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NOTES ON LEGAL ETHICS

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The Ethics of the Legal Profession

The Greek word *ethos* has been used to describe the oughtness of human conduct. Philosophers for centuries have said that man, because he is a man, has a duty to his God, to his fellow man, and to himself. For the purpose of legal ethics, we must assume that everyone who is interested in this subject is ethical in the sense in which that term has been used by the philosophers. If a man is not aware of the obligations imposed upon him as a human personality by the time that he approaches the legal profession, it will be too late for a law faculty to remedy that condition. The ethics of the profession, then, will deal only with that matter which is peculiar to lawyers as members of a profession. Perhaps the triple distinction of the philosophers may be drawn. We may say that a lawyer has a duty to the court, to his fellow lawyers, and to his client. The order of obligation probably is in the order in which these duties are stated. The lawyer is, first of all, an officer of the court. Therefore, his highest duty is to the court. If at times this seems to conflict with a duty which a lawyer owes to a client, it may well be that we can demonstrate that this conflict is more apparent than real. The obligation to keep the secrets of the client does not show a higher duty to the client. The knowledge gleaned from such confidences is indispensable to an investigation of the further facts necessary to help a lawyer in deciding what legal action is appropriate before the court. As an officer of the court, he has the right and the duty to make such investigations. The client must, however, be assured that his words will not be used against him.

History. — Perhaps the best way to find out about this profession and its duties is to look into the history of the profession. If we look back into the time of the Greek City State we see that every citizen possessed the powers of a lawyer. While this was undoubtedly a period of great civilization, so many were practicing the skills of a lawyer that no distinct class of lawyers seems to be found. When we get to the Roman civilization where the family seems to have been the basic social unit, we see something a little different. The head of the family, or the paterfamilias, had the responsibility of looking out for all the affairs of the members of his family. This included the solution of legal problems which were presented. Theoretically, the paterfamilias was supposed to argue for the family in the law courts. We have reason to suppose that in those days people stuttered, or had the usual difficulties of those called upon to speak in public. Therefore, the paterfamilias sometimes would call upon another paterfamilias to appear on behalf of his family. To be called upon to represent another family was considered to be a great honor. This, in turn, has given rise to the notion of the honorarium. The Roman paterfamilias was not entitled to a fee. The honor which he enjoyed was so great that it would be wrong for him to suppose that he was entitled to any compensation for it. Thus, if he was rewarded in any way it was by way of an honorarium or gift. With the fall of the Roman civilization, the finer sensibilities of the paterfamilias probably were diminished. We find at the time of Cicero that there was a pocket in the back of the gown worn by the paterfamilias into which a gift could be placed even before a law-suit was argued. The notion, however, of honorarium for legal services carries over and in England today it is not possible to sue for a legal fee because the nature of legal services is said to entitle no one to compensation. What is given is described there, as it was in Rome, as something in the nature of an honorarium. If
rewarded in advance, our English brother thus does not refund for services he is unable to perform.

In the period of the Dark Ages, the practice of law disappeared except in the Church. The Canon Law, based very largely upon the Roman Law, was developed during the Dark Ages, but all other law seems to have been lost sight of.

Thus at the time that William the Conqueror came to England he had very little in the way of traditional Roman Law to bring to Great Britain. The result is that our Anglo-American law probably arose pretty much upon its own, and the traditions which we know today are peculiar to the Anglo-American system.

Popular thinking about the lawyer may provide an exception. Dean Wigmore found a Latin inscription, upon the tombstone of St. Ives, of which this translation is offered, "St. Ives was a native of Brittany, a lawyer but not a thief, which was a source of great wonder to the people."

Very early in the history of England, the legal profession divided itself into two distinct branches. One group, which does office work principally, is described under the heading of solicitors. The other group, which basically is the trial bar, is described as the barristers. The customs of the profession are such that the solicitor deals directly with those who have legal problems. If the solicitor decides that the legal problem should be litigated, the solicitor prepares a brief of the facts and the law and sends it along to the barrister. The barrister is selected by the solicitor. The barrister does not have contact with the client until the matter is immediately ready for trial.

In the United States, the legal profession never had a formal beginning. As is well known, lawyers were not attracted to this country in the early days. The legal profession has a great affinity for the status quo. Many of the people who came here had a real hostility to the legal profession. It was the symbol of a system of government which they had rejected and left behind.

Our early lawyers for the most part were self-trained. The basis of our legal learning in this country was found in Blackstone's Commentaries on the Laws of England. Lawyers were self-taught out of these volumes. A very small number were trained in the law under an apprentice system. Fewer still were trained at the Inns of Court in England.

Out of these humble beginnings a great profession was formed. Our traditions are largely English because of what our ancestors learned through the reading of Blackstone's Commentaries. However, we did not adopt the English practice by which the profession is divided into solicitors and barristers. In our country there is but one class of lawyer and he is qualified by law to do any of the work required in the profession.

Bar Associations. — Each state in the United States has its own bar association. The members are admitted to the practice of law by the highest court in the state. The federal courts accept those entitled to practice in the states into the bar of the Federal Court upon proof of good character and membership in the bar of a particular state.

The lawyers of the United States are not associated together on a national basis except by voluntary bar associations. One of these voluntary bar associations is the American Bar Association. A committee of this organization, some years ago, fashioned what we now call Canons of Ethics. These canons are not law, nor do they have legal effect since they are not promulgated by any organization with real legislative power. Most courts of the United States, however, look to these Canons of Ethics to decide what is proper conduct on the part of a member of the profession. One who violates these canons may be disciplined for unprofessional conduct. The basis of the discipline
is not necessarily violation of the canon. The violation of the canon is evidence that
the attorney in question has not observed a general requirement of ethical conduct on
the part of officers of the court.

The sanctions imposed by these courts for breach of professional obligations may
take the form of disbarment, suspension, or censure. To many people, the type of dis-
cipline administered to lawyers seems to be much too light. One principle to keep in
mind is this and it is found in the words of Mr. Justice Cardozo, "Reputation in such
a calling is a plant of tender growth and its bloom once lost is not easily restored."
The good reputation of a lawyer is his principal asset. Any official action which impairs
that reputation directly affects the man's usefulness and earning capacity. Thus, a
censure of a member of the bar carries with it much more punitive effect than the
ordinary layman is willing to concede. The bar is a small and close-knit organization.
Official discipline does damage to one within his own profession and the word quickly
spreads to the community in which the man practices. While such punishment seems
to be nominal, in effect it is serious. An official statement that a lawyer has been derelict
in his duty to a client may be more damaging than a three-months' suspension for an
unexplained cause.

Requirements for Admission. — What are the requirements for admission to the
bar in the United States? The first requirement is that a man be possessed of a good
general education. The reason for this is so that a court may be informed by the lawyer
of those facts which the court needs for the solution of a legal problem. The obligation
to inform on the facts is as great as the obligation to inform on the law. Thus, the
requirement of a basic general education found in most courts has a reasonable basis.
We say the public ought to be protected against the incompetent. The measure of com-
petency in such a case is the ability of the man adequately to represent a client before
the court which needs to be informed on facts as well as the law. Knowledge of business
affairs in tax matters, common knowledge of chemistry in homicide cases, knowledge
of meteorology in admiralty cases, common knowledge of physics in cases involving
personal injury are but a few of the instances where information derived from a general
education is essential to a proper presentation of a case. In Tarbell's Life of Lincoln,
there is a clear statement to the effect that Abraham Lincoln was conscious of his lack
of education in his dealings with other lawyers. The biography makes clear that Lincoln
felt obliged to study hard in order to be the equal of those members of the bar who
were college trained. It probably is not true that Abraham Lincoln stood for the propo-
sition that general education is not essential to the proper performance of a lawyer's
duties.

A second requirement in the way of education for a lawyer is that he be possessed
of a knowledge of the law. Cases make clear to us that a lawyer is not expected to be
correct in every legal judgment which he makes. He is held to the same standard of
knowledge as other members of the profession practicing in the same or similar
localities. The test used is the test for negligence in cases involving those in any par-
ticular profession. If a lawyer is in ignorance of an existing statute of his jurisdiction
or actual decided cases, it is probably proper to say that his knowledge is below the
standard. If, however, he expresses an opinion on a matter not yet decided either in
the courts or the legislature of his state, but an official decision is rendered shortly
after the opinion is given, which is contrary to the advice which he gave, the test will
be whether or not he acted in the manner of the reasonable and prudent attorney. No
lawyer guarantees the results of his legal thinking. On the other hand, a lawyer is held
to a standard of reasonable care and may be sued for culpable ignorance of the law.

Another requirement for admission to the bar is that a lawyer be possessed of a
good moral character. The reason for this is because the lives and fortunes of many men will be entrusted to his care. As a fiduciary, the lawyer must be faithful and, believed to be faithful as well, to the needs of his client. Such risks as the one involved in a lawyer moving from one side to the other side, depending upon which pays him the higher fee must not exist. The good of the profession requires that a lawyer be known to be a man of such integrity that any client has the unqualified right to place his full faith and trust in this man.

One of the most common requirements for membership in the bar is that of citizenship. The reason for this is so that the court may have the most complete jurisdiction possible over a member of the bar. This is to guarantee to clients within the state that any legal power resting in the court may be exerted to its fullest against an attorney. Thus, an alien who may leave the jurisdiction would thereby remove himself from some of the punitive power of the courts. This is enough to deny to him the right to practice law. Such has been the English rule in regard to solicitors. It has not been the English rule in regard to barristers who for some reason or other, perhaps because they do not deal directly with the public, are not looked upon as officers of the court.

In the United States, a problem has been presented to us very recently by the Supreme Court of Nevada. A young man who had been born in Nevada came to California to study law. His studies were interrupted by war service. At the end of the war, he completed his law studies and was admitted on motion to the bar in California. A California statute at that time permitted veterans whose studies were interrupted by war duties to be admitted to the bar without going through the formalities of the regular bar examination. This young man then went to the State of Nevada in which he claimed citizenship by reason of his birth. After admission to the bar in Nevada, the bar association of that state called to the attention of the court, that only a short time before, this man claimed to be a resident of the State of California. The Nevada court seemed to feel that this man ought not to have been admitted in that state, suggesting that perhaps one may not be a member of more than one bar at one time. However, the issue was not definitely settled because the Supreme Court of Nevada was obliged to point out that the bar association had followed the wrong procedures to bring this matter to the attention of the Nevada court.

The lawyer is said to stand in a fiduciary relationship not only to his client, but to the court as well. Thus, this problem is presented. Suppose that a man has been disbarred in a particular jurisdiction. He then goes to another jurisdiction and asks for admission to practice law. Upon being asked in the second state to make a full disclosure of his pertinent life history, this man omits any reference to the prior disbarment. The question then comes as to whether or not his failure to make a full disclosure to the court of the second jurisdiction will justify the cancellation of the license granted to him in the second jurisdiction. The answer to that is "Yes" on the grounds that the applicant stands in a fiduciary relationship to the court, which puts upon him a duty to make full disclosure of all that is pertinent. His silence when he has a duty to speak may be considered a breach of his obligation to the court and the license, when granted, is said to have been granted on fraudulent representations. Such was the justification for revocation of the order admitting a man to the practice of law in the State of California. Prior disbarment is not, of itself, grounds for exclusion.

Unlicensed Practice. — Questions of this kind arise. May a lawyer admitted to the bar in California, but not admitted to the bar in New York, form a partnership with a New York lawyer to practice law in New York? The answer to that is "No" on the grounds that the California partner is in effect practicing law in New York when
he is not a citizen of New York nor subject to the direct discipline of the New York courts. The objection is made generally that this Californian is accomplishing indirectly what he would not be permitted to accomplish directly. In addition, the people of the State of New York are not protected from those who have not been admitted to practice in the State of New York.

This type of case must be distinguished from one where a law student draws legal papers. In doing legal work for some time the point may be raised that the student is practicing law without a license. It is true that if a law student makes use of his own legal judgment for the solution of the problem of a specific person, he may well be charged with the practice of law without a license. But the point of distinction is that a law student who does this work under the direction of a competent lawyer does nothing more than clerical detail and the application of rules of law in a specific case is determined by a qualified lawyer. Similarly, a question arises when a disbarred attorney is permitted to do clerical work in the office of a licensed attorney. Ought not we to say that so long as he is under the supervision of the licensed attorney the public will receive as much protection as it does in the case of the law student referred to above? The answer in logic probably seems to be the same, but in practice it has been found that this is a way by which those who have been disciplined actually continue to carry on the practice of law in spite of the disbarment. Thus, while there is no strict rule which forbids the employment of a disbarred attorney, the presence of such a disbarred attorney in an office always creates suspicion which may, in turn, produce an investigation and discipline of the one who hires the disbarred attorney.

A peculiar problem has arisen in California by reason of the provision in our statutes which enables a man to be a lawyer on the inactive list. Lower fees for membership in the bar association are charged to those on the inactive list. Now the question presented is this: May such a member on the inactive list take causes of action by way of assignment and prosecute them in his own name? This is a well-recognized evil and we have statutes which say that a disbarred or suspended attorney may not enforce these claims which have come to him by way of assignment. A lawyer who has resigned, however, is not within the prohibitions of the statutes and no attempt was made to discipline the man on the strength of this statutory provision when he established that he was neither disbarred nor suspended. It will be well to keep in mind, however, that there is another provision of our statutes which says that any unlicensed person, who does a single act by way of the practice of law, even when he does it gratuitously and as a favor for a friend, may be punished for contempt.

Some other censurable evils on the unlicensed practice of law are these. An attorney was retained by some insurance adjusters to lend them the use of his name. He had no duties whatever to perform for this group, but his name would appear on their letterhead and they would adjust cases and make settlements, sometimes filing papers in court in his name. An attorney is said to have an exclusive franchise to practice law and he may not give that power nor share it with anyone not licensed to practice law. Thus, the unburdened attorney who was paid for the use of his name was disciplined by the Supreme Court of California.

A very close case came up here in California involving this dramatic set of facts. A lawyer had become addicted to the use of alcohol and had abandoned his profession to the point where he was teaching in a public night school. While teaching in the night school, he had as a student, a nurse, who felt that she could reform him and restore him to a state of greater usefulness. She entered into a relationship with him by which she became his secretary and more or less managed his office affairs. The attorney prospered with her guidance and assistance. After some years of practice, the attorney died and then the disclosure was made that he had agreed to share with
this nurse the proceeds of the successful law practice in which he had been engaged with her help. The heirs at law of the attorney objected to this division of his property on the grounds that this young lady was illegally in the practice of law. Our court laid down the definition of a partnership in which it showed that for a true partnership each individual in the association is a principal with the right to exercise control; each is a general agent with power to bind the partnership; each is personally liable for the debts of the partnership; each is entitled to a proportionate share of the profits. All that they could find in this relationship was the last element, namely, a sharing of the profits. There being no right of control or general power of agency or any showing that the girl was as much a principal as the lawyer, the court was unwilling to call this a partnership and the young lady was entitled to her half of the investments made by this man and herself on the proceeds of his practice of law.

There has been exception taken lately to work done by certified public accountants that seems to have some of the qualities of the practice of law. The objection is raised particularly in regard to the completion of income tax returns. A Massachusetts case dealt with the problem presented by the completion of that simple internal revenue form known as No. 1040. A public accountant made out such returns for factory workers. The bar association asked to have him enjoined on the grounds that the completion of such forms constituted the need for legal judgment and hence constituted the practice of law. The Massachusetts court, however, said that every citizen is supposed to be able to fill out Form 1040. It is written in simple form with all the instructions found in it necessary for its proper completion. Therefore, these accountants did nothing that required any special training or judgment for its completion and the injunction was not granted. As opposed to that, we have a case in New York where a certified public accountant advised a large business activity how it could keep its books, bill its customers, and arrange its affairs so that the tax obligations could be kept at a minimum. This was not done as an incident to assistance given to the company in its accounting procedures. It was instead a straight tax opinion. That seemed to be enough to influence the New York court to say that this man was attempting to practice law without a license. Likewise, objection has been taken to some conduct of banks in offering to their customers what sometimes are described as legal services. The scheme in this particular case was one where attorneys became employees of the bank. Customers of the bank were invited to consult them. The attorneys apparently were expected to give advice which would lead to the employment of the bank for trustee services and other services which were part of the regular bank activities. Now, suit is started against the bank to punish them for the practice of law without a license. Several objections to this type of activity by the bank were raised:

1. A corporation cannot practice law. The court held that this was a good objection. Two reasons may be offered in support of this conclusion. First, only a human being may have the franchise to practice law, perhaps because he is subject to greater disciplinary action than that which can be imposed upon a corporation. The financial responsibility of a corporation is limited and the courts, therefore, would not be able to have full power over a corporation and its finances for the purpose of compensating clients who are unfairly treated.

2. The second objection was that a lawyer cannot share or delegate his powers to a non-lawyer. It was felt in this case that the lawyers were engaged in some form of partnership with this corporation and this as a matter of fact permitted the corporation to share the responsibility in the carrying on of these activities.

3. A lawyer cannot share his profit with a layman. The possibility that the practice of law will become purely commercial is one which has always bothered the courts. This, in turn, has led to a rule that a lawyer may not share his profits with anyone who does not enjoy the franchise and all of the responsibility that goes with the practice of law.

4. A lawyer must make use of "delectus personarum." If the lawyer here is the agent or
servant of the corporation it may well be that he cannot make a choice of the clients
who come to him. If he is expected to take everyone who comes along, clearly he will
abandon this obligation of *delectus personarum*.

5. The lawyer’s position is that of a fiduciary to each particular client. This means that he
must use his own judgment and be fully responsible for the decisions he makes. He is
entitled to no exemption by the assertion that he is following the orders of one who
pays him. A lawyer cannot accept an order which interferes with his freedom of dis-
cretion. It would appear in this case that in a conflict of interest between the bank and
that of the client, the lawyer may be expected to prefer the bank. If that is so, of course
he breaches his obligation as fiduciary to the client.

6. The bank in carrying on this business did considerable advertising. This would amount
to a solicitation of business for a lawyer. This type of activity smacks too much of
commercialism and is considered unbecoming to those who are engaged in the practice
of law.

Thus, the bank here on several counts was guilty of practicing law without a
license and was fined the sum of $10,000. This opinion provides a convenient digest
of the legal objections to this type of activity.

Other problems on the unauthorized practice of law are raised by automobile clubs.
Some of them sell memberships which include road service, information and touring
service, a magazine, and the right to consult lawyers with a promise by the automobile
association that it will pay a substantial part of the lawyer’s fee. The question comes
as to whether this arrangement with lawyers is ethical. The answer to all of this seems
to be that if the automobile club does not actually make a profit out of the legal advice
category of its service, the practice may be upheld so long as there is left both to the
attorney and the member what we described above as the *delectus personarum*. That is,
the attorney is free to reject any particular client who comes along as one not entitled
to his services and the client is free to select any attorney whom he chooses. Two cases
where this distinction was brought out are these: one, the automobile club agreed to
pay certain charges to any attorney selected by the member of the automobile club.
This was held to be a perfectly proper arrangement. In the other case, there was a panel
of lawyers selected by the automobile club. A member could select any one member
of the panel and fees would be paid at the same rate as before. In this latter case, the
practice was said to be bad because this limitation to the members of the panel con-
stituted an interference with the *delectus personarum*. Perhaps an insurance scheme to
cover lawyer’s fees may be evolved from these cases!

Occasionally, lawyers feel obliged to take action against notaries public who do
much of that which is like the practice of law. An attempt was made in the State of
Washington to enjoin a notary public who was charged with these activities: preparing
and drawing for others for reward, deeds, mortgages, leases, agreements, contracts,
bills of sale, chattel mortgages, wills, notes, conditional sales contracts relating to either
real or personal property, options, powers of attorney, community property agree-
ments, liens, bonds, mortgage assignments, mortgage releases, chattel mortgage satis-
factions, creditors’ claims, and probates, etc. The injunction was not granted in this
particular case, however, because no showing was made that this particular notary
public charged anything for these services. The court, acting in the field of equity by
way of injunction, said that it was necessary for the lawyers who complained to show
that a property right of theirs was violated by the conduct of the notary. In view of
the fact that he was doing this without compensation, the court did not feel that there
was any infringement of property rights. We must note, however, that this probably
is true in the field of equity and injunctions, but if we are in the criminal field or in
the field of contempt, courts nevertheless may consider an act done gratuitously as
one which constitutes the practice of law and appropriate disciplinary action may
be taken.
Lawyers as Officers of the Court

An attorney is said to be an officer of the court before which he practices. The ordinary way for him to enter upon his duty is that of any other public officer, namely by taking an oath of office. The question that has been raised after such an oath is taken is whether or not a lawyer has become an officer of the government in the constitutional sense. If he is such an officer, then the only form of discipline which will be available is that of impeachment.

We know, however, that the common practice is to discipline a lawyer by disbarment. Therefore, it is necessary to qualify the statement that a lawyer is only an officer of the court. He is not an officer who holds his position under the Constitution. That, as courts have pointed out, is reserved to those elected to high office or to the members of the Judiciary. He is instead subject to the summary powers of the court of which he is a member. Thus, he may be ordered by a court to pay over money belonging to a client under penalty of contempt, even in a jurisdiction which prohibits imprisonment for debt. He is not entitled to a formal trial on the issue of indebtedness. If he goes to jail for disobedience, it is to vindicate the authority of the court over its officers. The most burdensome of the disciplines known to the court is that of disbarment, although it is possible for a lesser punishment to be given.

The oath which the lawyer takes follows the form set out by the American Bar Association. Each state has its own form, but in general they follow the oath recommended by the American Bar Association. This oath is a fairly complete summary of all of the obligations which one assumes when he becomes a member of the bar.

Criminal and Civil Cases.—One of the duties assumed is to uphold the Constitution of the United States and the state in which the lawyer will practice. A simple illustration to test the meaning of this may be found in Canon 4 of the American Bar Association. That canon says that a lawyer assigned as counsel to an indigent prisoner ought not to ask to be excused for any trivial reasons and should always exert his best efforts in his behalf. Frequently, the question is asked by a layman how it is possible for a lawyer to appear in a criminal case when the lawyer is convinced of the guilt of his client. The answer may be used to prove the nature of the obligation assumed by the attorney on the taking of the oath. The Constitution provides that the accused is entitled to a fair trial and to be represented by counsel of his own choice. The lawyer in such a case is merely following the constitutional obligation which he voluntarily assumed by taking the oath. Opinion as to the guilt or innocence of an accused in a criminal case is reserved for the jury. The obligation of the attorney for the defense is to insist that a fair trial be granted and that his client be made fully aware of all of his rights.

The duty in a criminal case must be contrasted with the obligation of a lawyer in a civil case. In a civil case, Canon 31 of the American Bar Association provides generally that a lawyer is not obliged to act either as advisor or advocate for every person who may wish to become his client. He has a right to decline employment and Canon 30 of the American Bar Association makes it clear that a lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. That canon carries these added words: "His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination." To start a law suit merely to gain publicity for an author is forbidden.

When a lawyer is asked to handle a civil case, he is under a duty to investigate the facts very thoroughly. Then he is duty-bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. It is never enough for the lawyer
to take the word of his client as to the facts of the case. We must recognize that people in trouble see the facts in the light most favorable to themselves. Thus the duty is put upon the lawyer to make an independent investigation. Sometimes this involves the expenditure of money.

A Boston lawyer was saved great embarrassment by hiring psychiatrists to observe his key witness in a damage suit for more than a million dollars. If the testimony of the witness, a woman of good standing in her community, could be believed, responsibility for the death of one hundred and sixty-eight persons would be fixed. The psychiatrists found that she was a pathological liar and the story she told was fiction.

The duty, however, is clear and even after investigation a lawyer must be aware of the fact that there are errors which can occur by judges, other lawyers, the weaknesses of human beings, surprises in evidence, the fallibility of juries, etc., which should lead the lawyer to the position where he will never assure a client that it will be possible to win a particular case. The moral of this is found in Canon 8 of the Boston Bar Canons: "Whenever the controversy will admit a fair adjustment, the client should be advised to avoid or to end the litigation."

Adverse and Conflicting Interests. — When a lawyer undertakes a case for a client it is necessary that his loyalty to the client come before all else. Thus, a duty is imposed upon a lawyer to inform his client of any adverse influences or conflicting interests which the lawyer may have. It does not always follow that a man may not represent conflicting interests, but there is a duty of disclosure of conflicting interests. If the consent of all of the parties to a problem is obtained after full disclosure, but, of course, without pressure being put upon any of the parties, it is possible for the attorney to act even in a case where prima facie the interests are conflicting.

Frequently, in a small town the same lawyer will represent the vendor and vendee of a piece of real estate. The consent of both is required.

When a lawyer starts out in practice after retirement from judicial position or public employment this obligation of the fiduciary continues to be present. He ought not to accept employment in connection with any matter which he investigated or passed upon while he was in such public office. The confidences of a client continue long after the relationship formally has come to an end. Information obtained during their relationship as attorney and client may never be used either for the individual benefit of the attorney or a new client or against the old client. The confidence of the client requires that this fiduciary relationship be forever maintained. If it becomes necessary at some time to ask for a release from this obligation, we must remember that the right to release belongs to the client, with two exceptions which are found in Canon 37 of the American Bar Association Canons: First, "If a lawyer is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation." Second, "The announced intention of a client to commit a crime is not included within the confidences which he is bound to respect. He may properly make such disclosures as to prevent the act or protect those against whom it is threatened."

An added obligation on a lawyer to maintain the fiduciary nature of the relationship prevents him from acquiring any personal interest in the litigation. This problem arose in the case of a lawyer who took a case on a contingent fee basis. The client decided to call off the litigation prior to the trial. The attorney objected on the grounds that he had been given an agency coupled with an interest. If the cause of action was so abruptly terminated, the lawyer would lose out on his contingent fee. Our court made it perfectly clear that this lawyer was not entitled to such a claim. It suggested the lawyer would be acting unprofessionally in insisting upon this because it is proof that he has a personal interest in the outcome of the litigation.
The proposition that an attorney must not have an interest in the outcome of litigation is not so absolute that the client has a right to dismiss the attorney without any obligation of compensation for work done. The measure of damages in cases where the attorney is wrongfully dismissed is at least the reasonable value of services rendered up to the time of dismissal. In California, we go so far as to say that the attorney may recover the original fee agreed upon if some other lawyer is permitted to complete the suit following false representations by the client that he wants to call off the whole cause of action. Such improper dismissal will not operate to the financial prejudice of the first attorney.

Nice questions come up on this matter of adverse and conflicting interests. An attorney is regularly employed by a corporation. An employee of the corporation comes to him and says that he has a matter which he wants to discuss in confidence. The matter involved is the story of embezzlement by this employee from the corporation. What is the lawyer to do in such a case? Is his duty of loyalty to the corporation such that he must report the wrong doing of the new client? Or is his obligation to the new client such that he can keep secret this information which adversely affects the corporation? The nature of the attorney's relationship to any client is such that, when the problem of adverse and conflicting interests arises, he is properly obliged to withdraw from the relationship at least in so far as this particular item is concerned. Thus, the generally accepted view for the solution of this problem is to have the lawyer tell the new client that he cannot represent him in this matter because he is already retained by the corporation. If the corporation asks him to proceed against the new client in this matter, he must tell the corporation that problems of a fiduciary nature which have arisen prevent him from taking action in this case. An implied term of every contract between attorney and client is this fiduciary obligation which, when it arises, exempts the attorney from a duty to continue to serve.

Compensation is not always the test for the relation of attorney and client. A town counsel talked over with a friend of his a particular problem which was in the counsel's office. The friend, an attorney, later was asked by a client to proceed against the town on this same matter. The uncompensated attorney is forbidden to accept this case because he has acquired information in regard to the subject matter as an attorney. A lawyer who practices in a jurisdiction which required that those seeking admission to the bar serve an apprenticeship finds that he is obligated to maintain in confidence any information which he acquired while serving the apprenticeship. The principle that any information acquired by a lawyer or his employees be kept confidential carries over well beyond any change of employment. Although it may be difficult to discipline a clerk or a secretary who acquires information and later uses it in breach of this obligation, there is little doubt that there is an effective means to deal with this problem of the clerk who later becomes a lawyer. A litigant may ask to have him stricken as attorney of record in the case. He may be subject to professional discipline for breach of this obligation which manifests itself while he is a member of the bar.

An attorney is asked by a client who has very large interests to handle an insolvency proceeding for him. One of the creditors is another client with a very small financial interest in the proceedings. A suggestion that the debtor client pay off the small claim of this other client so as to remove adverse and conflicting interests is not an ethical solution of this problem. The unethical part appears when we see that payment paid to the small claimant would in fact amount to a preference over other creditors of the debtor. For a lawyer to suggest that is not only unethical, but in some cases may lead to a criminal prosecution for a violation of the federal bankruptcy laws.

An attorney who supervises the distribution of a decedent’s estate is in a difficult
position because he cannot tell the lethargic heirs of the estate to consult a lawyer or to take steps to enforce claims which they have against the estate. As a representative of the estate, he is not free to authorize any payments out of the estate, except to those who prove that they have a right to such payments. Thus, for him to make suggestions to the heirs as to how they can proceed in order to enforce their claims would be to give advice to one having adverse and conflicting interests.

One who is an attorney for a public group such as a municipal corporation finds himself in the position where he can never be given a release from possible conflicting interests in view of the fact that the public is such an indefinite group that no legal entity is authorized to give him a release from his obligation as a fiduciary.

There is no breach of the fiduciary obligation by an attorney who confesses judgment on a note which is authorized on the face of the instrument itself. A confession of judgment even against one's own client is considered to be in the nature of a favor to the client in that it cuts down on the cost of possible litigation to enforce the claim. Since the lawyer is not acting adversely, such confession of judgment may be permitted.

Law and Morals. — A duty rests on the attorney to make sure that the client is honest in all of his dealings with adverse parties and their lawyers. Thus, a client who makes false representations to a debtor to accelerate the payment of a claim must be warned by the attorney that he is acting improperly. A client who attempts to charge more for attorney's costs than he will pay subjects himself to discipline by his lawyer. The lawyer must never permit such a false claim to be made. Once retained, a lawyer is in complete charge of litigation. The client may direct only a dismissal of the cause of action.

Sometimes the conscience of the lawyer is much more tender than that of the client. The client asks a lawyer to do that which runs contrary to the conscience of the lawyer, that is, to use the defense of the statute of limitations against a claim for a just debt. In such a case, the moral obligation of the lawyer seems also to be his ethical obligation. If the attorney is convinced that the client is trying to work a wrong of any kind judged by the moral standards of the lawyer, the lawyer's obligation is to try to correct the attitude of the client. Failing in his attempt to correct the attitude of the client, he will be obliged to dismiss the client.

A lawyer has many rights in regard to the use of legal processes which are not available to others. An attorney seeks a writ (ne exeat) to keep a debtor from going out of the jurisdiction when he knows that that person has a duty to leave on urgent business. The lawyer is taking advantage of this for the purpose of improperly accelerating payment of some claim. We may say that the attorney is abusing his right to use legal process and will be charged with unethical conduct. An attorney who asks a court for an accounting of the separate interests of bandits to effect a fair division of the booty, under the guise of a partnership termination, is taking advantage of a court of law to accomplish an illegal object of which he is aware. For that, he will be subject to discipline. In matters such as usury, infancy and other personal defenses, a lawyer should follow his own conscience. He is under no obligation to make use of these devices for the protection of a client whom he knows is acting dishonestly. The better procedure is to refuse to serve the client rather than to refuse to use the defense. The latter involves the risk of a suit for negligence.

In a civil case, an attorney is free to reject any cause which does not seem to him to be meritorious. If in the course of the trial he finds that the cause of action is one which is not proper for litigation, he is likewise free to withdraw. The caution that must be given at this point, however, is that he must withdraw in such a way as not to prejudice his client. Thus, I don't suppose that he is free to say in open court that he
is leaving the client because the wretch is not entitled to legal representation. He must leave the case under such circumstances that the client is not thereby prejudiced. If some other lawyer has a conscience less tender, that, of course, is no concern of the lawyer who withdrew from the case. He has fulfilled his obligation by withdrawal. No lawyer is the keeper of another lawyer's conscience.

Duty to Other Lawyers. — A lawyer has a duty to other lawyers. Canon 9 of the American Bar Association probably summarizes this rule quite well. This provides 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 attorney. The policy behind this seems to be founded on the tradition that a lawyer is the champion of his client. It would be ungentlemanly for a lawyer to deal with anyone other than the champion of the other side.

Sometimes a duty arises when one is obliged to pay excess fees to witnesses. Notice to that effect should be given to opposing counsel. In general, there is no right, much less a duty, to pay fees above the statutory amount. The outstanding exception to this, of course, is in the field of the expert witness. There it is common practice to pay a higher fee. The ethical obligation of one lawyer to another, however, seems to be to require that notice be given to the other party of the use of an expert and some suggestion made as to the amount of the fee to be paid. The reason for this seems to be to give the other side an opportunity to go out and get an expert who charges a similar fee. This seems like a strange proceeding in view of the fact that the testimony of experts is supposed to be the result of honest investigation by the expert. This is done so commonly, however, that a lawyer must keep in mind the duty to inform the other side of the use of experts and to make some suggestion as to the price-range within which the expert will be paid.

Agreements made with other attorneys must be scrupulously observed. This is a fraternity of gentlemen. The technicality that a statute requires a written agreement for extensions of time, etc., is never asserted within the profession.

The rule of gentlemanly conduct likewise requires courteous treatment within and outside the courtroom.

Disciplinary Proceedings

The general rule which we follow in this country is this: any court which has authority to admit an attorney to practice has the power to discipline. An interesting problem arose in the federal courts in 1949. An Assistant United States Attorney had been disbarred in the United States District Court for the breach of official and professional duties. He appealed to the Circuit Court of Appeals. The Circuit Court of Appeals reversed the trial court's determination by finding that the penalty imposed was too severe for a man who was not charged with an offense involving moral turpitude. This is one of the rare cases which we have seen in which an attempt has been made to reverse disciplinary action taken by a court of competent jurisdiction. We can say quite generally that the power of a court to discipline an officer of the court is not subject to review. The practice in state courts results in a statement of this rule without qualification. This is because the discipline ordinarily is administered by the highest court of the state and there will be no opportunity for review of the decision of the highest court. It is possible, however, that in federal courts the rules may be otherwise. The term "disbarment" probably arises because in the ancient days the custom was to throw physically over the bar of the court an attorney who had been ordered to be
disciplined. The procedure today as we understand it is symbolic, such physical force no longer being used.

An interesting constitutional question arises when a legislature attempts to reinstate a man suspended or disbarred by a court. The rule seems to be generally accepted that the admission and discipline of attorneys is a judicial function and the legislature will have no power to pass a law ordering a disciplined attorney reinstated to good standing. Sometimes the Supreme Court delegates to the bar association the investigation of facts for possible future discipline of members of the bar. When the bar association performs these functions, it serves in the same capacity as a master for the Supreme Court. It simply takes the facts. It is possible for the bar association when it acts in this way to have the same powers as a master, which may well include a subpoena and the right to ask for books and records of those under investigation.

In many states of the Union, we have what is called an integrated bar. Active membership in the bar is a requirement for each person who practices law in the jurisdiction. One of the duties of a member of the bar is to pay dues. What happens when one refuses to pay the dues? One man, in a spirit of obstinacy, litigated this question by saying that he was being punished for non-payment of a debt. The court pointed out that this is no debt since suit cannot be brought for its collection; nor is it a tax because none of the usual remedies of distress, etc., can be used against one who does not pay. This is one of the reasonable rules and regulations for carrying on the affairs of the bar, and an attorney who will not pay his dues fails to conform to a reasonable rule and regulation. Therefore, he may be disciplined. The usual discipline is suspension of that person from the privileges of the bar until he pays up his back dues. At that time, it is possible for him to be completely reinstated.

A constitutional question frequently raised is that of double jeopardy. An attorney is punished for a crime. Subsequently, an attempt is made to remove him from the bar because he has committed this offense. The argument is raised that this is double jeopardy. The courts make very clear that removal from the bar is a disciplinary matter, and is not pain or punishment within the meaning of the Constitution. A privilege is withdrawn. That privilege or franchise was one granted him in the public interest. It is not for the personal benefit of the individual. When the privilege is withdrawn in the public interest, he has no grounds for complaint. One lawyer under suspension went so far as to say that he could not be disbarred for misconduct during the period of suspension since he was not a member of the bar. The court pointed out that while he lost some privileges during that particular period, technically he was still a member of the bar, amenable to the discipline of the profession. Another lawyer claimed the right to a jury trial on issues of fact which might lead to his disbarment. The court said that no constitutional right is involved. The withdrawal of the privilege is not pain, punishment, or the taking of property. A particular jurisdiction permits this, but the attorney has no constitutional claim to the right.

The general grounds for disbarment are these: (1) conviction of crime; (2) evidence which in the judgment of the court shows that the crime has been committed and that the facts proven would justify a conviction thereof; (3) such intentional fraud upon the court or a client that shows evidence of moral turpitude. However, it is important to remember that there may be other bases for disbarment.

Any evidence of want of moral character whether found in professional acts or otherwise is grounds for disbarment. The reason for this is that the lawyer as an officer of the court must be a man of great integrity. Any conduct of his which would cause doubt in the minds of the public as to his honesty and integrity renders him useless as a member of the profession. The lawyer who makes use of intoxicating beverages is
usually the subject of special consideration. One court says that if his use of intoxicant
does not interfere with his practice of law, he will not be punished merely because
of the use. It is interesting to note, however, that in the State of Kansas, where a strict
prohibition law formerly was in effect, an attorney who kept a jug of whiskey on his
back door-step was convicted of the offense of illegal possession. This was said to be
a crime involving moral turpitude. For that, he was disbarred. In many other juris-
dictions, a different attitude exists in regard to such matters. It may be safe to say that
in California an attorney who commits the offense simply would be charged with gross
negligence.

In one case, an attorney violated his professional duties while giving advice to
a prisoner in jail. The prisoner apparently did not know why he was being detained.
He was being detained only as a material witness to a felony. The attorney told the
man that he had been arrested for rape. On such false representation, the attorney
was able to extract a large sum of money from this man. Such an abuse of office shows
a want of moral character. The attorney was disbarred. Another attorney charged an
extraordinarily high fee for slight services rendered in regard to a workman’s compen-
sation case. The fee in a workman’s compensation case is pretty much regulated. This
man definitely exceeded the limits by several hundred per cent. For that, he was discli-
plined. An attorney abuses his professional relationship by suggesting to the victim of
an apparent homicide that it would be wrong to make an ante-mortem statement. He is
guilty of unprofessional conduct by obstructing the administration of justice.

One attorney wanted to resign from the bar following a charge that he conspired
to work a fraud under the Bankruptcy Act. The court refused to accept his resignation.
The lawyer has a status which he cannot divest at will. The public has an interest to
know under what circumstances a man leaves the bar. The court which refuses to
accept the resignation is acting completely within its rights. Quite generally, there is
an investigation so that some record may be made in the event that this man decides
to practice law in some other jurisdiction.

An attorney was charged with the crime of seduction on the promise of marriage.
He said that this had no relation to his professional calling. The court was willing to
concede that, but said there was evidence of moral turpitude in his personal life which
would cause the public to think less of him. For this, he was disciplined. Acts involving
moral turpitude are quite generally the basis for disciplinary action.

In the field of professional misconduct we run into such cases as these. An attorney
tampered with the jury roll. This is unprofessional conduct. An attorney in California
came into the courtroom carrying arms. He felt it was necessary because his life had
been threatened. The attorney was disciplined because he gave evidence of want of con-
fidence in the ability of the court to maintain peace and order. The attorney was
disciplined in a case where he altered a check which had been given him to use as
evidence. His duty is to leave the evidence intact for the proper administration of the
law. An attorney who has brought an action to repossess real estate will be guilty of
unprofessional conduct if he assists the client in the use of self-help to regain more
quickly that same property. One who assists ambulance chasers to carry on their busi-
ness is guilty of unprofessional conduct. Ambulance chasing in any form is looked
upon as unprofessional conduct.

An attorney who threatens criminal proceedings in order to accelerate the pay-
ment of a debt is guilty of an abuse of office. Discretion in such matters rests in the
public authorities. The same is not true in regard to a threat of civil proceedings. The
attorney has the right to decide that such is the proper way to collect a debt. As a
fiduciary, an attorney has a duty to put first the interests of his client. Thus, an arrange-
ment by which an attorney says to another attorney, "I'll not object to your account [in a probate matter] if you do not object to mine" represents a form of injustice to the client. An attorney who attempts to bribe and entertain witnesses and otherwise influence the opinions of those who will testify in litigation is guilty of unprofessional conduct. One particular attorney said that he was ordered to do this by his employer. The employer was tired of making payment to litigants who resorted to exactly the same tactics. This attorney attempted to justify what he was doing by claiming the right to fight fire with fire. The court is completely unsympathetic to such a claim.

There is one form of professional misconduct which probably does not involve moral turpitude. It is, however, the basis of disciplinary action. It is something that every lawyer should keep in mind. The rule is set out for us in the State Bar Act of California. It is called Rule 9 and forbids the commingling of funds of a client with an attorney. In many jurisdictions, loss of commingled funds subjects the attorney to treble damages. In every jurisdiction, the attorney becomes an insurer of the funds he so commingles. On the other hand, we know that if an attorney separates the funds and they are lost through no fault of his, he is exempt from liability. For both moral and practical reasons, every attorney should remember about the rule forbidding the commingling of funds. Attorneys are notoriously poor bookkeepers and the rule exists for their own protection.

A "sloppy practitioner," so described because he does not do his utmost to keep up with the needs of his clients and permits their affairs to drag, is subject to professional discipline. In California, this has been described as an offense involving moral turpitude because the attorney has a duty to exert himself to his utmost on behalf of his client.

**Non-Professional Misconduct.** — Lawyers have been disciplined for what is described as non-professional misconduct. Thus, a lawyer who is landlord of a hotel used for immoral purposes will be subject to discipline. An attorney who is a bookmaker or a common dice shark or a pawnbroker acting as a fence for stolen goods will be subject to professional discipline. A very obvious case is one of the attorney who loaned the use of his identity to a foreign agent so that the agent could get a passport to get in and out of the country. Clearly, he is subject to professional discipline. A lawyer who sells his own real estate, concealing the fact of a second mortgage, is going to be held liable to a layman. The lawyer in this case seems to be held to a higher standard of care than that which is imposed upon the ordinary seller, where we see the rule of *caveat emptor* applied. The lawyer has a duty to be completely honest in his dealings with third persons even in affairs that fall outside of his professional activity. A lawyer who participated in a lynching in the yard of a courthouse during a lunch hour was subject to full professional discipline, although he said he did this during a time when the court was not in session.

Sometimes an attorney may be readmitted to practice after disbarment, but it is the exception rather than the rule. The one thing which a court looks for in such a case is whether or not this man has so completely rehabilitated himself that the public will have full confidence in him as an honest and able man. Unless the applicant for readmission can establish this, the court will not in any way entertain the petition. Even if proof of rehabilitation is offered, there is no assurance that the attorney will be accepted back into the fold.

**Attorneys’ Fees**

Under the tradition of the English bar, a lawyer may not sue for a fee. Whatever a lawyer receives for his professional services is considered a token and described as
an honorarium. We take a different view in regard to this matter in the United States. We say in this country that a man does better work if he knows he is going to be compensated. In addition to that, if it is known that the debt may be collected the client is not likely to be overreached by an attorney who really has the client in a disadvantageous position if he is in great need of legal services because he is in trouble. The relationship between attorney and client is described under the term of retainer. This is the name of the contract by which the attorney assumes to be faithful to the client and agrees that he will not handle any case involving adverse and conflicting interests. Before an attorney may accept such a retainer, it is necessary for him to believe that there is some expectation that he will be called upon to render legal service. If it is obvious that he is being retained so that he may not appear against the one retaining him, the lawyer will be acting unprofessionally. The fundamental principle governing this is that a lawyer may never receive something for nothing.

Likewise an attorney must act with care with one who appears to him to be a stranger asking to contribute to the cost of some litigation. Strangers are not allowed to participate in litigation and in fact it is a misdemeanor to stir up or encourage litigation. The application of this rule, however, is more difficult. A man who expects to become the third husband of a woman asks an attorney if he will look into the matter of her prior divorces so that there would be no question of the competency of the woman to marry. There the man is said to have a sufficient interest in the subject matter so that he is not a stranger to the litigation. The attorney there was free to accept the fee paid by the prospective husband No. 3.

In fixing the amount of the fee, it is well to keep in mind that there is a well-established tradition of the bar in regard to this. Perhaps the clearest statement of the rule is found in Canon 12 of the Boston Bar Association Canons:

"Canons of Professional Ethics

"Canon 12. Fixing the Amount of the Fee. In fixing fees, lawyers should avoid charges which over-estimate their advice and services, as well as those which under-value them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means should receive special and kindly consideration.

"In determining the amount of the fee, it is proper to consider: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

"In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade."

In considering these particular items, it seems wise to keep in mind that time and labor is not always a very good guide. The more expert a man, the less time he needs to spend on a case. That matter of time and labor then is compensated by novelty and difficulty. In regard to the second item it is important to remember that one who is a fiduciary is not free to take cases which involve adverse and conflicting interests. The loss of this potential business is a proper factor to take into consideration in determining a fee. Likewise if one is called upon to represent an extremely unpopular cause,
something like divorce in a small town, one must likewise take that into consideration in determining the loss of future business. The customary charges of the bar are proper to consider so that one may not be charged with the offense of under-cutting. In addition, these charges, usually based upon considerable experience of the members of the bar, serve as a very fine guide. This is particularly true for younger men who may fail to take into consideration the overhead that is involved in the maintenance of an office. There is no more useless citizen than a bankrupt attorney. The fourth element, the amount involved and the benefits to the client, become quite important when we realize an attorney may be sued for negligence. In considering the amount involved as a basis of the fee, one does no more than an insurance carrier who adjusts the premium with regard to the risk involved. On the fifth point, certainty of compensation, again one must take into account the common business practices which require one to make payments regularly to his employees and to those companies which render service to him. While he has outstanding accounts more than sufficient to pay these costs, perhaps it will be necessary for him to borrow money in order to meet this overhead. If it becomes necessary for him to pay interest or otherwise to defer some expected gain, it is only proper that this cost be passed on to the client who fails to meet his obligations.

The sixth requirement in regard to character of employment, whether casual or constant, is important because one needs to investigate the character and standing of each client as he comes along. One would not attempt to go into court unless he is sure that the client is entitled to legal representation. The character investigation involved in this is time-consuming and expensive. Thus, if one deals regularly with a client this investigation becomes unnecessary. To that extent the cost of doing business is diminished and that in turn should be reflected in the fee which is charged to a client.

The matter of contingent fees is a troublesome one. In some jurisdictions they are forbidden altogether. Some say that an attorney who takes such a case commits the offense of champerty. That offense has been defined as buying an interest in the outcome of litigation. In other jurisdictions, however, and this is most commonly true in the western states of the United States, the policy is to favor contingent fees. The theory is that poor people otherwise would not have an opportunity to receive their day in court. So long as the fees are reasonable in amount and arrived at as a result of fair dealings between attorney and client, these arrangements are permitted. However, a lawyer sometimes finds it necessary to protect himself against clients who for some reason or other may become angry at him. Sometimes a client is tempted to say that the attorney has agreed to handle a case on a contingent fee basis as well as to pay all of the costs of the litigation. That is champerty. The attorney ought to take a note or some other evidence of debt to show that, as to court costs, he has not assumed the obligation. Any money so advanced is only by way of loan. A note or other evidence of debt should be there to prove that he expects to be reimbursed.

A fundamental principle in regard to litigation is that the cause of action belongs to the client. Any time the client wishes to give up litigation, he must be free to do so. The attorney ought not to have any interest in the subject matter, so he cannot object, as one California attorney did, that it is impossible to dismiss him because he has an agency coupled with an interest. If he has an agency coupled with an interest, probably he is guilty of the crime of champerty. But let us suppose a case where the attorney is wrongfully dismissed by one who has hired him on a contingent fee basis. The first attorney later finds that his client merely wanted to give the case to another attorney. The other attorney successfully prosecutes the action to completion. A choice is open to our court. Either the attorney wrongfully dismissed could collect the reasonable value of the services which he had rendered up to the time of his dismissal or the court could order him to receive the full amount which had been promised to him for suc-
cessfully prosecuting the action. The California court took the latter approach on the
grounds that the dismissal by the client was wrongful and the conduct constituted a
willful breach of contract. If the percentage agreed upon for a contingent fee was 40
per cent and both the first lawyer and the second lawyer received that amount, it is
quite obvious what happens to the client who is guilty of such unlaymanlike conduct.

There are only two rules we need to know in the matter of sharing fees. First of all,
the lawyer may never share his fee with a layman. Second, he may share his fee
with another attorney only where there is a division of responsibility and of work.
A mere reference by one lawyer to another of a particular case because the other
lawyer happens to be more conveniently located to handle it is not a justification for
a fee. Some responsibility which in turn may lead to possible liability on the part of
the attorney is a condition precedent to the charging of any fee. Rebates and com-
missions are not known in the legal profession. The division of fees is solely upon the
basis of responsibility assumed in regard to the affairs of the client.

Sometimes it becomes necessary for a lawyer to withdraw from a case. It is not
at all impossible that he withdraws from the case because of non-payment of fees. The
one thing which the lawyer must remember is this, he must not withdraw from the case
under circumstances that will prejudice the affairs of the client. That means giving
him sufficient notice to obtain another attorney. It means as well omitting any dramatic
conduct or references which will suggest to the public or to the court that the reason
for the abandonment of the suit is the non-payment of fees. While it is possible for an
attorney to terminate his relationship with a client at almost any time the one principle
to be kept in mind is that it must not be done in a way that prejudices the client. A
doubtful matter arises in regard to withdrawal from a criminal case because of non-
payment of fees.

Perhaps the obligation which one assumes in a criminal case, namely, that of
protecting the constitutional rights of the accused, is sufficiently great to override any
personal interest which the attorney has in the fee. We know that if a court chooses
to appoint an attorney as counsel in a criminal case and there is no legislation by which
the attorney will be compensated by public funds, that attorney more or less has to
consider that he is fulfilling the obligation which he had assumed by his oath of office.
Certainly we find frequent appointments of attorneys as counsel for indigent prisoners.
The traditions of the bar are such that one probably would never hesitate to take such
a case if so directed. There are provisions in the Canons for legitimate exemptions.
One arises when a man is actually engaged in other litigation which will prevent his
appearance in court at the time that this particular case should be tried. Recently, a
case came up where an attorney was able to convince the court that his assigned client
was lying to him. The attorney believed he couldn't possibly get the truth for the pur-
pose of a trial. In such a case, the counsel for the indigent prisoner was excused. In the
absence of such excuse, however, the traditions of the bar seem to be strong enough
to require a man to continue even where he will receive no compensation for it.

An attorney ordinarily may not receive a gift from a client. The relationship of the
attorney and client being a fiduciary one the presumption seems to be that the client
has been overreached by the attorney who receives a gift. At least, cases seem to indi-
cate that the attorney has the burden of proof to show that what comes to him by way
of gift has not come as a result of undue influence exerted by the attorney. Legacies
to an attorney who drew the will are always looked upon with suspicion. There is no
rule which says he cannot receive a legacy, but courts have always maintained an
attitude of stout suspicion in matters of this kind.

"It is better to give than to receive." Such is the simple maxim which vitalizes
legal ethics.