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INTRODUCTION

On August 12, 1969, the House of Delegates of the American Bar Association adopted the Code of Professional Responsibility as a model of ethical conduct for attorneys throughout the country. The Code grew out of the efforts of the ABA Special Committee on Evaluation of Ethical Standards, with John F. Sutton, Jr. as reporter, which was appointed to evaluate the continued vitality of the Canons of Professional Ethics, first promulgated in 1908. In determining that a new set of standards was necessary, the committee identified, in the preface of the Code, four shortcomings of the Canons:

(1) There are important areas involving the conduct of lawyers that are either only partially covered in or totally omitted from the Canons; (2) Many Canons that are sound in substance are in need of editorial revision; (3) Most of the Canons do not lend themselves to practical sanctions for violations; and (4) Changed and changing conditions in our legal system and urbanized society require new statements of professional principles.

Now, a decade after its effective date, similar charges are being leveled with increasing frequency—although perhaps with less urgency and concerning different substantive areas—against the present Code of Professional Responsibility. Among members of the bar there is evidence of increasing apprehension over the effectiveness of the Code, spawned by such considerations as the failure of the Code to deal with a number of difficult issues, to reflect the diversity of the profession, to consider the problem of conflicting standards, to recognize the special situation of the public lawyer, and to alter the common perception of ethical rules as more commendatory than mandatory. From outside the bar, the growing consumer movement for better delivery of legal services, recent Supreme Court decisions on the commercial aspects of legal practice, current antitrust attention by the Justice Department, and heightened public concern with legal ethics in the post-Watergate era have also spurred the movement to reconsider the ethical relationship between lawyer and public.

In light of these criticisms, on August 22, 1977, the ABA appointed the Special Commission for the Evaluation of Professional Standards, with L. Ray Patterson as reporter, to review the need for improvement in the Code. The Commission is now composing a new code dealing with professional standards, a preliminary draft of which is tentatively scheduled for publication in August 1980. The new code, currently

slated to take the form of a restatement, can be expected to make fundamental changes in the formulation of the model for legal ethics.

The purpose of this Symposium is to further these revisory efforts by enlarging the pool of responsible and constructive scholarly criticism that can be drawn upon in reassessing the Code of Professional Responsibility. Reflecting the profession's commitment to a thorough rethinking of the Code, our authors range in their discussions from grappling with broad fundamentals to proposing specific revisions in disciplinary rules. Although at points clearly divergent positions are taken, such as Professor Sutton's and Dean Patterson's suggestions for improvement in the framework of the ethical rules, the authors all endorse some revision, if not wholesale reshaping, of the Code. It is hoped that the ideas presented here will contribute to the creation of more enduring and workable standards of professional ethics.