

1959

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*, 10 *Wes. Rsrv. L. Rev.* 344 (1959)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol10/iss3/7>

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.

of fiduciary duty imposed on the agent by holding that a substantial discrepancy between the contract price and the value of the property was sufficient, alone, to rebut the claim of the agent that he had disclosed all material facts.

HUGH ALLAN ROSS

ATTORNEYS AT LAW

Violations of Canons of Professional Ethics

We have commented in a previous survey article¹ upon the Supreme Court's determination that it is unethical for an attorney to conceal from the probate court before which he is acting as administrator and attorney for the administrator of an estate being administered therein, the fact that he also is representing a principal claimant to the proceeds of such estate and has a contract with such claimant for a percentage of the recovery for that claimant.

Pursuant to the recently adopted procedures for discipline of attorneys in this State, the case again came before the Supreme Court during the period covered by this survey.² Several issues were raised, of which one is particularly relevant: whether the rule of the court under which the disciplinary proceedings were brought is constitutional? The court, quite rightly we think, held that the rule is constitutional; reiterated that the power to admit to practice and to discipline those who have been admitted to the bar is inherently within the powers of the judicial branch of the government and may not be limited or directed by the legislative branch; that the reference under Rule XXVII of disciplinary matters to a Board of Commissioners on Grievances and Discipline is solely for investigation purposes, not for judgments, and that the facts in the case did not present the question whether the Rule violated Section 1, Article IV of the State Constitution³ in bypassing the inferior courts.

The high court does not appear to have passed, and expressly indicated in its opinion that it was not so passing, upon the power of local bar associations, through their grievance and disciplinary procedures, to

1. 1956 Survey, 8 WEST. RES. L. REV. 250 (1957).

2. *Cleveland Bar Ass'n v. Pleasant*, 167 Ohio St. 325, 148 N.E.2d 493 (1958) *Cert. denied*, ____ U.S. ____ (1959). This is apparently the first decision by the Supreme Court under its new procedures for discipline, since it bears the notation, "D.D. No. 1."

3. "The judicial power of the State is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by Law."

issue at least private reprimands to offending practitioners,⁴ nor does it appear to have foreclosed entirely a disciplinary power of inferior courts. In *Lattin v. McMiller*⁵ the Stark County Court of Appeals decided, one day before the Supreme Court's pronouncement, that a common pleas court has a similar inherent right, upon proper application or sua sponte, and without the help of any specific statutory provisions, to conduct a general investigation as to unauthorized practice of law within its jurisdiction; that the court need not personally conduct such investigation but has similar inherent power to appoint trusted and qualified committees or commissioners.

The two cases are clearly not in conflict. A head-on conflict will occur if and when formal disciplinary proceedings against persons admitted to practice are commenced independently of Rule XXVII in a common pleas court or a court of appeals.

Violation of Canons of Judicial Ethics

The Supreme Court also passed upon another disciplinary matter of importance to us as officers of the court, this time involving the Canons of Judicial Ethics.⁶ These Canons, of course, are much newer in time than the Canons of Professional Ethics,⁷ and have received far less judicial interpretation. In *Mahoning County Bar Ass'n v. Franko*, the court had before it original disciplinary proceedings, instituted under its new rules XXVII and XXVIII against respondent, a lawyer and, during the time of the acts by him which were the subject of complaint, a judge of the Youngstown Municipal Court.

The opinion of the Supreme Court, though quite lengthy, is thorough, well considered and the source of much valuable authority and quotation for lawyers concerned with problems of professional and judicial ethics. The court found as facts that:

1. Respondent had failed and refused while an active partisan candidate for the political office of county prosecutor to resign his inferior judicial position in violation of Canon 30 of the Canons of Judicial Ethics.

2. He had openly campaigned for the office of municipal judge, making a significant part of his campaign the repeated promises that

4. 167 Ohio St. 325, 335, 148 N.E.2d 493, 499 (1958).

5. 104 Ohio App. 449, 150 N.E.2d 84 (1958).

6. *Mahoning County Bar Ass'n v. Franko*, 168 Ohio St. 17, 151 N.E.2d 17 (1958). See also, CONSTITUTIONAL LAW section, *infra*.

7. The Canons of Professional Ethics were first adopted by the American Bar Association on July 9, 1924; the Ohio Supreme Court adopted the Canons of Professional Ethics of the American Bar Association on November 13, 1952 and Canons of Judicial Ethics on January 27, 1954. See 167 Ohio St. lxxxiv.

as judge he would not strictly follow the provisions of state statutes requiring the notation of traffic law violations upon the licenses of convicted drivers, in violation of Canon 30.

3. He had persistently disregarded, while judge, duty assignments made pursuant to statute and rule of court by the presiding judge of the Youngstown Municipal Court by holding traffic court on Saturday mornings (although he was not the regularly assigned traffic judge and Saturday was not ordinarily a day upon which traffic cases or other matters were heard by any of the other judges); during hearings he carried out his previously announced policy of not marking the drivers' licenses of persons convicted of traffic law violations; voided, for no valid reason whatsoever, some 720 duly issued parking-violation tickets, and arbitrarily assessed a standard penalty of five dollars and suspended costs for all traffic violations.

4. He published and distributed some 85,000 copies of a standard-size newspaper, entitled "The Political News," in which he caused himself to be referred to innumerable times as "Judge Franko," and wrote letters requesting support in his campaign for the office of county prosecutor, in which, in those to Democrats, he claimed affiliation with the donkey and in those to Republicans, with the elephant.

Respondent's defense to the charges outlined in paragraphs 2 and 3 was that he was merely exercising his "judicial discretion." The Supreme Court cogently disposed of this effort by pointing out that there was a significant distinction between the occasional and even common exercise of that undoubted duty and the constant use of it as a cloak in furtherance of general political ambitions.⁸

As a matter of law on the facts above, and others found by it, the Supreme Court held (following the paradoxically named *Pleasant case*⁹) that Rule XXVII is not at variance with statutory procedures for disbarment, that it did not deprive respondent of due process or operate unconstitutionally against him, since it in fact afforded him a hearing before the Supreme Court before any punitive action was taken against him, and finally that acts committed by an attorney in his capacity as a judge are grounds for his discipline *qua* attorney, in that such acts are done by him as a member of the bar under color of his other office which he holds for the time being. The Canons of Professional Ethics are binding upon all members admitted to practice Law in Ohio, as are the Canons of Judicial Ethics.¹⁰ Rule XXVII, Sections 1, 5 and 6, relating to the investigation of conduct and the enforcement of discipline, specifically refer to both

8. Canon 21, Canons of Judicial Ethics.

9. *Cleveland Bar Ass'n v. Pleasant*, 167 Ohio St. 325, 148 N.E.2d 493 (1958).

10. OHIO SUP. CT. R. XXVIII.