North Dakota Law Review

Volume 42 | Number 1 Article 7

1965

Attorney and Client - Constitutional Law - Attorney's Fifth Amendment Right to Just Compensation for Defending Indigent Client

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deprivation. Therefore the loss should be placed on the manufacturer, who is best able to minimize it.[16]

If this smacks of strict liability, the answer may be that this is what is needed. Let the only basis for non-recovery be remoteness of causation.[17] In placing the manufacturer in this position, it is probably only fair to allow him reasonable defenses, *i.e.* contributory negligence, unforeseeability, etc. The ultimate answer may be to abrogate the cause of action for breach of implied warranty and substitute a new cause of action which sounds in tort, but which does not put the plaintiff to proof of the manufacturer's negligence.

JOHN GRAHAM

ATTORNEY AND CLIENT — CONSTITUTIONAL LAW — ATTORNEY'S FIFTH AMENDMENT RIGHT TO JUST COMPENSATION FOR DEFENDING INDIGENT CLIENT—The Petitioner was appointed by the federal court to defend an indigent client which involved 108 hours of labor, use of his firm's facilities and out of pocket expenses. He requested compensation under the fifth amendment guarantee of just compensation for property taken by the government. The United States District Court for the District of Oregon *held* that the petitioner was entitled to just compensation because his property was taken without due process of law. The court also found that by taking his services, the government had entered into an implied contract that it would pay for this property. The United States Court of Appeals reversed the district court decision, *holding* that upon becoming a member of the bar the petitioner was entitled to no compensation because as an officer of the court he has assented to donating his services. *Dillon v. United States*, 230 F. Supp. 487 (D. Ore. 1964); *United States v. Dillon*, 346 F.2d 633 (9th Cir. 1965).

Receiving some compensation for defending an indigent client is not the problem since the Criminal Justice Act of 1964 now reimburses an attorney for defending such client in a federal court.[1] The Federal District of North Dakota has adopted a plan under this act in which a competent attorney is appointed, with option

16. Escola v. Coca-Cola Bottling Co., 24 Cal. App. 2d 453, 150 P.2d 436 (1944). "Those who suffer injury from defective products are unprepared to meet its consequences. . . . [T]he risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business."

17. In Hahn v. Ford Motor Co., 126 N.W.2d 350 (Iowa 1964), the court states that the plaintiff's failure to establish causation is part of the reason for refusing to allow recovery in implied warranty.

1. CRIMINAL JUSTICE ACT OF 1964, 78 Stat. 552 (1964), 18 U.S.C. § 3006A (1964). An attorney appointed pursuant to this section, or a bar association or legal aid agency which made an attorney available for appointment, shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $15 per hour for time expended in court or before a United States commissioner, and $10 per hour for time reasonably expended out of court, and shall be reimbursed for expenses reasonably incurred.

to decline, and at the conclusion of the case he may submit a claim for compensation which is paid at the discretion of the judge.[2]

The purpose of the fifth amendment guarantee is to bar the government from placing a public burden on a particular class of people when the public should bear it as a whole.[3] This Constitutional provision pertains to every sort of interest a citizen may possess,[4] and how it is taken is immaterial.[5] Thus, regardless of the business, occupation, or calling a person has engaged in, it constitutes property within the meaning of due process of law[6] for which just compensation must be granted.[7] What is meant by just compensation is that the full and perfect equivalent in money must be paid for the property taken.[8] Thus, the appointment of an attorney to defend an indigent constitutes a taking of his business and should entitle him to just compensation under the fifth amendment.

Despite the fifth amendment argument for just compensation the legal profession seems to be plagued by along tradition of holding an attorney to be an officer of the court. One of the burdens placed upon him as such officer is to gratuitously render services to an indigent at the suggestion of the court[9] since humanity demands these services for the poor and defenseless.[10] The law confers rights and privileges upon the attorney which are to be reciprocally enjoyed with his duties and obligations. But by becoming an officer of the court he has impliedly consented to the giving of his services which can no longer be taken.[11]

It appears as though it may not be long before an attorney will receive the just compensation he so rightfully deserves. The startling decision in the present case, some dicta,[12] and the leniency shown by the courts toward disbarment,[13] may indicate that a

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2. As advised by the Clerk of the United States District Court, District of North Dakota, THE PROPOSED PLAN FOR THE REPRESENTATION OF DEFENDANTS FINANCIALLY UNABLE TO OBTAIN AN ADEQUATE DEFENSE UNDER THE CRIMINAL JUSTICE ACT OF 1964 has been adopted and went into effect on August 20, 1965. Under this plan, competent attorneys are placed on a panel from which the judge will select counsel when an indigent client appears. The attorney need not accept the appointment, but if he does he must continue on such case until relieved by the court of appeals. At the conclusion of the case the attorney may submit a claim for compensation and for reimbursement of his expenses. Nominal expenses not exceeding $50 may be received without prior authorization of the court. The court must approve anything in excess of $50. An affidavit must be filed showing time expended, services rendered, expenses incurred, and compensation received from any other source. At the judge's discretion compensation will be given, but it will not necessarily be just compensation.

3. Armstrong v. United States, 364 U.S. 40 (1960); Dillon v. United States, 230 F. Supp. 487 (D. Ore. 1964).

4. United States v. General Motors Corp., 323 U.S. 373 (1945).

5. United States v. Finn, 127 F. Supp. 158 (W.D. Okla. 1954).

6. Lewis K. Liggett Co. v. Baldridge, 278 U.S. 105 (1928); State *ex rel* Sampson v. Sheridan, 25 Wyo. 347, 170 Pac. 1 (1918).

7. *Supra* note 4.

8. United States v. Miller, 317 U.S. 369 (1943).

9. Wayne County v. Waller, 90 Pa. 99 (1879).

10. Arkansas County v. Freeman & Johnson, 31 Ark. 266 (1876).

11. United States v. Dillon, 346 F.2d 633 (9th Cir. 1965).

12. Webb v. Baird, 6 Porter 13 (Ind. 1854). "The idea of one calling enjoying peculiar privileges, and therefore being more honorable than any other, is not congenial to our institutions. And that any class should be paid for their particular services in empty honors is an obsolete idea, belonging to another age and to a state of society hostile to liberty and equal rights."

move is being made to solve the problem. It is difficult to determine the effect that just compensation would have on the principles surrounding the legal profession and the pride developed by the individual lawyer. It does not seem possible, however, that it would have an adverse effect on principles and pride if nominal compensation did not. It would seem that the attorney would work harder to build up individual pride if he would not have to worry about adequate compensation. It may even strengthen his principles in that he would not attempt to get out of an appointment or advise a client in such a way so as to end the trial quickly.

The very fact that state statutes and the Criminal Justice Act of 1964 provide for compensation indicates that it is necessary. The judge in the present case admitted that he selected an attorney and firm which had the means to stand the burden. This being the case, the writer can conceive of no reason why it should not be just compensation rather than a nominal sum.

RONALD SCHWARTZ

BASTARD—DUTY TO SUPPORT—EFFECTIVENESS OF UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT—Plaintiff obtained a judgement in Kentucky under which defendant was adjudged the father of plaintiff's illegitimate child and ordered to contribute to the child's support. Plaintiff then brought an action in Texas under the Uniform Reciprocal Enforcement of Support Act to secure enforcement of the Kentucky judgment. In refusing to enforce the judgement, the Texas Court of Civil Appeals, with one justice dissenting,[1] *held* that section 7 of the Uniform Support Act,[2] granting to plaintiff the election of state law to be applied, was repugnant to the fourteenth amendment of the U. S. Constitution and that article five of the U. S. Constitution was inapplicable because of the ambulatory nature of the Kentucky judgment. *Bjorgos v. Bjorgos*, 391 S.W.2d 528 (Tex. 1965).

Although a majority[3] of jurisdictions concur with the Texas court regarding the obligations under the full faith and credit clause, the trend is toward upholding ambulatory judgments of sister

13. Posey & Tompkins v. Mobile County, 50 Ala. 6 (1873). "If counsel wilfully refuse to discharge this duty, on a proper order of the court, they should be removed or suspended." The plan adopted by the United States District Court, District of North Dakota, *supra* note 2, states that: "The adoption of this plan shall not affect the obligation of attorneys admitted to the Bar of this Court to accept appointment to serve as counsel without compensation for indigent defendants in criminal cases, in habeas corpus actions, and in proceedings under 18 U.S.C. § 2255."

1. The dissent favored enforcement, basing his decision on the Texas Supreme Court's application of full faith and credit in Guercia v. Guercia, 150 Tex. 418, 241 S.W.2d 297 (1951).
2. TEX. REV. CIV. STAT. art. 2328b-3 § 7 (1964).
3. *E.g.*, Ogden v. Ogden, 33 So. 2d 870 (Fla. 1947); Newell v. Newell, 77 Idaho 355, 293 P.2d 663 (1956); Latham v. Latham, 223 Miss. 263, 78 So. 2d 147 (1955).