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Attorneys at Law

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tially eliminates this problem on future appeals by making an appeal to the Court of Common Pleas of Franklin County from the orders of the Board of Liquor Control permissive, instead of mandatory. Thus, an order of the Board of Liquor Control denying a permit may be appealed to the court of common pleas of the county in which the place of business of the applicant is located or the county in which the applicant is a resident.

MAURICE S. CULP

AGENCY

Because of the lack of significant opinions rendered on Agency during the period covered by this Survey, Mr. Hugh Ross has not submitted an article this year.

THE EDITORS

ATTORNEYS AT LAW

Four cases of disciplinary action were reported last year, three from Cuyahoga[1] and one from Stark County.[2] Two attorneys were publicly reprimanded, one was indefinitely suspended from practice, and one was permanently disbarred.

The cases give some further definition of the term "misconduct" which, by Ohio Supreme Court Rule XXVII, warrants disciplinary action. The most interesting of these[3] concerned an attorney representing the plaintiff in a divorce action. The attorney had been told by his client, before the petition was filed, that he was living in a state of "either bigamy or adultery," and that he intended to continue to do so. Therefore, the attorney knew that the divorce action was without merit and knew that his client was continuing to act in violation of a criminal statute.[4] The Board of Commission on Grievances and Discipline found "that [the attorney] failed to terminate a professional relationship in the face of his client's continued wrongdoing and performed improper service by instituting an admittedly unmeritorious suit."[5] The supreme court said that these acts constituted misconduct and approved the board's recommendation of discipline for the attorney.

1. Cleveland Bar Ass'n v. Wilkerson, 168 Ohio St. 478, 156 N.E.2d 136 (1959); Cleveland Bar Ass'n v. Vann, 168 Ohio St. 481, 155 N.E.2d 922 (1959); Adams v. Fleck, 154 N.E.2d 794 (Ohio P. Ct. 1958).

2. Stark County Bar Ass'n v. Beyoglides, 169 Ohio St. 201, 158 N.E.2d 361 (1959).

3. Cleveland Bar Ass'n v. Wilkerson, 168 Ohio St. 478, 156 N.E.2d 136 (1959).

4. OHIO REV. CODE § 2905.08.

5. Cleveland Bar Ass'n v. Wilkerson, 168 Ohio St. 478, 156 N.E.2d 136, 137 (1958).

The misconduct here consisted not just of instituting the divorce action, but also of maintaining a "professional relationship" with the client. It is, of course, clear that an attorney may not aid a client in the perpetration of a crime, which is to be distinguished from representing a client who has committed a crime where the criminal activity has ceased. But the doctrine of this case forbids the maintenance of a professional relationship with a client who continues his criminal activity, even though the legal service does *not* aid in the crime. Stated another way, it means that one who insists on continuing a life of crime is not entitled to legal counsel. The opinion does not discuss the purpose of the doctrine, but presumably it is based upon the unseemliness of such a relationship, the necessity of upholding the honor and dignity of the profession, and the desire to encourage obedience to the law by denying vital services to the continuing criminal.[6] It should be noted that in the case at hand the attorney knew positively from his client that the client was continuing the criminal acts; the decision does not deal with the situation where the attorney has something less than positive knowledge of the continuing activity. Perhaps the decision does not mean to deny *all* legal service to the criminal under these circumstances, but there is no suggestion in the opinion that any type of professional service would be proper. This doctrine plainly needs further study and clarification.

The court did not indicate how serious it considered this misconduct of maintaining a professional relationship to be under these circumstances, for although it approved the board's recommendation of indefinite suspension of the attorney, he was also guilty of filing an admittedly unmeritorious suit, of failing to account properly for a client's funds, of instituting litigation contrary to the wishes of a client, and of failing to prosecute properly the case of another client. The court said that it was the cumulative effect of these acts of misconduct that warranted the discipline, and that it did not make any determination as to whether the conduct in any one of the acts might in and of itself be sufficient to justify the discipline.

In the above case, and in *Cleveland Bar Association v. Vann*,[7] the misconduct consisted of failing to account properly for clients' funds. In both cases, the full amount of the fund had been returned to the client before disciplinary proceedings were instituted, but both attorneys were found to have misconducted themselves and were disciplined. Since the circumstances of these cases are not fully laid out

6. Canons of Professional Ethics § 16, entitled "Restraining Clients from Improprieties," provides:

> "A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial offices, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation."

The impropriety or wrongdoing contemplated by this canon does not seem to be the type present in this case.

7. 168 Ohio St. 481, 155 N.E.2d 922 (1959).

in the opinions, the cases give only a general indication of what the court considers to be accounting improper to the extent that discipline is warranted. In one case, that of the attorney with the adulterous client discussed above,[8] the attorney had received $1,000 from his client, to be paid to the vendor of real estate which the client was buying. The purchase agreement failed and the client demanded the return of the $1,000, which the attorney was holding separately from his own funds, but the attorney refused to return it. He claimed to have an attorney's lien on the fund, which the board found did not exist, and he returned it only after embezzlement charges were brought against him.

In the second case,[9] $257 had been given the attorney, again to be paid to the vendor of real estate being purchased by the client; the attorney apparently used this money and refused initially to pay the vendor or to repay the client. Upon further demand, the attorney made reimbursement to the client. The court held that the board's recommendation of indefinite suspension was unduly severe under the circumstances, and reduced the discipline to a public reprimand.

In another case,[10] a probate court reprimanded two members of a law firm, who jointly represented conflicting interests in a matter before the court, remarking that the case contained echoes of *In re Estate of Wright*.[11] Their conduct was criticized primarily because they had represented the deceased in devising a plan to limit as much as possible his wife's inheritance from him and then, upon his death, represented the widow and children in connection with their rights in the estate. The court pointed out that the attorneys' obligation to the deceased client was not terminated by his death and that they should have completely divorced themselves from any action designed to protect the widow.

The fourth disciplinary case[12] resulted in permanent disbarment of an attorney on findings of misconduct under some eight different counts. No details of the acts of misconduct were stated.

In all but one of the surveyed cases the disciplinary procedure followed was that under Ohio Supreme Court Rule XXVII. In the one special case, that of conflict of interest discussed above,[13] a reprimand was delivered sua sponte by the Probate Court of Cuyahoga County in connection with an order requiring the reprimanded attorneys to turn over to the court an asset of an estate held by them. The testi-

8. Cleveland Bar Ass'n v. Wilkerson, 168 Ohio St. 478, 156 N.E.2d 136 (1959).

9. Cleveland Bar Ass'n v. Vann, 168 Ohio St. 481, 155 N.E.2d 922 (1959).

10. Adams v. Fleck, 154 N.E.2d 794 (Ohio P. Ct. 1958).

11. 123 N.E.2d 52 (Ohio Ct. App. 1954), Sonenfield, *Attorneys at Law, Survey of Ohio Law — 1955*, 7 WEST. RES. L. REV. 230, 235 (1956); 165 Ohio St. 15, 133 N.E.2d 350 (1956), Sonenfield, *Attorneys at Law, Survey of Ohio Law — 1956*, 8 WEST. RES. L. REV. 250 (1957).

12. Stark County Bar Ass'n v. Beyoglides, 169 Ohio St. 201, 158 N.E.2d 361 (1959).

13. Adams v. Fleck, 154 N.E.2d 794 (Ohio P. Ct. 1958).