1968

Ethics (1959-1966)

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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 $2,400 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. 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 advice proper?

(ETHICS) No. A lawyer should not in any way 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 ** ** **"
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 typed 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.

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 12 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. 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.xcv) 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.xxvii) 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.
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 might pool their resources and occupy the same office, thus effecting a rather substantial saving in office and clerical expenses. Edward, having some misgivings as to whether he can ethically become a partner of his brother, seeks your advice. He informs you that, 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 be share in fees when he cannot accept responsibility for the work done by the law partner.

Page 555. 1 June 1962.

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 a party to the partnership and owning the same office, Brown joined in 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 whether he expected to receive 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 Canon 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."

Page 554. 1 December 1961.

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 his practice would be unprofitable, 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 goodwill, 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.

59th. 1 June, 1963.
was called before the district ethics committee, and under questioning admitted 
recovery if successful. Billmyer, recognizing his own 
limitations as a trial lawyer, 
under a contingency contract by which 'the lawyer would retain one-third of the 
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 
Hoover fees for their services? 

(a) Billmyer has no rights. His contract for one third of what might be re-
covered 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 366-368.


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, 
under a contingency contract by which 'the lawyer would retain one-third of the 
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 
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value of the services he has rendered. See 5 Am.Jur. pp 366-368.
1. Lawyer represented Landers in a notorious divorce case that involved prominent people in the community. Lawyer believed that newspaper accounts of the situation for his client, Landers, in an undappiness var 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 Landers' 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?

(BTHICS) 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. See. 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, jvors, witnesses and attorneys.

10. 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?

(BTHICS) Rules of Court, Part 6, §3, 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 spinster, 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 learning 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? 467

(BTHICS) 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.
Miss Dirts was an elderly spinster who lived in an old residence in the city of Richmond. She was continually harassed by Ezra Sharpay, who insisted that she pay him a sum of money he contended she owed him on a promissory 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 Dirts went to see Adam Crook, a Richmond lawyer, explained her plight and convinced him that she had signed the note and deed of trust given Sharpay only as a result of Sharpay's misrepresentations. Crook, feeling great sympathy for Miss Dirts, agreed to represent her and they then signed the following paper:

"It is agreed between Miss Dirts and Adam Crook that the latter will act as her lawyer in proceedings to be brought against Ezra Sharpay to have the note held by him and the deed of trust on her residence at 1011 5th Street in the City of Richmond, void and without effect. Crook shall ask Miss Dirts to execute and deliver to him a deed conveying an undivided one-fourth interest in her residence. Miss Dirts shall never oppose the said Crook 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, Crook commenced an appropriate proceeding in the common court of the City of Richmond, as a result of which the note and deed of trust held by Sharpay were found void and without effect. Crook then asked Miss Dirts to execute and deliver to him a deed conveying an undivided one-fourth interest in her residence. Miss Dirts refused to do so. Crook now has brought a suit against Miss Dirts 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 Dirts asks your advice on whether she has any defense to the suit by Crook.

What is your advice to Miss Dirts?

Miss Dirts has a defense. The agreement by Crook to carry on the litigation at his own expense was shampartous contract, unlawful in toto at to end 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. 764)

A good argument can also be made that this could constitute taking an interest in the subject matter of a suit prosecuted under Cannon 10.