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Virginia Bar Notes

1948–1962: Dudley W. Woodbridge (Acting Dean 1948-1950)

1968

Ethics (1959-1966)

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Repository Citation
Woodbridge, Dudley Warner, "Ethics (1959-1966)" (1968). *Virginia Bar Notes*. 10.
https://scholarship.law.wm.edu/vabarnotes/10

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Ethics

J 59 1 June 1959. 460.

1. In 1958 Rhodes Yancey, a lawyer of Roanoke specializing in the trial of automobile accident cases, entered into a written contract with Hubert Hobart, a layman and experienced investigator. The material portions of the contract provided:

"(a) Yancey hereby employs Hobart for a term of three years as clerk and special investigator in that portion of Yancey's law practice involving personal injuries, and further agrees to pay Hobart as basic compensation for his services the sum of $2400 per year, payable monthly at the rate of $200.

"(b) Yancey further agrees to pay Hobart 10% of the gross fees accruing to Yancey on account of his successful representation of plaintiffs in personal injury business investigated by Hobart within the City of Roanoke and the Counties of Roanoke, Bedford, Franklin, Botetourt, Craig and Montgomery.

"(c) In consideration of the basic salary and commissions promised as aforesaid, Hobart agrees to perform faithfully the duties and work assigned to him by Yancey, and at all times to work in the interest and furtherance of the business of Yancey."

Hobart now informs you that, although he has been well compensated by Yancey in salary and commissions for his services as an investigator, he desires to terminate his employment so that he may transfer his investigating activities to the State of New Jersey. He further states that Yancey has told him that, if he undertakes to terminate the contract prior to the expiration of the three-year term, he, Yancey, will bring an action to recover damages for breach of contract. Hobart then inquires whether he may successfully defend against such an action if brought. What should you advise him?

(ETHICS) I would advise Hobart that he could make a successful defense. The contract may be avoided by him because it is against public policy to permit an attorney to share fees with a person not an attorney. The non-attorney should not be allowed to practice law indirectly thereby getting some of the benefits but subject to none of the responsibilities. It also tends to stir up litigation. See Q.19 on p.3 of Legal Ethics in these notes. See Canon 34.

1 Dec.1959 477.

1. Lawyer is counsel for Bent in litigation against Hook pending in the Law and Equity Court of the City of Richmond. During the pendency of the litigation, Bent advises Lawyer that he is most anxious to effect a settlement as he is very doubtful of the outcome of the case. Lawyer advises Bent that he feels it would be useless that he(Lawyer) talk to opposing counsel as he knows him to be very stubborn, unreasonable and of an uncompromising nature. Lawyer told Bent he would prefer not talking to Hook, but advised Bent to interview Hook and endeavor to effect a settlement. Is Lawyer's advise proper?

(ETHICS) No. A lawyer should not <u>in any way</u> communicate upon the subject of controversy with a party represented by counsel(Canon 9); nor should he do indirectly what he cannot do directly. And Canon 16 reads in part, "A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not do do * * *"

J 60 1 June 1960 493.

1. For several years Lawyer B has regularly represented Modern Furniture Co. Lawyer B is a member of its board of directors and is paid an annual retainer as its attorney. The furniture company has had good experience in the Collection of its delinquent accounts, because Lawyer B at the outset prepared a form letter to such customers which he used successfully in making collections. These letters were signed by him and mailed from his office.

The furniture company has now suggested that it relieve Lawyer B of the burden of sending so many letters, and it has requested that he give them a supply of his letterheads, on which the company's secretary can type the form letter, and at the bottom of which a facsimile of Lawyer B's signature would be added.

Can Lawyer B ethically permit this practice?

(ETHICS) No. The letters purport to be from a lawyer when in reality they are from the Modern Furniture Co. A lawyer should not allow his name to be used willy-nilly by a non-lawyer in any phase of the practice of law.

509. 1 Dec.1960

1. Client, as heir of the deceased owner, claimed a valuable mine. He and Attorney agreed that Attorney would institute an action to recover the mine, that Attorney would save Client harmless as to any court costs and that Attorney would receive a one-third interest in the property if the litigation were successful. Pursuant to the contract, Attorney brought the action which, due to Attorney's untiring efforts, terminated in Client's favor. Client refused to convey Attorney the one-third interest in the mine, and Attorney filed a bill in equity against Client, asking for specific performance of the contract. Client demurred to the bill. How should the court rule?

(ETHICS) The demurrer should be sustained. The contract is voidable as against public policy since it is champertous and violates two canons of professional ethics. Canon 42 states that a lawyer may not properly agree with a client that the lawyer shall bear the expenses of litigation. Canon 10 states that a lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

1 June 1961 524.

1. Corpus Blackstone, an attorney, was Judge of the County Court of McDill County, Virginia. Reckless Jones was tried before Judge Blackstone on a warrant charging him with assault and battery of his wife, Angel Jones. Judge Blackstone acquitted Reckless Jones of the charge.

Shortly thereafter, Angel Jones brought a suit for divorce from bed and board against Reckless Jones on the ground of cruelty, through her attorney, Will Brown. When Reckless Jones found out that he had been sued for divorce by his wife, he thereupon went to Corpus Blackstone and asked Judge Blackstone to defend his interests in the divorce suit.

Should Judge Blackstone accept employment to defend the interests of Reckless Jones in the divorce suit?

(ETHICS) No. Canon 31 of the Canons of Judicial Ethics(201 Va.cvi) reads in part, "Trial, civil and police justices who by virtue of their office are not prohibited from practicing law, are in a position of great delicacy and should be scrupulously careful to avoid conduct in practice whereby any of them would seem to utilize their judicial position to further their professional success." And Canon 36 of Profession Ethics (201 Va.xcvii) reads in part, "A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

1. Edward Jones, a young lawyer who has recently become qualified to practice in Virginia, has been approached by his older brother Joseph, a certified public accountant practicing in the City of Richmond, with the suggestion that the two of them form a partnership and occupy the same office, thus effecting a rather substantial saving in office and clerical expenses. Edward, having some misgiving as to whether he can ethically become a partner of his brother, seeks your advice. He informs you that the arrangement, if made, would be such that the stationery used by the two would have clearly printed on it the distinction between himself as a lawyer and his brother Joseph as an accountant; that there would be plainly marked on the entrance door to the office a similar distinguishing legend; and that he would restrict himself only to the practice of law and his brother only to the practice of accountancy. What should be your advice to Edward?
(ETHICS) I would advise him that the contemplated partnership would violate Canon 33 which reads in part, "Partnerships between lawyers and members of other professions * * * should not be formed or permitted where any part of the partnership's employment consists of the practice of law." The non-law partner would not be subject to discipline by the courts, nor should he share in fees when he cannot accept responsibility for the work done by the law partner.

1. Thaddeus Hornblower was admitted to practice law in Virginia in November,1961. Hornblower was employed by William Scapeheart to commence a general creditor's suit against Joseph Finchberg. The suit was commenced and a number of secured creditors were made parties defendant to the suit. While the suit was pending Ezra Brown,one of the defendants, told Hornblower that he had planned an extended trip to Europe and offered to sell to him his claim against Joseph Finchberg. Hornblower accepted the offer and purchased Brown's claim. George Green, another of the defendants, was not represented by counsel. During the course of the litigation Hornblower chanced to meet Green on the steps of the court house and Green inquired of him when he expected the litigation to terminate and when Green could expect payment of the debt due him. Hornblower told him that he expected that all of Finchberg's property would be sold within sixty days and that Green had nothing to worry about, that his lien was good and that he would soon receive payment of his entire claim. It later developed in the course of argument on exceptions to the commissioner's report that there was a question as to the validity of Scapeheart's and Green's liens.
May Hornblower be properly criticized for purchasing Brown's claim and advising Green that his claim would shortly be paid?
(ETHICS) Yes, Hornblower may be properly criticized. By Cannon 10 it is improper for an attorney to buy an interest in the subject matter of the litigation, nor should he purport to advise an unrepresented person as to any matter of law as "his lien was good."

1. Oliver Lam, a war veteran, graduated from law school and was admitted to the bar of Virginia. He believed that the current economic boom was beginning to fade and that creditors' rights presented a promising field of practice for a young lawyer. After practicing alone for one year and without many clients, Lam concluded that a partnership would be desirable, and he initiated conversations with Clarence Richman, a successful collection attorney. Before negotiations had progressed very far, Richman died, and his widow qualified as executrix of his estate. Knowing of Lam's interest, Mrs. Richman proposed the sale to him of her late husband's good will, all files, accounts receivable and law practice for $3,000 cash or for 10 per cent of the future receipts from Mr. Richman's clients for a period of five years.
Can Lam ethically accept the widow's proposal in either form?
(ETHICS) He cannot. The turning over of the files to Lam would make him a party to the violation of confidences in violation of Canon 37. It would be indirect advertising in violation of Canon 27. And if Lam gives the widow 10 per cent of his fees, he is sharing fees with a non-lawyer who does not share responsibilities in violation of Canon 34.

1. Shady Billmyer, an energetic but unscrupulous lawyer, visited Elmer Hoover in a South Boston hospital for the purpose of soliciting his personal injury action. Hoover, who had no particular lawyer in mind, agreed for Billmyer to represent him under a contingency contract by which the lawyer would retain one-third of the recovery if successful. Billmyer, recognizing his own limitations as a trial lawyer, sought out the distinguished attorney Darrance Clarrow of Halifax County, who readily agreed to assist Billmyer and to share and share alike in the fee. Clarrow knew nothing of Billmyer's solicitation. Upon the trial of the action, a handsome verdict was recovered by Elmer Hoover. Before the judgment was satisfied, Shady Billmyer was called before the district ethics committee, and under questioning admitted soliciting the case.

What are the rights of (a)Shady Billmyer, and (b) Darrance Clarrow to collect from Hoover fees for their services?

(ETHICS) (a) Billmyer has no rights. His contract for one third of what might be recovered was obtained illegally and he should not be allowed to profit from his own wrong.

(b) Since Clarrow did not know of the illegality, and has rendered substantial services he is entitled to recover on quasi-contractual principles the reasonable value of the services he has rendered. See 5 Am.Jur. pp 366-367.

1 Dec.1964. 634.

1.(a) Jasper Hickory was indicted upon a charge of murder. He employed a local attorney, John C. Lawyer, to represent him. Lawyer conferred at length with his client and made a careful investigation of the facts. Hickory insisted at all times that he was not guilty, and that he was in fact not present at the time and place of the killing. The Commonwealth was relying strongly upon the testimony of Joe Bean, a close relative of the deceased, who said that he had seen Hickory shoot and kill the deceased. Hickory insisted that he was at home, but that as he lived alone he had no evidence to corroborate his statement. Lawyer finally concluded that his client was guilty. May Lawyer continue to represent Jasper Hickory?

(b) In the case stated under paragraph(a)of this question, assume that Jack Swindle told the Commonwealth's Attorney that, at the time of the killing, he saw Joe Bean in another town thirty miles from the place where the killing occurred. The Commonwealth's Attorney knew that Swindle had a questionable reputation for truth and veracity, and he did not believe him.

Under the circumstances, was there any duty on the part of the Commonwealth's Attorney to advise Lawyer of Swindle's statement?

(ETHICS)(a) Yes. Even the guilty are entitled to their day in court and may call for proof by the Commonwealth beyond a reasonable doubt. Lawyer should not make himself judge or jury. Having taken the case Lawyer is privileged and obligated to see it through except under certain unusual circumstances not present here. Otherwise innocent persons who were the victims of circumstances might not be defended and guilty ones might be punished too severely.

(b) Yes. The primary duty of the Commonwealth's Attorney is not to convict but to see that justice is done.

10. Partner Justice of the law firm of Justice & Mercy was employed by Hurt to handle Hurt's personal injury action against Careless, who who insured by Insurance Co. Partner Justice did all the work on the case, and Partner Mercy did not know specifically that the case was in the office. During the pendency of the tort action, Partner Justice agreed upon a settlement of the case with the claims adjuster for Insurance Co. A misunderstanding arose, however, as to the terms of the settlement, and Insurance Co. declined to pay on the grounds that no valid settlement agreement had been reached. Partner Justice concluded that the tort action should be dismissed and an action on contract should be brought against Insurance Co. to enforce the settlement. Knowing that he, Justice, would be the key witness as to the settlement negotiations, he turned the entire matter over to his partner, Mercy.

May Mercy properly institute and prosecute the contract action against Insurance Co. on behalf of Hurt?

(ETHICS) No. When a lawyer is a witness for his client, except as to merely formal matters, he should leave the trial of the case to toher counsel. This disqualification applies to the whole firm with which the lawyer is associated. Therefore Mercy may not accept the employmend. See Canon 19.

1. Lawyer represented Landers in a notorious divorce case that involved prominent people in the community. Lawyer believed that newspaper accounts of the situation put his client, Landers, in an undeservedly bad light. After the first day of trial, Lawyer received an unsolicited telephone call from one of the newspaper reporters and Lawyer said that if he was not quoted, he would give reporter some interesting information. Upon receiving such assurance that his name would not be used, Lawyer told reporter certain details of the rather sordid conduct of Lander's wife with prominent citizen Clark, which he intended eventually to bring out in trial, and with prominent citizen Kent, which he did not intend to bring out in trial. The newspaper published the stories, ascribing them to an anonymous source.

The next morning on the way to court, Landers told Lawyer that if he saw witness Lacy at court, he was going to thrash him, and Lawyer told Landers that he would not blame him for doing so. As they were entering the court building, Lawyer spied Lacy standing around the corner and pointed him out to Landers and stood by while Landers walked over and knocked Lacy to the ground.

Has Lawyer acted improperly in any of the above instances, and, if so, in what respect?

(ETHICS) Lawyer has acted improperly with respect to newspaper publicity and in inciting his client to attack a witness. The Canons in so far as applicable reads

Canon 20. Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. ***. If the Extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously.

Canon 16. A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors.

10. J66 Smith, Jones and Brown, a Virginia law firm, has prepared a profit sharing plan that qualifies under the pertinent provisions of the Internal Revenue Code.

Is it ethical for the firm to adopt the plan which provides, on the basis of a predetermined percentage, benefits for employees of the firm who are not lawyers?

(ETHICS) Rules of Court, Part 6, #2, Canons of Professional Ethics, Canon 34 provides that no division of fees for legal services is proper, except with another lawyer, based upon division of service or responsibility, and the profit sharing plan is therefore unethical.

9. Joseph Dokes was counsel of record for William Smoot in a suit for the specific performance of a contract for sale of real estate. The defendant, Sally Blake, a spinstress seventy years of age, was represented by Hobson Moat. Dokes had known Miss Blake for a number of years and he personally felt that it was to her advantage to settle the case. He, therefore, called on Miss Blake one evening and told her that he felt his client had an excellent opportunity to win the suit, but in order to avoid the expense and uncertainty of litigation he had advised his client to pay to Miss Blake an additional One Thousand Dollars for the property. Miss Blake, being rather timid and desiring to avoid the unpleasantness of litigation, promptly agreed to convey the property to Dokes' client upon the payment of the alleged agreed consideration plus an additional One Thousand Dollars. Dokes promptly prepared a short written agreement in his own handwriting and procured Sally Blake's signature to it. Upon learing of Dokes' visit to his client, Moat addressed the court, in the presence of Dokes, and was highly critical of Dokes' conduct. Thereupon Dokes addressed the court, stating that Moat had been away on vacation, that he, Dokes, was interested in the welfare of Miss Blake, as he had known her for a long time, and that the settlement was advantageous to the parties and would result in saving the time of the court. Dokes called upon Moat for an apology for his critical remarks. Was Dokes entitled to an apology? J67

(ETHICS) Joseph Dokes was not entitled to an apology. The ninth Canon of Professional Ethics states that a lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. Dokes, by dealing directly with Miss Blake, violated this canon and is not entitled to an apology.

1---Ethics

DLL

Susie Wirtz was an elderly spinster who lived in an old residence in the city of Richmond. She was continually harrassed by Ezra Sharpey, who insisted that she pay him a sum of money he contended she owed him on a primissory note secured by a deed of trust on her residence. He threatened to foreclose the deed of trust unless such payment was made. Becoming frantic, Miss Wirtz went to see Adam Crock, a Richmond lawyer, explained her plight and convinced him that she had signed the note and deed of trust given Sharpey only as a result of Sharpey's misrepresentations. Crock, feeling great sympathy for Miss Wirtz, agreed to represent her and they then signed the following paper:

> "It is agreed between Susie Wirtz and Adam Crock that the latter will act as her lawyer in proceedin s to be brought against Ezra Sharpey to have set aside both her note held by him and the deed of trust on her residence at 1011 S. 10th Street in the City of Richmond, it being further understood that all expenses of such proceeding will be borne by Adam Crock without recourse against Susie Wirtz, and that if such proceeding be successful, Susie Wirtz will compensate Adam Crock for his services by executing and delivering a deed conveying to him an undivided one-fourth interest in such residence."

Shortly thereafter, at his own expense, Crock commenced an appropriate proceeding in the Chancery Court of the City of Richmond, as a result of which the note and deed of trust held by Sharpey were found void and without effect. Crock then asked Miss Wirtz to execute and deliver to him a deed conveying an undivided one-fourth interest in her residence. This she refused to do. Crock now has brought a suit against Miss Wirtz in the Law and Equity Court of the City of Richmond seeking specific performance of her agreement to convey to him the undivided interest in her residence. Miss Wirtz asks your advice on whether she has any defense to the suit by Crock. What should your advice be?

Miss Wirtz has a defense. The agreement by Crock to carry on the litigation at his own expense is a champertous contract, unlawful in this state and thus void. There can be no recovery either on the agreement or in quantum meruit for services rendered thereunder, as the courts will not allow to be done indirectly what they refuse to allow to be done directly. (112 Va. 780)

Note: A good argument may also be made that this would constitute taking an interest in the subject matter of a suit proscribed under Cannon 10.