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## Public Law: Professional Responsibility

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## PROFESSIONAL RESPONSIBILITY

A. Leon Hebert\*

## DISCIPLINARY ACTION

Several serious misdeeds committed by an attorney during the course of his representation of his client and in the proceedings in which he sought a divorce from his wife resulted in disbarment.<sup>1</sup> The attorney was called upon to handle a real estate transaction which involved a collateral mortgage and the issuance of a title opinion to a bank. The title was passed on the real estate on December 30, 1970. When called upon to furnish the collateral mortgage which was to have been imposed upon the property, he dated the mortgage January 14, 1971, and issued a title letter which omitted reference to a second mortgage which primed the collateral mortgage. In fact, there was no pretense of any title examination. Recordation of the mortgage dated January 14, 1971, did not occur until some six weeks thereafter. He forged the name of an associate as the notary who executed the mortgage and had his secretary affix the name of that associate to the title letter.

Another offense arose out of respondent's divorce from his first wife. The attorney attached a consent and waiver to divorce with forgeries of the signatures of both his wife and the notary public. In addition, evidence showed that respondent was not a bona fide resident of Mississippi for the year preceeding the divorce though he claimed residence to establish Mississippi jurisdiction.

Stressing the necessity of acting in accordance with Disciplinary Rule 6-101, and Ethical Consideration 9-6,<sup>2</sup> the supreme court explained "that a

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1. Louisiana State Bar Ass'n v. Gremillion, 320 So. 2d 171 (La. 1975).  
 2. LA. CODE OF PROFESSIONAL RESPONSIBILITY, E.C. 9-6 (found in ARTICLES OF INCORPORATION, LOUISIANA STATE BAR ASS'N art. XVI; LA. R.S. 37, Ch. 4, app.) [hereinafter cited as CODE OF PROFESSIONAL RESPONSIBILITY] provides: "Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety."

disbarment proceeding is not so much for the punishment of the attorney as it is for the preservation of the integrity of the courts and the salutary effect it has upon other members of the bar." The court struck the respondent's name from the roll of attorneys and revoked his license.

In *Louisiana State Bar Association v. Edwards*,<sup>3</sup> the supreme court reviewed the disciplinary procedure provided in Article 15 of the Articles of Incorporation of the Louisiana State Bar Association, and clarified the meaning of several of its provisions.<sup>4</sup> It reaffirmed unequivocally that in proceedings commenced after September 1, 1971, new procedures would be applicable.<sup>5</sup> Inasmuch as Edwards entered a plea of *nolo contendere* to a felony charge of interstate transportation of motor vehicles on September 3, 1971, the Committee properly proceeded under Article 15, Section 8, as amended. The court easily disposed of the pardon issued by the Governor of Louisiana for a crime committed against a federal jurisdiction<sup>6</sup> and also rejected the claim that a plea of *nolo contendere* may not be used as a conviction in a disbarment proceeding.

The Committee on Professional Responsibility brought disciplinary proceedings against R. C. Edwins<sup>7</sup> alleging several violations of the Code of Professional Responsibility including solicitation, carelessness in accounting to his client for proceeds of a settlement and advancement of living expenses to his clients. The commissioner found the respondent had committed the deeds with which he was charged and the Committee concurred in his findings. Though no formal exceptions to the findings of the commissioner were filed by the attorney,<sup>8</sup> he contested both the findings of fact and conclusions of law made by the commissioner in his briefs and oral arguments to the court. After finding that a failure of a respondent attorney to object to the findings of fact operated as a confirmation of those facts, the court nevertheless explained that the ultimate responsibility as to the discipline warranted by the facts rests with the court.<sup>9</sup>

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3. 322 So. 2d 123 (La. 1975).

4. *Id.* at 125-27.

5. 263 La. 743, 269 So. 2d 228 (1972).

6. *Louisiana State Bar Ass'n v. Ponder*, 263 La. 743, 269 So. 2d 228 (1972). The inherent power of the Governor to grant a pardon for a crime committed against another jurisdiction has not been decided.

7. *Louisiana State Bar Ass'n v. Edwins*, 329 So. 2d 437 (La. 1976).

8. ARTICLES OF INCORPORATION, LOUISIANA STATE BAR ASS'N, LA. R.S. 37, Ch. 4, app. Art. XV, Sec. 6(d) [hereinafter cited as ARTICLES OF INCORPORATION].

9. The charges considered by the Commissioner were:

"1. That in July, 1970 the respondent Edwins (a) improperly solicited employment as attorney from Ralph Thomas to represent him in a seamen's suit, (b) improperly advanced financial assistance to Thomas during his representation of

In light of the evidence, this writer cannot share the conclusion that the court bore the "ultimate responsibility" in a manner which will set the tone for strict adherence to the disciplinary rules which were under review.<sup>10</sup> In fact, as to the rule dealing with advancement of funds, the opinion practically invites future violation under the guise of making counsel available. The use of the advancement of living expenses as means of solicitation is totally disregarded.

The conclusion reached by the court is a disregard of everyday happenings. Given a chance to explain his advances to clients, the lawyer charged will surely meet the court's humanitarian test and deny that such advances had anything whatever to do with an inducement to obtain professional employment. In effect, DR 5-103(B) has been silently repealed and is ingloriously committed to the reliquary of dead laws. Repeal of a DR would be preferable to the emasculation administered to the prohibition against advancing living expenses. The court could modify the rule by allowing advancements of living expenses in extreme situations by requiring counsel to obtain court approval of such advances after a recommendation by an appropriate committee of the bar.

No discussion of *Edwins* would be complete without commenting on a ninety-day suspension. In instances where the solicitation of a case produces a substantial contingent fee, and the sanction administered is only suspension, it is nothing more than a ninety-day vacation. Perhaps if punishment is the object of a suspension for proven violations of the DRs, the court should consider a longer minimum. The court's comment that this was the first punishment administered for solicitation is a mild warning that other solicitors may not fare as well.

For the advances made by *Edwins* to his clients, which the court found to be a deliberate violation, the court administered a 30-day suspension to run concurrently with the 90-day suspension levied for solicitation of *Thomas'* case. Because *Edwins* did not justify the advances, the court properly applied the presumption that the advances were made with the intention of securing or keeping the legal representation of *Seltzer*. At least the court was aware of the conflict which occurs in retaining a client when

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him, and (c) when the suit was settled in May 1972, improperly neglected to account to *Thomas* for the withholding of advances and expenses (in addition to his fee) from the proceeds of the settlement.

2. That, during his representation of *Donald Seltzer* in a seamen's suit from March-June, 1972, *Edwins* improperly advanced some funds to his client." 329 So. 2d at 442.

10. CODE OF PROFESSIONAL RESPONSIBILITY, DR 2-103, 5-103(B), and 9-102(B)(3).

another lawyer is known to advance funds for any purpose.

By way of justification for the lenient punishment administered, the court adverted to EC 5-7 and EC 5-8 commenting:

Nevertheless, under the circumstances here shown, we are unwilling to hold that the spirit of the intent of the disciplinary rule is violated by the advance or guarantee by a lawyer to a client (who has already retained him) of minimal living expenses, of *minor* sums, necessary to prevent foreclosures, or of necessary medical treatment. (Emphasis added).

No mention is made of "living expenses" per se. Nevertheless, the opinion glides right into the matter of living expenses in this language:

We do not believe any bar disciplinary rule can or should contemplate depriving poor people from access to the court so as to effectively to assert their claim. Cf., Canon 2: 'A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.' Nor do we see how a lawyer's guarantee of necessary medical treatment for his client, even for a non-litigation related illness, can be regarded as unethical, if the lawyer for reasons of humanity can afford to do so.<sup>11</sup>

The court finds that the advances made were "akin to expenses of litigation" rather than prohibited advances made with improper motive of buying representation of the client or of advertising to attract other clients. That reasoning flows from a willingness to magnify the human kindness of the advances rather than the reality of the situation—that the lawyer who does advance living expenses, for whatever motive, obtains the big cases. This places the practitioner who cannot afford to or is unwilling to make advances at a distinct disadvantage in acquiring a clientele.

The correct conclusion was reached by the dissenting Justices<sup>12</sup> as to the discipline applied by the majority of the court:

It seems to me that there is no question about the violation of disciplinary rules—. . . violations we should not condone. The disciplinary rules should be enforced in such a way as to give them meaning and significance in regulating the conduct of the members of the bar.

Members of the bar who adhere to the rules are puzzled by the court's failure to accept its responsibility for discipline. *Edwins* certainly makes a mockery of the true meaning of the Code.

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11. 329 So. 2d at 446.

12. Justice Dixon dissented and was joined by Justice Dennis.

## CIVIL ACTION TO RECOVER SETTLEMENT PROCEEDS

The conduct of an attorney in withholding proceeds of a settlement arising out of a claim of a wife and minor child for the death of their father in an accident which occurred on an offshore oil platform was an issue in *Gray v. Atkins*.<sup>13</sup> The Third Circuit Court of Appeal affirmed the judgment of a District Court awarding \$60,500 to plaintiff, and an additional \$15,000 to plaintiff's minor daughter. The sordid circumstances under which the plaintiff employed defendant attorney are discussed in detail in the opinion of Judge Hood.<sup>14</sup>

Just three weeks after the death of her husband, plaintiff was approached by two investigators who advised her that she probably had a legal claim for the death of her husband. Explaining that they operated under the trade name of Dugas Detective Agency, they persuaded plaintiff to sign a document employing their agency to do a full investigation of the accident of January 24, 1974, when her husband died. Charges for this service were to have been \$100.00 per day, plus expenses. The contract also gratuitously provided, "I, Pam Gray, also asked Mr. Dugas to recommend an attorney to represent me and my daughter, Mary Gray." This occurred on February 13, 1974.

Having obtained the plaintiff's signature on their own contract, Dugas and Mire took the plaintiff to the office of Hornsby, the lawyer whom they recommended, where she signed a contract to have him handle her own claim and that of her minor daughter agreeing to pay a contingency fee of 1/3 of the recovery.

Later Dugas advised the plaintiff that Hornsby was not handling her claims properly and suggested that she hire Atkins to represent her. In the interim between the date that she first hired Hornsby and the entering into a new contract with Atkins, the record discloses that Hornsby and Atkins were trading out cases which had been brought to them by Dugas, who by then had become Atkins' employee. The plaintiff's case fell to Atkins in the swapout.

On April 30, 1974, Atkins accepted employment in the following manner. Dugas produced a printed form contract labeled "Attorney Contract of Employment with an Interest." Neither the names of the contracting parties nor a description of the cause of action was contained in the blanks provided in the form. The fee to be charged, however, was stipulated to

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13. 331 So. 2d 157 (La. App. 3d Cir. 1976).

14. As of this writing, no criminal charges have been filed against the investigators despite the strong factual conclusion of the appellate court.

range from one-third to one-half of the gross amount of the settlement. All of the contract negotiations except a telephone call by Mrs. Gray were handled by Dugas.

In due course Atkins filed suit and reached a settlement with the defendant employer of his client's deceased husband for the sum of \$67,500 for the plaintiff and \$15,000 for the child. Even the execution of the settlement papers was attended to by Dugas who took Mrs. Gray to the courthouse to assist her in completing the settlement. Counsel for Pennzoil, the employer, insisted on Atkins' presence to complete the judgment of dismissal. Thus, Atkins made an appearance personally at the courthouse where he received the draft for \$82,500.

Atkins then had his client execute another agreement in which she purportedly authorized Atkins to retain the proceeds of the settlement until other claims were paid or in which she agreed to indemnify Atkins for amounts he might be required to pay intervenors including Hornsby and Gray's parents who claimed a part of the settlement. Neither plaintiff nor her grandfather were ever given the opportunity to read this last agreement. Dugas had already signed the February 3, 1975, agreement as undertutor of the minor and was aware that plaintiff did not know that she had signed such an agreement.

From the \$82,500 received by Atkins, plaintiff received only the sum of \$6,000.00. She sued him for the unpaid balance.<sup>15</sup>

Atkins' answer is cryptically summarized by the court:

Defendant Atkins answered, alleging that he received \$89,517.73 in settlement of all of plaintiff's claims, that he is entitled to retain one-half that amount, or \$44,758.86, as attorney's fees and that he is entitled to withhold the additional sum of \$24,386.46 as reimbursement for advances made and expenses incurred in connection with this matter, leaving a net balance due plaintiff of \$20,373.40. He contends that he is entitled to retain even that net balance due plaintiff until the claim of Hornsby for attorney's fees is settled. Atkins also contends that he is entitled to recover damages from plaintiff under his reconventional demand, and to offset the amount due him as damages from the amount which he may owe Mrs. Gray.

The trial court rendered judgment against Atkins for the full \$75,500.00 and rejected Atkins' reconventional demand.

The Court of Appeal had no difficulty in finding the February 3, 1975,

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15. Atkins is under indictment in Lafayette Parish in # 41, 193 for theft arising out of the manner in which he dealt with his client.

agreement a nullity for lack of consent by Mrs. Gray. It also found the contract of April 30, 1974, null and void.<sup>16</sup>

The court relied on LA. R.S. 37:213 in finding that Dugas was unlawfully engaged in the practice of law. Again the court went to the core of the problem:

The evidence also convinces us that Atkins actively asserted and conspired with Dugas in the latter's illegal practice of law and that the contract between plaintiff and Atkins dated April 30, 1974, was entered into pursuant to that illegal relationship.

For his participation in assisting the unauthorized practice of law and because of the invalidity of both of the original contracts of employment, Atkins was denied any recovery whatever for the legal services.

The court deserves the unreserved commendation of the whole bar for its forthright treatment of the matters of professional responsibility.

#### FITNESS TO PRACTICE AFTER CENSURE

The paradox presented by the censure of Judge Joseph B. Dupont,<sup>17</sup> allowing retention of his office of City Judge and of his right to practice law under peculiar factual circumstances, is an interesting one.

The Judiciary Commission, after a three-day hearing, determined that Judge Dupont was guilty of willful misconduct relating to his official duties for willful and persistent failure to perform his duties. The factual findings upon which the commission reached the conclusion were that the judge received information from one Warren Ard on February 3, 1974, that two guns in his possession, a Browning automatic shotgun and a Winchester rifle, were stolen property and that after having received that information Judge Dupont did not report it to the proper authorities.

The second factual finding was that having received the information concerning the true ownership of the guns, Judge Dupont transferred the guns to Warren Ard for a consideration when it was his official duty to report the possession of the stolen articles to the proper authorities.

The third finding was that transfer of the guns to Ard for a consideration was made under circumstances designed to keep the transaction secret even to the extent of wiping the weapons for fingerprints.

The commission further concluded that the willful continuation of the

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16. The exact language of the court was "[W]e have concluded that the contract was executed in violation of prohibiting law and that it is also void."

17. *In re Dupont*, 322 So. 2d 180 (La. 1975). Judge Dupont presides in the City Court of Plaquemine, Louisiana.



possession and concealment of weapons for a period of five days, knowing that such concealment and possession may have been a criminal act,<sup>18</sup> and giving up the possession of the guns only upon receipt of a sum of money were serious charges.

Speaking through Justice Calogero, the majority of the court agreed with the commission's factual findings and proceeded to censure the judge as recommended by the Judiciary Commission. The court concluded:

His conduct and personal behavior in the particulars above enumerated, while not constitutionally warranting his removal from office was disparaging and inconsistent with the high degree of trust placed in him by the electorate.

Justice Barham in a dissent concluded that the facts developed in the case warranted at least a suspension and perhaps the removal of the judge.

In a "concurring" opinion, Justice Dixon found that the record in the case reflected no mitigating circumstances and no redeemable qualities on the part of the respondent—no recognition of wrongdoing, no remorse, no regrets, no disputes of the basic facts giving rise to disciplinary action. It was his conclusion that the respondent judge should have been removed<sup>19</sup> from office.

The paradox arises when one considers the necessity for maintaining good moral character in the practice of law. Can a judge who has failed in his judicial duties to the extent that he has received a censure (with two votes for removal from office) be considered to possess good moral character sufficient to enable him to continue to practice law? Would a lawyer faced with the same factual dilemma have been treated the same way?<sup>20</sup>

The Committee on Professional Responsibility undoubtedly must have considered the filing of disciplinary action against the judge for his admitted misconduct as a lawyer, but since only an order of censure was issued for his conduct as a judge, the committee must have despaired at the hope of obtaining the greater measure of discipline for his violation of his duties as a lawyer.

#### FITNESS TO PRACTICE AFTER REMOVAL

The Judiciary Commission made a specific recommendation concern-

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18. LA. R.S. 14:69 (1950), *as amended by* La. Acts 1972, No. 654, § 1.

19. A conclusion which was also reached by Justice Barham in a dissenting opinion.

20. For other cases dealing with judicial misconduct see *In re Haggerty*, 257 La. 1, 241 So. 2d 469 (1970), and *State v. O'Hara*, 252 La. 540, 211 So. 2d 641 (1968).

ing the conduct of a sitting judge stating that he was suffering from a permanent disability that seriously interfered with the performance of his duties.<sup>21</sup> Without reciting the specific disability, the court ordered that the judge be involuntarily retired for permanent disability. The same question might be asked concerning the judge's fitness to practice law under those conditions which were described by the Judiciary Commission's Report as being a very serious form of alcoholism.

#### MALPRACTICE SUITS ON THE RISE

Two cases dealing with legal malpractice suggest that the frequency of such claims against attorneys is increasing. In the *Muse*<sup>22</sup> case, the lawyer advised the client to pay a part of the proceeds of a health insurance policy to Charity Hospital thinking that the hospital had a lien on such proceeds for services rendered to the client. Subsequently, the client consulted a different lawyer who pointed out that no such lien existed. The court held that the first lawyer was negligent and that he was thus indebted to his client for the amount mistakenly paid.

In *Zito*<sup>23</sup> the issue arose as to whether the failure of the attorney to file a claim timely for his client gave rise to an action *ex contractu* or *ex delicto*. The trial court had upheld a plea of liberative prescription of one year. The appellate court remanded to allow the plaintiff an opportunity to establish a claim *ex contractu* if the facts were available. On remand the trial court dismissed plaintiff's suit with a finding that plaintiff himself had furnished counsel the wrong date (regarding the occurrence of an accident) and, therefore, the lawyer had not breached his contract. Judgment was rendered July 20, 1976.<sup>24</sup> Another appeal is anticipated.

#### FEES

Various aspects of attorney fees received the attention of several of the Circuit Courts of Appeal.<sup>25</sup> In *Pierson*, the court determined that the lawyer

21. *In re Alexander*, 323 So. 2d 448 (La. 1975).

22. *Muse v. St. Paul Fire & Marine Ins. Co.*, 328 So. 2d 698 (La. App. 1st Cir. 1976).

23. *Jackson v. Zito*, 314 So. 2d 401 (La. App. 1st Cir.), *cert. denied*, 320 So. 2d 551, 553 (La. 1975) (judgment not final).

24. No. 175,040 (19th Judicial District Court).

25. *Krebs v. Bailey's Equip. Rentals, Inc.*, 328 So. 2d 775 (La. App. 1st Cir. 1976); *Mire v. Travelers Ins. Co.*, 318 So. 2d 93 (La. App. 3d Cir. 1975); *Pierson v. Dept. of Revenue*, 316 So. 2d 404 (La. App. 1st Cir. 1975); *Baghramain v. MFA Mut. Ins. Co.*, 315 So. 2d 849 (La. App. 3d Cir. 1975); *Schoenberger v. Martin*, 314 So. 2d 368 (La. App. 4th Cir. 1975); *Smith v. Westside Transit Lines, Inc.*, 313 So. 2d 371 (La. App. 4th Cir. 1975).

hired by the Department of Revenue under special contract to collect an alleged tax liability from the American Telephone & Telegraph Co., was entitled to the full statutory fee, under LA. R.S. 47:1512, of 10% of the recovery despite dismissal by the Collector of Revenue. While the attorney was negotiating a settlement of the claim, the Collector of Revenue, who had hired him, intervened and attempted unsuccessfully to get the lawyer to lower his fee from the \$154,304 due under the statute. The lawyer was then discharged a few days before a consent judgment was entered in an amount which gave rise to the stated fee. The trial court found that the plaintiff lawyer had earned the entire fee.

On appeal the court stated that LA. R.S. 37:218 and 47:1512 are *in pari materiae* and should be so construed; though discharge of the attorney was permissible, the fee was earned. The discharge is effective whether the fee is on a contingency or on a fixed fee basis.

Where an attorney's fee was being claimed under LA. R.S. 22:658—providing for penalty and attorney fees in insurance matters<sup>26</sup>—the contract with the lawyer was on a one-third contingency basis. Plaintiff recovered \$45,363 but the court awarded the sum of \$10,000 as being a reasonable fee assessable under the statute but a footnote indicated that the award against the insurance company was not in total satisfaction of the contractual obligation of the client to the attorney. This language indicates the rationale of the court:

The fee is determined by many considerations other than time visibly employed in the litigation. Absent other evidence, the court will be guided by the amount of labor performed as indicated by the record.<sup>27</sup>

Another situation arose in which the attorney employed by written contract on a contingency fee basis was dismissed before the case was settled by a second lawyer. The dismissed advocate had not filed his contract and intervened to protect his fee. The firing by the client arose out of disappointment that a jury trial date was upset. The lawyer sensed that his client would be unhappy. The court found that the dismissed attorney had been lax in communicating with his client and, therefore, he had been dismissed for cause. The following language sets the bar's responsibility in focus:

We regret that it is necessary for this Court to decide a case of this nature. We recognize that the ramifications of our opinion extend far

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26. 315 So. 2d at 852 (La. App. 3d Cir. 1975).

27. *Id.* at 853.

beyond the narrow issue of the amount of appellant's fee. Perhaps the organized Bar should have machinery available for the mandatory arbitration of such matters. In the long run, it would certainly be beneficial to the public image of the Bar if a case such as this could be disposed of in some way other than by litigation.

*Schoenberger*<sup>28</sup> simply involved a division of inheritance tax fees due an incumbent and a past attorney to assist the tax collector. The facts indicated that the incumbent attorney to assist the tax collector was not made aware of the governor's action in excluding certain successions from those which would normally fall to the appointee by virtue of the time of completion of the succession and payment of any tax due. Since both attorneys, the old and the new, had done some work, the court affirmed the trial court's decree splitting the fee between them.

That the attorney is bound by the statement he sends to his client is essentially the holding in *Krebs*.<sup>29</sup> After his discharge by the client, a new statement of charges included some which had already been billed and paid. The court stated again that a contingency fee contract can be revoked at any time; upon revocation the lawyer is relegated to a recovery on quantum meruit for the services rendered.<sup>30</sup>

#### MISCELLANEOUS CASES AFFECTING PROFESSIONAL RESPONSIBILITY

In *Mire v. Travelers Insurance Company*,<sup>31</sup> plaintiff's attorney in a case brought against the executive officers of his employer sought to impose an attorney's fee on the portion of the award paid to the workmen's compensation carrier who had intervened. Travelers had the tort and compensation coverage as well and had contributed \$100,000.00 toward the overall settlement of plaintiff's claim ex delicto. The attorney alleged that his efforts produced the recovery of the amount awarded the intervenor for compensation. Travelers contended that it was hurt by the action, not helped. The court refused to allow plaintiff any recovery on the theory of unjust enrichment.<sup>32</sup>

An interesting result was obtained in *Oil Purchasers, Inc. v. Kuehling*,<sup>33</sup> a case in which the heirs of an attorney sought recovery of fees for

28. 314 So. 2d at 368.

29. 328 So. 2d at 775 (La. App. 1st Cir. 1976).

30. See, e.g., *Tennant v. Russell*, 214 La. 1046, 39 So. 2d 726 (1949); *Succession of Carbajal*, 139 La. 481, 71 So. 774 (1916); *Louque v. Dejan*, 129 La. 519, 56 So. 427 (1911).

31. 318 So. 2d 93 (La. App. 3d Cir. 1975).

32. LA. CIV. CODE art. 1965.

33. 321 So. 2d 17 (La. App. 3d Cir. 1974).

services rendered during the attorney's lifetime. The case had been in process for several years, but was not consummated until after the death of the lawyer who was operating under a contingency fee contract which provided for 25% of all land and monies recovered by the attorney's efforts. The trial court awarded a fee of 20% of lands and monies instead of the 25% provided in the contract. The attorney's heirs appealed and the court of appeal held that quantum meruit was the basis for the award of fees but that there could be no award of an interest in the land itself,<sup>34</sup> the value of the land must be commuted into a money award. It found that the attorney had performed 80% of his contract, but had to remand the case to allow the value of lands and other rights to be made.

Judge Culpepper reviewed the doctrine of quantum meruit very thoroughly and concluded that no expert testimony was necessary where services for which payment is claimed were rendered under the eye of the court.<sup>35</sup>

#### CONCLUSION

The cause of professional responsibility has been dealt several severe blows by the opinions of our supreme court within the last year. Particularly, the lenient attitude of the court toward those who have violated the Code of Professional Responsibility in the area of solicitation will only breed other violations. When the court rationalizes that advancement of living expenses may be the only way of making legal services available to the poor and the indigent, it overlooks the fact that the practitioner who has the largest bank account will soon acquire the largest personal injury practice. This attitude, coupled with a slap on the wrist suspension for direct and indirect solicitation, will most certainly lure the avaricious lawyer to weigh the possibility of obtaining a sizable tort case which will produce a very large fee on a contingency basis through forbidden means against a suspension of only three months.<sup>36</sup> Certainly the *Edwins* case must represent a discouragement to the Committee on Professional Responsibility which labors at the oars of enforcement of the Code.

Still on rehearing is another case in which the committee's efforts have thus far been thwarted.<sup>37</sup> The problem of the felony tax offender has yet to be faced by the court. Is a felony tax fraud a serious crime which deprives a

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34. *Citing* *Liverman v. Hungerbeeler*, 156 La. 297, 100 So. 2d 425 (1925).

35. *Citing* *James, Robinson, Felts, & Starnes v. Powell*, 303 So. 2d 229 (La. App. 2d Cir. 1974); *Jones v. Bryant*, 283 So. 2d 307 (La. App. 4th Cir. 1973).

36. *Louisiana State Bar Ass'n v. Edwins*, 329 So. 2d 437 (La. 1976).

37. *Louisiana State Bar Ass'n v. Ponder*, 263 La. 743, 269 So. 2d 228 (1972).

lawyer of his good moral character? Can the court simply avoid the findings of a jury that a lawyer has defrauded the United States of its lawful revenues and say to the offender, "Your good moral character has not been tarnished. You may continue to practice law!"?

In dealing with problems of discipline, if the supreme court should follow the reasoning of the Third Circuit advanced in *Gray v. Atkins*,<sup>38</sup> the hope of restoring the legal profession to its lofty eminence still remains. The sordid facts of the *Atkins* case certainly suggest vigorous supervision of contingent fee contracts entered into on behalf of a minor. Those same facts suggest vigorous enforcement of the unauthorized practice statutes.

There can be no doubt that laxity in administering professional discipline in the area of solicitation—including solicitation by the advancement of living expenses—begets further violations and even a callous attitude by lawyers that there is no need to be ethical in their relationship with the public, the courts and their fellow lawyers.

If the court feels that suspension or disbarment is too great a price to pay for code violations perhaps the institution of a system of severe fines would get the violator's attention more readily. The fines could be paid into the Client Security Fund and used to reimburse clients who have suffered financial losses due to lawyer chicanery.

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38. 331 So. 2d 157 (La. App. 3d Cir. 1976). See text at note 13, *supra*.