create scholarships for students who agree to practice public service law. However, this issue needs to be studied with other recommendations to the Court.

The Louisiana State Bar Association's Access to Justice Committee would be the proper Committee to handle this request.

ACTION OF THE COMMITTEE:

The Committee voted to table this proposal. However, the Committee recommends that the Supreme Court ask the Louisiana State Bar Association's Access to Justice Committee together with the Louisiana Bar Foundation to consider the above concept.

DECISION 16

AMEND SUPREME COURT RULES TO REQUIRE LAWYERS TO MAINTAIN CLIENT TRUST ACCOUNTS ONLY IN THOSE BANKS WHICH WOULD NOTIFY THE OFFICE OF DISCIPLINARY COUNSEL IF A LAWYER'S TRUST ACCOUNT IS OVERDRAWN

Commentary: The disciplinary system has conducted a study which reflects that of the nearly 200 disbarments handed down by the Louisiana Supreme Court in the last 25 years, 60% deal with conversion of client funds or other improper funds handling. In most instances, complaints were preceded by typically multiple overdrafts on client trust accounts. Supreme Court Rule XIX and the Louisiana Rules of Professional Conduct currently require lawyers to maintain client trust accounts for the proper segregation of client funds from those of the attorney. An amendment to the Louisiana Rules of Professional Conduct should be considered which would require Louisiana attorneys to maintain client trust accounts only in those banks which would offer overdraft notification on lawyer's trust accounts with notice being forwarded to the Office of Disciplinary Counsel. Such notification should provide an early opportunity for the discipline system to intervene where improper fund handling is occurring and should serve to prevent substantial harm to the public.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends to the Supreme Court that it amend Supreme Court Rule XIX and the Louisiana Rules of Professional Conduct to implement the above proposal.

DECISION 17

AMEND SUPREME COURT RULES TO REQUIRE ALL LAWYERS TO SUBMIT PROOF ANNUALLY OF MALPRACTICE INSURANCE

Commentary: Attorney negligence may result in substantial harm to their clients. The harm is compounded by the attorney's individual inability to respond financially to repair the harm caused. The Committee considered whether the Court should consider studying the requirement that all Louisiana licensed attorneys have malpractice insurance as a means of protecting the public.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends to the Supreme Court that this proposal be referred to the Louisiana State Bar Association for further study.

DECISION 18

AMEND SUPREME COURT RULES TO REQUIRE ALL LAWYERS TO SUBMIT PROOF ANNUALLY OF FIDELITY BONDING

Commentary: Sixty percent of all disbarments handed down by the Louisiana Supreme Court in the last 25 years, and a substantial number of suspensions, involved commingling and conversion of client funds by the attorney or staff members. Many industries and professions whose duties include the handling of other people's funds impose a requirement that fidelity bonding be maintained to insure against the risk of employee dishonesty and defalcation (i.e., bank employees, retirement fund managers, etc.). Requiring fidelity bonding for all attorneys, even at minimal levels of coverage, would provide a source of funding for those members of the public who have been harmed by the dishonest attorney whose intentional acts result in loss. The LSBA Client Protection Fund, while attempting to address this concern, has an inadequate and unstable source of funding to provide any meaningful remedy. Insurance carriers who write fidelity bonding would likely impose their own rules for random audits and thereby aid and assist in the monitoring of client trust accounts thereby substantially reducing the incidents of conversion.

ACTION OF THE COMMITTEE:

The Committee unanimously recommends to the Supreme Court that this proposal be referred to the Louisiana State Bar Association for further study.

DECISION 19

REQUIRE THE OFFICE OF DISCIPLINARY COUNSEL TO CONDUCT RANDOM CLIENT TRUST ACCOUNT AUDITS

Commentary: At present, the disciplinary system may gain access to an attorney's client trust account and other financial records only if there is probable cause to believe that a violation of the Rules of Professional Conduct has occurred. Many states have embraced the concept of random audits of client trust accounts as a prophylactic measure designed to encourage and enhance compliance with accounting and ethics rules applicable to client trust accounts. Many businesses and industries, including governmental offices, are already subject to random audits. Permitting the disciplinary system to establish and operate a mechanism for conducting random audits of client trust accounts should be considered as a means of enhancing and enforcing attorney compliance with accounting and ethical rules applicable to client trusts accounts.

ACTION OF THE COMMITTEE:

The Committee unanimously opposes this measure.

DECISION 20

ADD AN ADDITIONAL ETHICS HOUR REQUIREMENT WITHIN THE 15 MANDATORY CLE CREDITS

Commentary: The Committee considered whether one hour of training a year is too little for such an important topic as ethics and whether adding one more hour within the total 15 hours would not be unduly burdensome and increase the possibility of learning something which will help lawyers practice ethically. The additional hour would be very practical and relevant such as in the "How To" topics listed in Decision 4 above.

ACTION OF THE COMMITTEE:

The Committee unanimously opposes this measure.

DECISION 21

ALLOW LAW OFFICE MANAGEMENT COURSES TO QUALIFY FOR CLE CREDIT

Commentary: Currently, only specified law office management courses qualify for CLE credit. The Committee considered whether this should be broadened to include any course which helps an attorney represent his/her client more efficiently and ethically, and be approved for CLE credit, leaving the review and approval process to the CLE committee.

ACTION OF THE COMMITTEE:

The Committee unanimously opposes this measure as unnecessary. The CLE committee has already taken steps to approve law office management courses.

ATTACHMENT "A"

DISSENTING COMMENTS BY PROFESSOR GREG SMITH, PAUL M. HEBERT LAW CENTER, LOUISIANA STATE UNIVERSITY

DECISION 1

REQUIRE NATIONAL CHARACTER AND FITNESS ASSESSMENT APPLICATION PRIOR TO COMMENCEMENT OF LAW SCHOOL

I don't think that we've adequately thought this one through.

Currently, as a result of a Supreme Court order, second year law students fill out an extensive character and fitness questionnaire, pay \$125, and send the questionnaire off for evaluation. It takes some time for the results to be returned. As I understand the recommendation, we would want law school applicants to go through the same process before they walk through the door of the law school.

I have some questions:

1. How many bar applicants are actually excluded because of character and fitness problems? If, as I suspect, the number of people who are actually excluded, on character grounds, is very small, then the justification for this proposal is very slight.
2. Shouldn't this sort of proposal have the endorsement of state bar committees that are concerned with bar admission and the character and fitness of bar applicants? At most, it seems to me that we should refer the idea to those committees to consider.
3. How well is the current program (second-year law student character applications) working? I recognize that the current program is very new, so we may not know a great deal yet about how it is working out. But I have the impression that many of the second year law students at LSU who completed the paperwork this last year had lots of questions and concerns about what they were being asked to do and how they were supposed to fill out the various papers. If there are some problems with the current program, do we really want to move them forward to the time before individuals are even enrolled in law school?
4. Are we going to require law school applicants to await the results of the character inquiry before they enroll? If we don't, the purported "financial" benefit of the recommendation will not be altogether complete, because students will have already paid for their first semester of legal education. On the other hand, if we do require applicants to await the results of the inquiry before they enroll, then we will prevent late applicants and late-accepted applicants from going to law school. We might also force some top flight law school applicants who are accepted at good out of state law

schools to accept time-sensitive scholarship offers at those other schools, if they have to respond to those offers before the results of the character inquiry are returned. If the real motive for this proposal is to help out prospective law students, I don't think it should be applied to exclude otherwise qualified applicants from enrolling in law school. If this is not the real motive, then the proposal should be rejected for being disingenuous.

5. In further elaboration of one of the issues I raised in paragraph 4 immediately above, I wonder how well the program is going to work out for applicants who are placed on a "waiting list." The Committee has recommended that the character and fitness assessment applications be provided to applicants when they are accepted. Assuming that we don't require the results of the character inquiry to be returned before students enroll in law school (which would be a bad idea), we ought to recognize that some individuals may not be admitted to law school until a couple of days before law school is supposed to begin. This happens at LSU with some regularity. These folks will presumably have to jump to fill out the papers, and pay the \$125 to process them, even though there is no chance that the results of the character inquiry will be available to them before they have to pay tuition for their first semester of law school. It is true that there are probably no more than a handful of people who are admitted to law school just before the semester begins, but I would guess that even fewer individuals are barred from admission to the bar on character and fitness grounds.
6. Some applicants will apply to several law schools, not all of them in state. The best applicants who do this will be accepted at several law schools. If one of these applicants takes some time to think about which school to attend, he or she may be faced with the need to fill out the character and fitness paperwork and pay the \$125, even if he or she ultimately ends up going out of state. On the other hand, the extra paperwork and the extra cost associated with this proposal might induce one of these top flight applicants to choose an out of state law school. Are these the sorts of results that we would like to see?
7. What about students attending out of state law schools who want to sit for the Louisiana bar examination? Wouldn't we permit them to sit for the bar exam even though they did not comply with the requirement, provided that they pass the character and fitness inquiry that all applicants must satisfy after graduation from law school? Otherwise, we would not admit people to the Louisiana bar who attended out of state law schools.
8. What happens to law school applicants who plan to attend Louisiana law schools who don't plan to practice in this state? Would they still be required to fill out the paperwork and pay the \$125?
9. If the answer to question 8 is no, and an applicant doesn't meet the requirement, but later decides that he or she would like to practice in Louisiana, would the applicant be prohibited from sitting for the bar exam?

I don't like this recommendation at all. But if the momentum behind it is too powerful to resist, maybe it could at least be deflected so that the result is that we accelerate the current program by one year. That is, instead of requiring second year law students to complete the character and fitness questionnaire, we would require first year law students to do so.

DECISION 11

INCLUDE ETHICS AS A SUBSTANTIAL SUBJECT ON FUTURE ESSAY BAR EXAMINATIONS

I don't have an objection to incorporating legal ethics and professional responsibility issues into the essay part of the bar examination. However, I think the text of the recommendation goes too far. Testing on "professionalism", for example, would be problematical, given the uncertain meaning of that expression. And why would we want to have an essay question on how to organize a file or how to establish a tickler system?

I think we would be better off saying that we think it is a good idea to have some legal ethics or professional responsibility coverage on the essay portion of the bar exam, and leave the rest up to the examiners.