

WXPost SEP 20 1975
**Bar Criticizes Court
In Disciplinary Snarl**

By J. Y. Smith

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The D.C. Bar charged yesterday that its disciplinary board has been made useless because the D.C. Court of Appeals disregarded its recommended punishment of former Attorney General Richard G. Kleindienst for misleading the Senate.

On Aug. 11, the court suspended Kleindienst from the practice of law in the District for 30 days for "direct and repeated misrepresentations" in answering Senate inquiries about White House interference in the ITT antitrust case.

The bar's disciplinary board had recommended last May that Kleindienst be suspended for one year.

The charge that the court had undercut the board's authority came in a request filed by the bar Sept. 8 asking that the court hold a new hearing on the Kleindienst matter.

The petition also asked that the court "state, for the benefit of the bar, the factors to be considered by the disciplinary board prior to recommending the disciplining of an attorney."

On Thursday, the court issued an order refusing the request. It gave no explanation for its action.

But Associate Judge George R. Gallagher said in a statement attached to the order, "I do not understand why this court has turned down this genuine request of its own disciplinary board. If this court will not give the board the guidance it seeks, there is no other place to get it."

Associate Judge Austin L. Fickling joined Gallagher in his statement.

The Court of Appeals formed the District of Columbia Bar in 1972 and gave it the power to discipline lawyers. Those found guilty by courts of felonies or less "serious crimes" are disciplined automatically. The court retained the final say in cases where discipline is not automatic.

The Kleindienst case was the first to come before it under that system.

In turning down the disciplinary board's recommendation, the court said: "See DISCIPLINE, D3, Col. 1

DISCIPLINE, From D1

dation of a one-year suspension, the court, by a 4-to-3 vote, said the recommendation appeared to be "underpinned by punitive considerations."

"What is important is that the discipline imposed not have a punitive impact as its primary effect," the majority said.

In asking for a new hearing, the D.C. Bar said: "If the concept of 'punitive' action, as suggested in the Court's opinion, takes hold, then the disciplinary board and the system it administers will be reduced to a hollow shell.

"To avoid this consequence, the opinion of the Court must be modified, the ambiguous language removed, and clearer policy guidance set forth as to when a 'punitive impact' is to be regarded as the 'primary effect.'"

Chief Judge Gerard D. Reilly declined to comment on the court's refusal to rehear the case, Frederick A. Ballard, chairman of the disciplinary board, also declined to comment.

In his statement attached to Thursday's order, Judge Gallagher said that when the disciplinary board "acts with fundamental fairness and reason, I think we should adopt its recommendations for the establishment



RICHARD G. KLEINDIENST
... bar penalty cut

of a unified bar in this jurisdiction, as well as others, was to enable the bar to discipline itself."

In its petition, the D.C. Bar said the court's interpretation of "punitive" would be cited in future cases "to the effect that discipline should not be imposed if its impact is to punish respondent . . .

"The opinion allows every (lawyer facing discipline) to argue that the imposition of any discipline has unavoidable punitive consequences. Indeed, every (Such lawyer) may be able to argue that the primary effect of any reprimand or suspension is its impact on his ability to practice law."