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Legal Ethics: Attorney Disciplined for Unprofessional Conduct

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is a matter of speculation, but it is clear that this decision has served to re-emphasize the need for statutory clarification and stabilization of the retail credit picture. In light of the recent decisions of the Nebraska Supreme Court, it is obvious that such legislative action cannot fail to benefit the retail seller as well as the installment purchaser.

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Legal Ethics: Attorney Disciplined for Unprofessional Conduct —Defendant-attorney was found guilty of unprofessional conduct in an action instigated upon complaint of the Board of State Bar Commissioners. This finding was based upon two grounds. The first related to the maintenance of a neon "Income Tax" sign in the defendant's window, and the second concerned the allowance in his office of an income tax service conducted by his wife, a nonprofessional. Noting that this was a "test" case involving somewhat common practices, the court merely reprimanded the defendant and ordered him to pay costs not to exceed $200.[1]

In its opinion the court pointed out that the placement of the "Income Tax" sign called attention to the defendant's law office as the place where such service could be obtained. This, it felt, was a form of advertising, which amounted to solicitation of business, thus being unprofessional conduct. The court rejected defendant's argument that because nonprofessionals are permitted to engage in such service, his performance, within narrow, nonlegal limits, was engagement in a business in which he was free to advertise. The court concluded that the public interest would not be best served by allowing advertisement on the part of attorneys who render tax services.

The court looked at the problem of office sharing as a permissive practice, but only in certain instances. In the *Willenson* case the court held that the arrangement amounted to unprofessional conduct. There must be evidence of a physical separation which indicates the independence of the parties such that patrons of the other enterprise will be apprised of the lack of supervisory control by the attorney.

The refusal of the defendant-attorney to remove the sign upon request subjected him to possible disbarment or a substantial period of suspension. However, it is questionable whether the court would have imposed such stringent sanctions even absent the nature of the case as a "test" case.

> An attorney may be disciplined for actions that contravene the ethics of his profession even though his conduct is neither criminal nor calculated to obstruct justice. . . . It has also been said that unprofessional conduct that will justify disbarment

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[1] State v. Willenson, 20 Wis. 2d 519, 123 N.W. 2d 452 (1963).

> must have an element of immorality or dishonesty, or must violate private interests or the public good.[2]

The sanction which will be imposed varies among the courts. They consider the nature of the act, the customs of the community, and the interests of the public which are to be served.[3]

There have been numerous reasons given for the persistence and strict enforcement of the rules governing advertising and soliciting by members of the legal profession. The lack of benefit to the public is one of the reasons most frequently given. The result of unrestrained advertising would be to increase litigation in that attorneys would be competing for business. This encouragement of courtroom controversy would bring about a lowering of the whole tone of the administration of justice.

> If the practice of law is to remain a profession and not to become a mere trade, it is quite as important that ethical practioners be protected from unfair competition within the profession as from the unauthorized practice of law outside the profession by laymen and corporations. But this is not the only aspect of these canons. Their enforcement is of concern not merely to the members of the profession. It is equally essential to the public. Our citizens have a right to expect from the members of a learned profession who are granted by the State the privilege to practice law that they will live up to the standards long recognized at common law and in large part codified in the Canons of Professional Ethics.[4]

While it is usually necessary to examine the statutes, common law, decisions, canons, usages and customs, and practice of the bar in most instances to gain an accurate picture of the duties and obligations of the lawyer,[5] it was not necessary to do so in the *Willenson* case because violation of Canon 27[6] was readily apparent without more.

[2] 7 AM. JUR. 2d *Attorneys at Law* §38, at 66 (1963).

[3] See Hildebrand v. State Bar of California, 36 Cal. 2d 504, 225 P. 2d 508 (1950), where the court dismissed a disciplinary action against attorneys due to the absence of any prior decision holding that it was improper for attorneys to participate in a plan to render legal aid to members of a labor union. The court reasoned that the ends of justice could best be served by giving an opinion which would serve prospectively as a guide to members of the profession. *In re* Veach, 1 Ill. 2d 264, 115 N.E. 2d 257 (1953) held that the acts of an attorney, violating professional ethics (solicitation of personal injury cases), are not excusable even though they are in accord with established customs, and are free of criminality, fraud, or deceit. Nor was practice as a professional bondsman excusable on grounds of custom. *In re* Meldrun, 243 Iowa 777, 51 N.W. 2d 881 (1952).

[4] *In re* Rothman, 12 N.J. 528, 97 A. 2d 621, 625 (1953).

[5] DRINKER, LEGAL ETHICS 211-212 (1953).

[6] CANONS OF PROFESSIONAL ETHICS OF THE AMERICAN BAR ASSOCIATION, Canon 27: "The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by

The Ethics Committee of the Wisconsin Bar Association has at times passed on the propriety of signs such as the one used by defendant. Their position was relied on in the *Willenson* case.

> A lawyer may display a dignified window sign, shingle, or door sign to designate his office. It should not be gaudy or in bad taste. *There must be no neon sign or other illuminated lettering.* A black or gold lettered sign is the customary usage. A lawyer may not advertise a collection agency, income tax service or claims service. *Lawyers may not permit laymen who share office space with them to use window signs to display matter which would be prohibited to an attorney.* One or two instances have been reported that a lay tax return preparer shares space with an attorney and displays a neon or red and white painted sign in the window of the same suite of offices which the lawyer occupies. The committee has held this to be improper. *All advertising in the lawyer's office windows must conform to proper standards.* (Emphasis added.)[7]

The blueprint of ethical advertising has very narrow limitations. A lawyer may properly identify his office, use professional cards and letterheads, and list his name in telephone directories. The only two specialties which may be referred to on an attorney's business card are maritime and patent law.[8] As the court suggested in the *Willenson* case, a bar association directory, rather than individual advertising, can be used to apprise the public of attorneys who perform income tax services.[9]

That an attorney has a right to engage in a business which is independent from the practice of law almost goes without saying. There is a difficulty, particularly in tax service, in attempting to distinguish nonprofessional aid and use of legal knowledge with consequent dispensing of legal advice.[10] Maintaining a law office in conjunction with a non-

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personal communications or interviews, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable."

[7] Wis. B. Bull. Feb., 1962, p. 30.

[8] DRINKER, *op. cit. supra* note 4, at 245.

[9] State v. Willenson, *supra* note 1, at 562, 123 N.W. 2d at 456.

[10] DRINKER, *op. cit. supra* note 4, at 221, "Where the second occupation, although theoretically and professionally distinct, is one closely related to the practice of law, and one which normally involves the solution of what are essentially legal problems, it is inevitable that, in conducting it, the lawyer will be confronted with situations where, if not technically, at least in substance he will violate the spirit of the Canons, particularly that precluding advertising and solicitation. The likelihood of this is the greatest when the collateral business is one which, when engaged in by a lawyer, constitutes the practice of law, and when it is conducted from his law office."

professional also raises a problem. Sharing of office space, clerical help, and other items of expense are not in and of themselves unprofessional conduct. The danger which lurks in such practices, however, is that the public may be induced to believe that the services are of a professional nature when in fact they are not. Therefore, the Wisconsin Supreme Court has quite logically decreed that no display or advertising inconsistent with the Canons should be allowed to appear in connection with a law office.

A further problem in this regard arises under Canon 34 which provides that there can be no division of fees for legal services, except between attorneys who have rendered a portion of the services or shared some responsibility.[11]

The guidelines which the Wisconsin court has approved with respect to the advertising of an independent non-legal business are those of the Committee of Professional Ethics of the State Bar of Wisconsin.

1. The independent nonlegal business should be clearly and totally separated from the legal practice.
2. Letterheads, cards, and all advertising of independent business must contain no reference or inference to status of the individual as an attorney nor as to legal services.
3. It is desirable that the independent business have wholly separate locations from the legal practice, but if that is impossible the physical distinction should be made clear and definite as the circumstances permit.
4. There must be wholly separate telephone and other directory listings as well as wholly separate telephones and telephone numbers.
5. Signs of the other business must be wholly separate and to avoid the unethical "feeder" possibility, it would seem grossly inappropriate to have a gaudy or flashy other sign next to a modest shingle.[12]

An attorney is not permitted to participate in an advertised agency doing business in adjustment and investigation of claim service, collection service, or income tax service. This is because these activities are deemed to be inherent "feeders" for law practice.[13]

The attorney is bound by similar requirements when he shares his office with a nonprofessional. There must be an obvious physical separation such that patrons will be clearly apprised thereof. Further, the lack of supervisory control by the attorney must be apparent. The patron must also have knowledge that he need not consult the particular attorney for legal advice, but is free to choose any attorney.[14]

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[11] Conceivably, an arrangement of office sharing could result in the payment of a percentage to the nonlegal partner in the office for business which the lawyer retains as a direct result of his office sharing.
[12] Wis. B. Bull., June, 1960, p. 47, 49.
[13] *Ibid.*
[14] State v. Willenson, *supra* note 1, at 528, 123 N.W. 2d at 457.

The difficulty which Justice Dietrich, in his dissenting opinion in the *Willenson* case, finds is in the placement of an affirmative duty upon the attorney to make the independence of the operation apparent to the general public. He would prefer that it be incumbent upon one challenging the arrangement at least to allege that the operations are not in fact independent.[15] However, it does not appear to this author that the burden placed upon the attorney is too great in light of the public interest which is to be protected.

In the *Willenson* case, the Wisconsin Supreme Court laid down definite requirements which must be observed by an attorney who wishes to engage in an independent business or share an office with a nonprofessional. Adherence to the Canons of Ethics regarding advertising is of primary importance. Further, the attorney has a duty to make an obvious physical separation of the nonlegal business from the legal business. Future conduct of the type involved in this case will not be tolerated and it is evident that the court will continue to regulate the professional conduct of attorneys very strictly.

COLLEEN A. ROACH

Domestic Relations: The Present Law on Artificial Insemination —Few topics have engendered such great controversy in the past years as that of artificial insemination (hereinafter called AI). The social, moral,[1] religious, and legal problems raised by this relatively new medical technique defy treatment in a single article; in fact, the very interrelationship of these disciplines has so complicated this topic that a veritable paralysis has resulted in the law concerning AI. Yet, the legal profession cannot close its eyes to the serious nature of this problem. AI cannot be treated as a passing fad performed upon some insistent childless women as an experiment of sorts. Statistics on AI are at best conjecture because of the secrecy involved in its administration; however, some have estimated that approximately 100,000 American families have had children through the AI procedure and all seem to agree that its use will increase.[2] Thus, an examination of the present status of the law and possible future legislation on AI seems in order. It is this author's position that AI should be examined and analyzed from a public policy viewpoint, placed in the general setting of Judeo-Christian morality which prevails in our American society, yet divorced as much as possible from the detailed religious problems involved.

The method used to effect artificial insemination is of vital legal significance. There are three types of AI used by physicians to im-

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[15] *Id.* at 529, 123 N.W. 2d at 458.

[1] For an excellent discussion of the sociological, religious, and ethical aspects of artificial insemination see Rice, *A.I.D.—An Heir to Controversy*, 34 NOTRE DAME LAW. 510 (1959).

[2] Weinberger, *A Partial Solution to Legitimacy Problems Arising From the Use of Artificial Insemination*, 35 IND. L. J. 143 (1960).