Case Western Reserve Law Review

Volume 8 | Issue 3 Article 8

1957

Attorneys at Law

Samuel Sonenfield

Follow this and additional works at: https://scholarlycommons.law.case.edu/caselrev

 Part of the Law Commons

Recommended Citation
Samuel Sonenfield, *Attorneys at Law*, 8 W. Rsrv. L. Rev. 250 (1957)
Available at: https://scholarlycommons.law.case.edu/caselrev/vol8/iss3/8

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

truck from Chicago to Canton. In Chicago, the driver falsely represented the truck as his own and picked up a load for delivery east of Canton. The accident happened on the direct route, so the driver was within the authorized limits of space and time, and ostensibly doing what he was supposed to do, i.e., deliver a truck to Canton. However, the Supreme Court held that the intent to go beyond Canton, coupled with the unauthorized load consigned to a point beyond Canton, took the driver out of the course of his employment as a matter of law.

HUGH ALAN ROSS

ATTORNEYS AT LAW

Representation of Both Sides in a Case Without Disclosure To the Court — Contempt of Court

A court of appeals decision which was discussed in the Survey of 1955 cases[1] came again to attention in the year 1956.[2]

An attorney had been appointed administrator of the estate of an intestate decedent. He filed an application in probate court for and secured the determination of heirship and authority to sell real estate of the decedent in order to pay estate debts.

Subsequently thereto, but obviously for services rendered prior to the determination of heirship, he entered into an agreement in writing with the man determined by the probate court to be the sole heir at law for fees for such representation of the heir. He did not disclose to the probate court his representation of the estate and of the successful claimant to it.

The Supreme Court held this to be a fraud upon it.[3]

> Where one accepts an appointment as administrator of an estate he represents that he has no arrangement for compensation from anyone concerned with the estate, in the absence of a full disclosure concerning such arrangement and the consent of all interested parties thereto. Certainly, such a representation relates to a material existing fact, and if he is violating his duty, a lawyer making such representation knows of its falsity. Necessarily, the representation is intended to be relied upon, and the court in relying upon it almost inevitably makes orders, such as to fees paid from the estate, which it in all probability would not do had a full disclosure been made to it.[4]

---

[1] 1955 Survey, 7 WEST. RES. L. REV. 235 (1956)

[2] *In re* Estate of Wright, 165 Ohio St. 15, 133 N.E.2d 350 (1956)

[3] See Canons 6, 22, A.B.A. Canons of Professional Ethics.

[4] It certainly can make no difference here that the attorney occupied the dual capacity of administrator and attorney for the administrator. If anything his conduct would

The Supreme Court also found that the attorney's conduct constituted misbehavior in the presence of or so near the court as to obstruct the administration of justice, and that for this reason the probate court was authorized to punish him summarily under Revised Code section 2705.01, and that it need not have to prefer written charges as provided in sections 2705.02 and 2705.03. In this respect the Supreme Court reversed the prior holding of the court of appeals in the case.[5]

Discipline — Inherent Power of Courts

There is not complete uniformity of judicial opinion in the United States as to the source of the power of courts to disbar or otherwise discipline attorneys.[6] While it is probably safe to say that the majority holding is to the effect that such power is inherent in the nature of the judiciary, needs no help from and cannot be limited by the legislative branch, statutes prescribing reasons for such action and the methods of procedure therefor are not uncommon.[7]

In the case of *In re McBride*[8] the Supreme Court reiterated its stand that it has inherent jurisdiction to disbar an attorney as an incident of its organization as a court as well as from its power to admit to the bar, and that Revised Code section 4705.02 "is but a regulative provision which does no more than recognize the existing power of the courts."[9] Such legislation is to be interpreted as an aid to and not as a limitation on the power of the judicial branch. Courts may discipline attorneys on grounds other than those specified by statutes.

Among such grounds is "moral turpitude." The court then held the following acts by an attorney to constitute moral turpitude:

1. Soliciting employment from a designated person.[10]
2. Endeavoring to employ another person for remuneration to solicit professional employment for him.[11]

---

seem the more reprehensible, since there was less opportunity for the situation to come to the court's attention.

[5] 123 N.E.2d 52 (Ohio App. 1954).

[6] CHEATHAM, CASES AND MATERIALS ON THE LEGAL PROFESSION 81-93 (2d ed. 1955).

[7] *E.g.* OHIO REV. CODE § 4705.02. And see *In re* Lieberman, 163 Ohio St. 35, 38, 125 N.E.2d 328, 330 (1955). "A proceeding to suspend or remove an attorney at law from office is strictly statutory." See 1954 Survey, 6 WEST. RES. L. REV. 235 (1955).

[8] 164 Ohio St. 419, 132 N.E.2d 113 (1956).

[9] Quaere: could this power be limited or regulated by a constitutional provision? Presumably the answer is, "Yes."

[10] Canons 27, 28, A.B.A. Canons of Professional Ethics.

[11] Rule XXVIII, Rules of Practice of the Ohio Supreme Court, Sections 1, 2, 3.

3. Attempting to impede and obstruct the investigations being made of his conduct as an attorney by a bar association's grievance committee and vilifying the members thereof by calling them vile and obscene names.

The court further held that there is no requirement, statutory or otherwise, that charges and specifications of professional misconduct be verified.

Disbarment — Venue of Action

Charges of unprofessional conduct were filed against a lawyer before the Common Pleas Court of Champaign County, where he had previously been practicing "for years" and was "still practicing" at the time of filing, although he had also, "for a long period of time had offices, lived in and voted in Cuyahoga County." The charges involved misconduct in Champaign County.

Summons was served upon the attorney in two ways: by registered mail sent to and received by him at his Cleveland office and by the Sheriff of Cuyahoga County by personal service in Cuyahoga County. The attorney made timely objection in the Champaign County court to the venue of the action.

The court of appeals held[12] that "the practice of law is state wide in its operation;" that the appellant lawyer was an officer of the Court of Champaign County, that venue of the proceedings was properly laid there and that service was properly made in Cuyahoga County.[13]

What Constitutes "Moral Turpitude"

Several noteworthy questions were raised and disposed of in the case of *In re Prentice.*[14] The case involved charges of professional misconduct against a member of the bar for falsification, as a notary public, of jurats in two written declarations, which purportedly were signed by the declarant in the presence of the attorney-notary, but which were in fact signed by the notary in the absence of the declarant. Such an act is, of course, a misdemeanor.[15] The court held it to be morally turpitudinous and ground for discipline.

The facts are multitudinous and the court's opinion is necessarily lengthy, with the result that to set them and it forth in detail would unduly lengthen this survey. Suffice it to say that the court held: (1)

---

[12] *In re* Crow, 135 N.E.2d 903 (Ohio App. 1955)

[13] The statute providing for disciplinary proceedings (OHIO REV. CODE § 4705.02) does not state where disciplinary proceedings shall be filed.

[14] 132 N.E.2d 634 (Ohio App. 1953)

[15] OHIO REV. CODE § 147.14.

that the term "moral turpitude" as contained in the code provision[16] authorizing disciplinary measures is not so vague and indefinite as to amount to a denial of due process of law under constitutional restrictions; (2) that conviction of the notary under the statute prohibiting a false jurat was not required as a condition precedent to disciplinary measures; and (3) that it was not an abuse of discretion for the trial court to have preferred its charges prior to or without first referring them to a bar association grievance committee.

The case bears some slight analogy to one[17] discussed in last year's survey,[18] but it is only fair to say that the degree of moral turpitude in the *Prentice* decision seems to this author considerably less than that in the *Cohon* case.

What Constitutes the "Practice of Law"

The question occasionally is presented whether an attorney has "been actively engaged in the practice of law as his principal occupation." Statutes prescribing the qualifications of judicial and other legal officials frequently contain such a requirement.[19] The case of *State ex rel. Devine v. Schwartzwalder*[20] involved the eligibility of respondent in an original quo warranto action to fill the office of municipal judge in Columbus, Ohio. He had been admitted to the practice of law for more than five years, but the question was whether he had been actively engaged in the practice of law as his principal occupation for at least five years, as required by the statute.[21]

For various periods of time subsequent to his admission to practice respondent had been: an Assistant Attorney General of the State of Ohio — work done by him in this period was conceded to have been the active practice of law; an attorney examiner in the Department of Liquor Control — this work was held by the Supreme Court to constitute the active practice of law; Chief of the Permit Division of the Department of Liquor Control — this work was held by the Supreme Court to constitute the active practice of law. While there is no requirement in law that this position be filled by an attorney, the duties performed were, said the court, the practice of the profession.[22]

---

[16] OHIO REV. CODE § 4705.02.

[17] Fidelity Finance Co. v. Harris, 71 Ohio L. Abs. 309, 126 N.E.2d 812 (1955).

[18] 1955 Survey, 7 WEST. RES. L. REV. 231 (1956)

[19] See 1955 Survey, 7 WEST. RES. L. REV. 231 (1956)

[20] 165 Ohio St. 447, 136 N.E.2d 47 (1956).

[21] OHIO REV. CODE § 1901.06.

[22] *Quaere:* does it therefore become improper *in futuro* to fill this position with a lay appointee?