

Issues in Legal Ethics

Faculty: Kyle Robinson, Esq.

- I. Beginning the Lawyer Client Relationship
 - A. ABA Model Rules
 1. 1.16 - Declining or Terminating Representation
 2. 1.18 - Duties to Prospective Clients
 3. 3.1 - Meritorious Claims and Contentions
 4. 6.1 - Voluntary Pro Bono Publico Service
 5. 6.2 - Accepting Appointments
 - B. Duty to Take (some) Cases
 1. General Rule
 - a) Lawyers are NOT Public Utilities
 2. Exceptions to the Rule
 - a) The Lawyer's Oath
 - (1) It is the duty of an attorney:
 - (a) To Support the Constitution and laws of the United States and of this State
 - (b) To maintain the respect due to the courts of justice and judicial officers
 - (c) To counsel or maintain such actions, proceedings or defenses only as appear to her legal or just, except the defense of a person charged with a public offense
 - (d) To employ, for the purposes of maintaining the causes confided to her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law
 - (e) To maintain inviolate the confidence, and at every peril to herself, to preserve the secrets of her client
 - (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which she is charged

(g) Not to encourage either the commencement or the continuance of an action or a proceeding from any notice corrupt of passion or interest

(h) Never to reject, for any consideration personal to herself, the cause of the defenseless or the oppressed.

b) *Bothwell v. Republic Tobacco Co.*

(1) While incarcerated, plaintiff, Earl Bothwell filed a complaint to request to proceed in forma pauperis, a civil complaint, and a motion for appointment of counsel with regards to a suit against Republic Tobacco Co. After a series of motions to withdraw and appointments of substitute counsel, the court appointed Paula Metcalf as plaintiff's counsel.

(2) Does a federal court have statutory or inherent authority to force an attorney to take an ordinary civil case for no compensation?

(3) A federal district court does possess the inherent power to compel an unwilling attorney to accept a civil appointment.

3. Pro Bono

II. Ending the Lawyer Client Relationship

A. General Rule

B. Mandatory Withdrawal

1. Being Fired
2. Good faith
3. Violation of Disciplinary Rule
4. Mental or Physical Incapacity

C. Permissive Withdrawal

D. Getting Paid

E. Cases

1. *Ruskin v. Rodgers*

a) Plaintiff sued defendant for specific performance of a written agreement for purchase of an apartment building and its conversion into condominiums. Plaintiff prevailed. Defendant contends he was deprived of a fair trial because of denial by

the trial court of defendant's motions for continuance and substitution of attorneys

- b) Denial of such a motion will not be disturbed on appeal unless there has been a manifest abuse of discretion or a palpable injustice. Grave reasons for granting a continuance must be given once a case has reached the trial stage.
- c) Does the defendant have an absolute right to replace his attorney at any time without cause? To allow defendant to substitute attorneys at this point would have been extremely disruptive to the trial and would have resulted in a significant and prejudicial delay.

2. Rosenberg v. Levin

- a) The proper basis for compensating an attorney discharged without cause by his client after he has performed substantial legal services under a valid contract of employment.
- b) A lawyer discharged without cause is entitled to the reasonable value of his services on the basis of quantum meruit, but recovery is limited to the maximum fee set to the contract entered into for those services.
 - (1) Contract rule - an attorney discharged without cause may recover damages for breach of contract under traditional contract principles
 - (2) Quantum Meruit Rule - limits recovery to the maximum amount of the contract fee in all premature discharge cases involving both fixed and contingent employment contracts (Court's Holding)

3. Holmes v. Y.J.A. Realty Corp

- a) Code of Professional Responsibility states that an attorney's withdrawal from employment is permissible where a client "renders it unreasonably difficult for the lawyer to carry out his employment effectively",

4. Kriegsman v. Kriegsman

- a) When a firm accepts a retainer to conduct a legal proceeding, it impliedly agrees to prosecute the matter to a conclusion. With trial imminent, it would be extremely difficult for plaintiff to obtain other representation, and therefore she clearly would be prejudiced by the firm's withdrawal.

III. Frivolous Claims

- A. ABA Model Rule 3.1 prohibits an attorney from taking a frivolous legal position that is, a position that, under the facts, has no basis in existing law and that cannot be supported by a good faith argument for extending, modifying, or reversing the existing law.
- B. ABA Model Rule 1.16, an attorney must refuse employment (or must withdraw from employment) if the employment would require the attorney to violate a disciplinary rule or other law

IV. Advertising and Solicitation

A. ABA Model Rules

- 1. 7.1 - Communications concerning a lawyer's service
- 2. 7.2 - Advertising
- 3. 7.3 - Direct Contact with Prospective Clients
- 4. 7.4 - Communications of Fields of Practice and Specialization
- 5. 7.5 - Firm Names and Letterhead
- 6. 7.6 - Political Contributions to Obtain Legal Engagements Or Appointments by Judges

B. First Amendment

C. Case Law

- 1. Bates v State Bar of Arizona
 - a) Two Arizona lawyers violated Arizona's ban on lawyer advertising.
 - b) Bates held that the First Amendment commercial speech doctrine protects attorney advertising that is truthful and not misleading.
 - c) The Court based its First Amendment conclusion on arguments that carry the strong antitrust - free competition among lawyers raises quality and reduces prices, and competition works best when consumers are well informed about their choices.
- 2. Florida Bar v. Went for It, Inc
 - a) Rules of the Florida Bar prohibit personal injury lawyers from sending targeted direct-mail solicitations to victims and their relatives for 30 days following an accident or disaster.

- b) Advertising may be regulated by the government if it satisfies a three pronged test
 - (1) The Government must assert a substantial interest in support of its regulation
 - (2) The government must demonstrate that the restriction on commercial speech is directly and materially advances that interest and
 - (3) The regulation must be “narrowly drawn”

V. Attorney Fees

A. ABA Model Rules

- 1. 1.5 - Fees
- 2. 1.8 (e)- Conflict of Interest: Current Clients: Specific rules - A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that

B. Setting Fees

- 1. Excessive Fees
- 2. Factors
- 3. Contingent Fees
- 4. Billable Hours

C. Case Law

- 1. Robert L. Wheeler, Inc. v. Scott
 - a) Question is after summary judgment was entered against appellant in a mortgage foreclosure proceeding, and after the trial court subsequently reduced the fee charge by Scott’s attorney, the fee was still excessive.
 - b) Factors
 - (1) Time and labor required
 - (2) Novelty or difficulty of issues
 - (3) The Skill requisite to perform
 - (4) Loss of opportunity for other employment
 - (5) The customary fee
 - (6) Where the fee is fixed or contingent
 - (7) Time limitations imposed by the client or circumstances
 - (8) The Amount involved and the results obtained

- (9) Experience, reputation, and ability of attorney
- (10) The undesirability of the case
- (11) Casual or regular employment
- (12) Awards in similar cases

D. Lending Money to Clients

VI. Fiduciary Duties

- A. Commingling
- B. Safeguarding Property
- C. Keeping records and Notifying Clients

VII. Bias

A. ABA Model Rules

- 1. 1.8(j) - Conflict Of Interest: Current Clients: Specific Rules A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.
- 2. 3.4 -Fairness to Opposing Party and Counsel
- 3. 3.5 - Impartiality And Decorum Of The Tribunal
- 4. 4.4 - Respect of Rights for Third Parties
- 5. 8.4 - Misconduct

B. Types of Bias

- 1. Gender
- 2. Racial and Ethical
- 3. Sexual Orientation
- 4. Other Forms

C. Remedies for Bias

D. Cases

- 1. In Re Plaza Hotel Corporation
 - a) Bankruptcy court granted a motion to disqualify the debtor's counsel for unacceptable gender-biased behavior toward the trustees' female counsel.
- 2. In Re Vincenti
 - a) Attorney disbarred because of behaviors including harassment and intimidation on the basis of sexual orientation
- 3. In Re Kirby

- a) Judge John J. Kirby was censured for his discourteous treatment of email attorney's, his public intoxication, his conducting of judicial business with alcohol on his breath and his habitual tardiness