Volume 62
Issue 3 *Dickinson Law Review - Volume 62, 1957-1958*

3-1-1958

Extra-Professional Misconduct as a Ground for the Disbarment of an Attorney in Pennsylvania

Carl R. Mapel Jr.

EXTRA-PROFESSIONAL MISCONDUCT AS A GROUND FOR THE DISBARMENT OF AN ATTORNEY IN PENNSYLVANIA

In discussing the misconduct of an attorney as a ground for his disbarment or suspension, this writing excludes from consideration all acts which involve a breach of the professional duty of an attorney to his client, or of his professional obligation of respect and good faith toward the courts. The scope of this note is confined to that misconduct in the personal life, or, if you will, "extra-professional" life, which may be urged as a ground for disciplinary action.

As an attorney is an officer of the court, the Courts of Common Pleas of the several counties of Pennsylvania have jurisdiction in disbarment or suspension proceedings. The courts may act on their own motion, upon the request of the local bar association, or upon the request of any individual. All disciplinary proceedings are subject to review by the Supreme Court of the Commonwealth.[1]

May the court properly consider extra-professional misconduct in disciplining an attorney? *Dickins' Case*,[2] which was the first Pennsylvania case to consider the question, answered in the negative. Although the attorney was temporarily removed from practice for professional misconduct, the court refused to consider, as an additional ground for action, the attorney's holding of a bogus gift drawing to increase attendance at a theatrical exhibition in which he was financially interested. There the court said, "However unprofessional the conduct of Mr. Dickins was in relation to the exhibition, and we think it indefensible, his conduct . . . ought not to be the subject of expulsion from his office as attorney." [3] While this dicta of *Dickins' Case* found expression in many cases as late as 1921,[4] it was apparently ignored in subsequent county cases where, prior to disbarment proceedings, there had been a formal indictment, trial, and conviction for such misconduct in a criminal proceeding.[5] But the retreat from the original position did not stop here. *In Re Wolfe's Disbarment*[6] held that a pardon to the required conviction would not be a bar to disciplinary action because, while a pardon does wipe out a conviction and all of its punitive consequences, it does not wipe out the act which was committed or deprive the court of the right to protect itself and the public from irresponsible

---

[1] PA. STAT. ANN. tit. 17, §§ 1663 and 1664 (1879).
[2] 67 Pa. 169 (1870).
[3] *Id.* at 176.
[4] In Brown's Case, 50 Pa. County Ct. 261 (1921), there was dicta to the effect that even though the conduct of an attorney was inexcusable, it would not be a ground for disbarment as it was not misconduct connected with the profession.
[5] Ex Parte Steinman and Hensel, 95 Pa. 220 (1880).
[6] 288 Pa. 331, 135 Atl. 732 (1927).

and morally oblique persons. The court, by dictum in the same case, announced that acquittal of criminal charges would also not be a bar to disciplinary action. This dictum seems justified because disbarment proceedings are civil and not criminal in nature, and therefore, evidence may be insufficient to carry the burden of proof in a criminal action but may still be sufficient to meet the different burden required in a civil case. Although this dictum on acquittal seems to be indirectly abrogating the necessity of a criminal conviction, it was not until the case of *In Re Chernoff*[7] that any court directly extinguished this as a requirement. There the court reasoned:

> ". . . If a lawyer not actually retained by and representing a client, had corrupted jurors or suborned witnesses in a case on trial at the suggestion of the counsel therein, it could not be determined that he was not subject to disbarment until after trial by a jury and conviction. If such were the law, the attorney trying the case who had suggested or connived the corruption could be summarily dealt with, while the one who had actually accomplished it, could not be until after he had been tried by a jury . . . ." [8]

While non-criminal professional misconduct is clearly sufficient ground for disciplinary action, it appears that non-criminal extra-professional misconduct is not. In fact, a review of all cases on extra-professional misconduct in Pennsylvania fails to reveal a case where this basis of disbarment was even seriously considered. The writer can offer no justification for this position but can only state that this is the current status of the law. It seems clear, however, that extra-professional misconduct of a criminal nature may properly be considered even though there has been no indictment, trial, or conviction. If criminal proceedings are instituted, neither pardon nor acquittal will be a bar to subsequent civil action.

Having thus ascertained under just what circumstances the court will consider extra-professional misconduct, the next question logically concerns the standard by which such misconduct is measured. The courts will naturally look to see if the legislature has established such a standard. However, early legislative efforts apply only to professional misconduct.[9] The most recent and only other legislation on the subject is found in the Pennsylvania Rules of Civil Procedure.[10] Rule 205 provides: "The Canons of Ethics of the American Bar Association, as from time to time existing, shall be and become stand-

---

[7] 344 Pa. 527, 26 A.2d 335 (1942).

[8] *Id.* at 532, 26 A.2d at 338.

[9] PA. STAT. ANN. tit. 17, § 1661 (1834) provides: "If any attorney-at-law shall misbehave himself in his office as attorney. . . ." and *id.* § 1662 states: "If any such attorney shall retain money belonging to his client. . . ."

[10] Adopted pursuant to PA. STAT. ANN. tit. 17, § 61 (1937).

ards of conduct for attorneys of the court. . . ." [11] The effect of the provision that the rules have the force and effect of statutes makes the canons statutory rules for the conduct of attorneys.[12] Unfortunately, however, the canons are confined to professional conduct and offer no aid in formulating a standard of extra-professional conduct.[13] Consequently, any existing standards must stem from a crystalization of judicial precedent.

What then is the standard, if any, as evidenced by these decisions?

In the case of *In Re Griffin,*[14] an attorney was disbarred who had previously, in a criminal case, been convicted of conspiracy to defraud the United States Government in the issuance of passports while acting as a United States Commissioner. The court based the disbarment on the following: "It appears to us that he has throughout displayed such a lack of moral perception as to demonstrate his unfitness for the practice of law. . . ." [15]

In *Allen's Disbarment*[16] the embezzlement of funds by an attorney acting in the capacity of an executor was found to be grounds for disbarment. The standard there was ". . . lack of personal honesty and moral character as to render him unworthy of public confidence." [17]

The court in *Wolfe's Disbarment* [18] held that the receiving of stolen goods by an attorney, while acting as a pawnbroker, justified disbarment. This result was based on the finding by the court that ". . . the attorney was no longer to be trusted." [19]

When confronted with the situation that an attorney, in his capacity as a detective in the coroner's office, had extorted money and solicited bribes, a court ordered disbarment on the ground that, "Disbarment is for the purpose of preserving the courts from the official ministrations of persons unfit to practice in them." The order was affirmed by the Supreme Court.[20]

---

[11] Philadelphia County had previously adopted the canons of ethics by Philadelphia Rule 215 (1) effective January 11, 1933, and Lackawanna County by Lackawanna Rule 18, effective February 20, 1935. It would be beyond the scope of this writing to consider the power of these two courts to adopt these canons.

[12] Schofield Discipline Case, 362 Pa. 201, 66 A.2d 675 (1949).

[13] It thus appears that as the American Bar Association may add to, delete from and otherwise change the canons, the Law of Pennsylvania changes accordingly. The conclusion that the American Bar Association is making Pennsylvania Law is inescapable. It is also of note that the Pennsylvania Rules of Civic Procedure purport to set forth only rules of procedure. The adoption of the canons seems to be the adoption of substantive rules.

[14] 371 Pa. 646, 92 A.2d 889 (1952); The Supreme Court of Pennsylvania, in a per curiam decision, affirmed the opinion of the Court of Common Pleas #7 of Philadelphia County.

[15] *Id.* at 652, 92 A.2d at 891.

[16] 41 Pa. County Ct. 562 (1914).

[17] *Id.* at 563.

[18] 288 Pa. 331, 135 Atl. 732 (1927).

[19] *Id.* at 334, 135 Atl. at 733.

[20] In Re Chernoff, 344 Pa. 527, 534; 26 A.2d 335, 339 (1942).

Where an attorney, acting as a trustee, caused the loss of trust property through mismanagement, a court in ordering disbarment found that the attorney had exhibited a ". . . lack of professional honesty as to make him unworthy of public confidence." [21]

Political beliefs were the grounds considered in *Margolis' Case*.[22] An attorney was disbarred who had been convicted for a violation of the Selective Service Act. He also was shown to have circulated material in an attempt to get others to violate the same act and had avowed himself a "theoretical anarchist." There the court stated: "The record before us discloses not only an utter lack of respect for the duly enacted statutes of the land but active encouragement of others to violate them, as well as breaches thereof by appellant himself, all of which warrants the action taken by the court." [23]

Although the court did not set any standard of conduct, there is dicta in the case of *In Re Trumbore* [24] that fornication is not an offense that would justify disbarment. This position has not been challenged as there have since been no disciplinary proceedings based on fornication.

In *Maginnis' Case*,[25] the court held that although it was an impropriety for a district attorney to sit with counsel for the accused while visiting in another county, since he took no part in the trial, it did not warrant disbarment because it did not show the attorney to be "corrupt . . . or controlled by evil purposes." [26]

The publication of a political cartoon by a district attorney, lampooning a judge who was running for re-election, was the alleged ground for disbarment in *Snyder's Case*.[27] In refusing disbarment the court said, "Criticism by an attorney of candidates for public office . . . is privileged as far as it is made on reasonable grounds and in good faith." [28]

These decisions seem to indicate that the courts do not recognize any stated standard of conduct but base their decisions on the exercise of judicial discretion. As would be expected, the discretion exercised by the judges does not conform to any clearly discernible standard but varies from court to court as do the judges' individual personalities. Many areas of the law are successfully

---

[21] 15 York Leg. Rec. 77, 80 (1901).
[22] 269 Pa. 206, 112 Atl. 478 (1921).
[23] *Id.* at 212, 112 Atl. at 480.
[24] 2 Penny. 84 (Pa. 1882).
[25] 269 Pa. 186, 112 Atl. 555 (1921).
[26] *Id.* at 198, 112 Atl. at 559.
[27] 301 Pa. 276, 152 Atl. 33 (1930); The cartoon showed the judge's father controlling the judge by the use of strings. Animosity had developed between the judge and the district attorney over whether certain county commissioners would be brought to trial for malfeasance in office.
[28] *Id.* at 287, 152 Atl. at 36.

administered by using judicial discretion as a basis for decision, the most noteworthy of which is the area of evidence. However, it is submitted that judicial discretion is not adequate in the area of extra-professional conduct.

This inadequacy is highlighted by decisions currently arising outside Pennsylvania concerning income tax evasion. A recent Washington decision held that wilful evasion of income tax involved "moral turpitude" and justified disbarment.[29] Kentucky, in a case involving an identical fact situation, held exactly the opposite.[30] The Kentucky case must also be compared with a Maryland case which ordered the disbarment of an attorney convicted of "slugging" parking meters.[31] Clearly these state courts also seem to be at odds over just what extra-professional misconduct is sufficient to merit disbarment.

All attorneys strive to be paragons of virtue, but to err is only human. It is inevitable then that disbarment actions will arise. As the decisions in these proceedings affect entire legal careers, legislation is needed that will establish a clear standard for judicial application.

It is therefore suggested that the Committee on Ethics of the Pennsylvania Bar Association either recommend to the American Bar Association that canons of ethics to cover extra-professional conduct be adopted or recommend to the Pennsylvania legislature that specific legislative action be taken to establish a definite standard.

CARL R. MAPEL, JR.

---

[29] In Re Seijas, 318 P.2d 961 (1957).
[30] Kentucky State Bar Association v. McAfee, 301 S.W.2d 899 (1957).
[31] Fellner v. Bar Association of Baltimore City, 213 Md. 243, 131 A.2d 729 (1957).