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PROFESSIONAL RESPONSIBILITY

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Practicing attorneys can no longer safely resolve matters of professional responsibility through the application of traditional rules that were once thought to be absolute and inviolate. Recent decisions involving such matters as advertising, group legal services, and solicitation are but some examples of rapid changes which are taking place in the area of professional responsibility. Compound this with a significant increase in the number of lawyers being admitted to the bar, and it is not surprising that the courts are confronted with an increasing number of cases involving matters of professional responsibility.

Louisiana is no exception to this trend. During the last year, the Louisiana Supreme Court handed down decisions involving disciplinary action resulting from such matters as the conviction of crime and the commingling of a client's funds. The court was also faced with questions concerning advertising and solicitation. Due to the growth of the legal profession and the public's right to receive competent services, the burden will become even greater upon the court to set the tone for standards of professional conduct which will be clearly understood by members of the bar. In like manner, the court must furnish the bar with sufficient guidance as to matters of professional responsibility and must be prepared to impose sufficient sanctions to insure compliance. The purpose of these sanctions, as courts have often observed, is not to punish the attorney so much as to protect the public. At times it appears that the supreme court's compassion for an individual attorney found guilty of professional impropriety has resulted in judicial language which does not further the objective of the court and the bar in striving to improve the level of professional competence and professional responsibility. In the final analysis, however, the decisions are a clear message to the bar. The court will not countenance professional irresponsibility and will look with a special disfavor upon those fundamental breaches of professional responsibility, such as the commingling of a client's funds and other basic violations of the disciplinary rules contained in the Code of Professional Responsibility.

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DISCIPLINARY ACTION

Conviction of Crime

The supreme court decided in *Louisiana State Bar Association v. Batson*[1] that an attorney *acquitted* of a crime may still be found guilty of professional impropriety with regard to the same incident. The respondent, a former attorney for the State Department of Revenue, had been acquitted of charges brought against him relating to the alleged misappropriation of funds. Nevertheless, the court found by clear and convincing evidence (a lesser standard than that required for a criminal conviction) that the attorney was guilty of professional impropriety on the same facts upon which he had been acquitted of a crime.[2] As a result, the respondent was suspended for six months.

Under the Louisiana State Bar Association Articles of Incorporation,[3] the certificate of the conviction of the attorney is conclusive evidence of his guilt of the crime for which he has been convicted. The respondent in *Batson* argued that because this makes a criminal conviction conclusive proof of misconduct, an acquittal must constitute conclusive proof that there has been no misconduct.[4] To hold otherwise would violate the due process and equal protection clauses of the federal Constitution, he alleged.[5] The court disagreed, holding that, under section 8 of article XV of the Articles of Incorporation, an acquittal is to be given equal weight regarding the innocence of the crime for which the attorney had been acquitted.[6] The court applied its own emphasis to the word "crime."[7] Whether an attorney has been found guilty or innocent in a criminal court of this state does not mean he will receive the same result in a disciplinary proceeding. The attorney's "moral fitness to practice law" is the issue to be decided. A verdict of guilty is conclusive evidence of the guilt of the crime and usually of the unfitness to remain a practicing lawyer. A verdict of acquittal, however, is conclusive evidence of the innocence of the crime, but not the fitness to practice law.

One must recognize the logic of this result. The court, when functioning as a disciplinarian, is concerned with the attorney's professional conduct and must decide whether that conduct is inappro-

1. 359 So. 2d 70 (La. 1978).
2. *Id.* at 73.
3. ARTICLES OF INCORPORATION, LOUISIANA STATE BAR ASS'N art. XV, § 8(7)(c), LA. R.S. 37, ch. 4 app. (Supp. 1971) [hereinafter cited as ARTICLES OF INCORPORATION].
4. 359 So. 2d at 72.
5. *Id.*
6. *Id.*
7. *Id., citing* ARTICLES OF INCORPORATION, *supra* note 3.

priate under the Code of Professional Responsibility, not whether he performed all of the elements of a crime outlined in the Criminal Code.

The same rationale was followed by the supreme court in the disbarment proceedings brought against an attorney convicted of influencing a criminal juror in federal court. In *Louisiana State Bar Association v. Thierry*,[8] the respondent attempted to show by means of character witnesses and his own testimony that he was morally fit to practice law, although he admitted his guilt of the crime. He asserted that he had been overzealous and naive about criminal matters, which did not make him morally unfit. The court rejected these arguments and, while confessing compassion for the respondent, held that "without a firm attitude in these matters, this Court would be untrue to its obligation and responsibility to maintain and uphold the high ethical standards of the profession of law and the administration of justice."[9] The court revoked the attorney's license effective September 4, 1975, the date of the respondent's initial suspension, pursuant to section 8(4) of article XV of the Articles of Incorporation. The court's decision was dated December 15, 1978. Presumably the court made the revocation effective in 1975 in order to grant to the respondent the benefit of the time elapsed between the original suspension and the court's final decision toward the calculation of the minimum of five years he must wait before petitioning for reinstatement.

In two additional cases, the court also found that the crime for which the attorney was convicted indicated his moral unfitness. *Louisiana State Bar Association v. Adams*[10] involved disciplinary proceedings brought against a salaried attorney for Charity Hospital. He was convicted of accepting a bribe from a prospective lessee of a service station owned by the hospital. The court found this crime reflected so seriously upon the young lawyer's moral fitness to practice law that disbarment was the required disciplinary action. The disbarment was made effective as of the date of the relator's suspension from the practice of law, as in the *Thierry* case.

In *Louisiana State Bar Association v. Quaid*,[11] a member of the Louisiana bar who had been convicted of burglary in Georgia, sought to return to the practice of law in this state after he had completed his prison sentence. The court decided that the felony for which he had been convicted was "so serious that it casts doubt on

8. 366 So. 2d 1305 (La. 1978).
9. *Id.* at 1307.
10. 363 So. 2d 418 (La. 1978).
11. 368 So. 2d 1043 (La. 1979).

his ability to loyally represent his clients, and indicates a disregard of ethical standards which reflects his lack of moral fitness for the practice of law."[12] As a result, he was disbarred, effective the date of the court's order of suspension.

The supreme court in *Louisiana State Bar Association v. Philips*[13] found that the seriousness of the crime of which the attorney is convicted may outweigh mitigating circumstances. The attorney pled guilty to a charge of theft of money from his client; the Court found that such a theft violated disciplinary rule 9-102.[14] Although the facts in the case indicated that the attorney had made attempts at restitution, the court pointed out that restitution only began after it became apparent that an audit would occur. The court also noted that the respondent never expressed any regret over his "continued pattern of spurious settlements that harmed both the injured claimants and the attorneys representing them."[15] The attorney was disbarred.

Commingling Clients' Funds

The mingling of a client's money with that of the attorney is a serious charge and was the basis, in part, for at least two of the disciplinary actions already mentioned.[16] The supreme court disciplined three attorneys in the last term for the improper handling of their clients' funds. None were disbarred, however, although disbarment is the usual remedy for such a charge.[17] The discipline imposed was limited to suspensions due to mitigating factors which supported each attorney's fitness to practice law.

In *Louisiana State Bar Association v. Adams*,[18] an attorney who spent most of his time as a realtor was charged with retaining funds which were supposed to be used to pay off a mortgage. The attorney handled a real estate closing in 1976 and received a cash payment for the home. Instead of using the cash to pay off the vendor's first mortgage, the attorney kept the money and put at least $25,000 to his own use. He made the prescribed monthly payments on the vendor's mortgage, and four and one-half months later paid off the loan.

12. *Id.* at 1045.

13. 363 So. 2d 667 (La. 1978).

14. *Id.* at 669, *citing* ARTICLES OF INCORPORATION, *supra* note 3, at art. XVI, D.R. 9-102.

15. 363 So. 2d at 670.

16. Louisiana State Bar Ass'n v. Philips, 363 So. 2d 667 (La. 1978); Louisiana State Bar Ass'n v. Batson, 359 So. 2d 70 (La. 1978).

17. Louisiana State Bar Ass'n v. Stinson, 368 So. 2d 971, 973 (La. 1979).

18. 368 So. 2d 694 (La. 1979).

The court found that the respondent misused his client's funds, an act which "represents a grave form of professional misconduct."[19] In mitigation, the court found that the respondent never intended to appropriate the money permanently, had voluntarily suspended himself from the practice of law, and had expressed his intent not to practice law in the future. The court therefore suspended him for only one year.[20]

The supreme court in *Louisiana State Bar Association v. Stinson*[21] found a 64-year-old attorney guilty of procrastination and withholding a client's funds. The attorney was accused of unjustified delay and neglect in the handling of certain cases, neglect and failure to prepare for a specified trial, and commingling and use of clients' funds. The court found that the attorney

> did good and honest work for his clients (if slowly); that no client lost money by his actions (nor is there the slightest hint of dishonest intent in the lawyer's procrastination); that indeed of his own volition (before any bar complaint) in each instance he attempted to minimize any client loss occasioned by his own delay by cutting his fees, which were in any event minimal rather than excessive; and that the lawyer had attempted to rectify his negligence or delay before any complaint was made to the disciplinary authorities.[22]

The respondent was suspended for three years instead of being disbarred by the supreme court which, the court recognized, is the usual penalty for the commingling of clients' funds to the extent "here indicated."[23]

Finally, in *Louisiana State Bar Association v. Rivette*[24] an attorney was found to have mingled the funds of a client, who was a personal friend, with his own. The court agreed with the commissioner that "friends and relatives are entitled to the same high standards of integrity from their attorney as are strangers."[25] The court, apparently persuaded by the fact that the respondent expressed his intention to "limit his future practice to that of a salaried government employee who would not have the responsibility for receiving, accounting for, and repaying clients' funds,"[26] suspended the attorney

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19. *Id.* at 696.
20. *Id.*
21. 368 So. 2d 971 (La. 1979).
22. *Id.* at 973.
23. *Id.* at 974.
24. 368 So. 2d 1045 (La. 1979).
25. *Id.* at 1047.
26. *Id.*

for only one year. The attorney was also accused of accepting a fee from a client and then failing to perform the work. Although there was disagreement about the facts of the matter, the commissioner and the court found that the facts were more consistent with the client's version than the attorney's.[27] The respondent was reprimanded and ordered to return the money to the client.[28]

Mitigating Factors

In many disciplinary proceedings, "mitigating factors" or, more appropriately, evidence of the attorney's good character may mean the difference between a relatively short suspension and a long suspension or a disbarment. Although it is not possible to articulate definitively just what factors influence the court, and to what degree, there does appear to be some pattern in the decisions.

Attempts by the attorney to correct the error

If an attorney has appropriated or used his client's money, restitution will work in his favor. The court has viewed the situation more favorably for the attorney if the attorney has returned the money before any complaint is filed. For example, in *Rivette* the court noted that repayment of the funds was a factor in mitigation, but that such should not be given great weight when repayment is accomplished only after the institution of formal charges by the Bar Association.[29] The same was true in *Philips*.[30] On the other hand, the court noted with favor in *Adams* that the money was repaid before a complaint was filed with either the local Bar Association or the local realtors' board.[31] The way the money is replaced also may make a difference. In *Batson* the money was returned in an irregular manner, a fact which the court noticed.[32]

Length of practice

The length of time that a lawyer has been actively practicing may be considered. An attorney may argue that he was naive about the situation because he had not been practicing very long. This argument was unsuccessful in the *Thierry* case, probably due to the fact that Mr. Thierry had been a member of the bar for four years

27. *Id.* at 1048.
28. *Id.*
29. *Id.* at 1047.
30. 363 So. 2d at 670.
31. 368 So. 2d at 696.
32. 359 So. 2d at 73.

at the time of his indiscretion.[33] He also attempted to argue that he had insufficient experience in one type of law, criminal practice to realize his conduct was improper. The court refused to give much weight to that argument.[34]

On the other hand, Mr. Stinson had been practicing law for some forty-two years at the time the court decided his case.[35] The Court noted the respondent's age, good reputation during his long practice of law, public service, and his honorable position as a community leader. As the court observed, a lesser disciplinary penalty was not justified because of these facts. In fact, the court suggested that "perhaps the converse is true."[36]

Self-imposed penalty

The supreme court may also consider an attorney's own attempt to preclude the future occurrence of the situation for which he was disciplined. In *Adams*, the respondent spent most of his time in the real estate business and voluntarily suspended himself from the practice of law.[37] The court noted this fact, along with his intention not to practice law in the future.[38] In *Rivette* the attorney had quit private practice and had a position as a salaried government employee.[39] He would not have the responsibility for receiving, accounting for, and repaying clients' funds.[40] This apparently influenced both the State Bar Association and the court in limiting his penalty to suspension.[41]

Other extenuating circumstances

The court noted in these cases, among other things, severe emotional and financial disasters suffered by the lawyer;[42] the lack of any other complaints lodged against the attorney;[43] reliance on another attorney;[44] the lack of regret for his acts by the attorney;[45]

33. 366 So. 2d at 1307.
34. *Id.*
35. 368 So. 2d at 974.
36. *Id.*
37. 368 So. 2d at 696.
38. *Id.*
39. 368 So. 2d at 1047.
40. *Id.*
41. *Id.*
42. Louisiana State Bar Ass'n v. Adams, 363 So. 2d at 419.
43. Louisiana State Bar Ass'n v. Batson, 359 So. 2d at 73.
44. Louisiana State Bar Ass'n v. Adams, 363 So. 2d at 419.
45. Louisiana State Bar Ass'n v. Philips, 363 So. 2d at 670.

his education;[46] whether he is a single practitioner;[47] and, of course, the lack of an intent to do anything wrong.[48]

Practice as a Notary Public After Disbarment

Louisiana Revised Statutes 35:14 provides that any attorney who is disbarred or suspended may not act as a notary public for the same period that he cannot practice law.[49] In *State ex rel. Wootan*,[50] a suspended attorney tested the constitutionality of this law but failed in his attempt to have it struck down. The alleged crime for which the attorney had been suspended occurred before the enactment of the statute. Judge Samuel of the fourth circuit refused to rule this a violation of the constitutional prohibition against *ex post facto* laws.[51] The suspension of the attorney occurred after the statute had been enacted; and the court decided that this was the date to be considered.[52] The court also refused to find any violations of the equal protection clause, because the services of notaries in a civil law jurisdiction are often the same as those performed by attorneys. The legislature had a reasonable basis to prevent a suspended or disbarred attorney from doing indirectly what he could not do directly.[53]

ADVERTISING AND SOLICITATION

The Louisiana Supreme Court was confronted with resolving the propriety of attorney solicitation by mail in *Allison v. Louisiana State Bar Association*.[54] Two New Orleans attorneys unsuccessfully sought to have the advertising of prepaid legal service plans ruled

46. Louisiana State Bar Ass'n v. Thierry, 366 So. 2d at 1307.
47. Louisiana State Bar Ass'n v. Stinson, 368 So. 2d at 974.
48. Louisiana State Bar Ass'n v. Adams, 368 So. 2d at 696.
49. LA. R.S. 35:14 (Supp. 1976) provides:

> Any attorney at law, or person who was an attorney at law, who is disbarred or suspended from the practice of law due to charges filed by the Committee on Professional Responsibility of the Louisiana State Bar Association or who has consented to disbarment shall not be qualified or eligible nor shall he exercise any functions as a notary public in any parish of the state of Louisiana as long as he remains disbarred or suspended from the practice of law in Louisiana. Provided, however, that nothing in this Section shall apply to any action taken against an attorney at law for failure to pay annual dues.

50. 364 So. 2d 1079 (La. App. 4th Cir. 1978).
51. U.S. CONST. art. I, § 9, cl. 3 provides: "No Bill of Attainder or ex post facto Law shall be passed."
52. 364 So. 2d at 1081.
53. *Id.* at 1081-82.
54. 362 So. 2d 489 (La. 1978).

constitutional, basing their claim on *NAACP v. Button*[55] and its progeny.

The plaintiffs, who at that time were in practice together, had mailed letters offering prepaid legal services plans to employers in the New Orleans area. After being notified of an investigation into the incident, the pair sued in the supreme court to stop the Louisiana State Bar Association, maintaining that sections of the Code of Professional Responsibility prohibiting such activity had a chilling effect on their first and fourteenth amendment rights.[56]

The court held that solicitations for employment which are not for pecuniary gain are permissible. However, solicitations which have as their primary basis an economic benefit for the attorneys are forbidden. In so deciding, the court looked at United States Supreme Court decisions on the subject. *Button*, the court found, upheld the rights of the NAACP staff to assist those with potential legal actions raising questions of racial discrimination. The Supreme Court noted the lawful objectives of the group and found that "association for litigation may be the most effective form of political association."[57]

In *Brotherhood of Railroad Trainmen v. Virginia*,[58] the Supreme Court also upheld solicitation where it concerned an organization not involved in the advancement of civil rights. The court found that solicitation by a union of legal assistance for its members is not "ambulance chasing." The railroad workers, by recommending competent lawyers to each other, are not themselves practicing law nor are they or the lawyers whom they select parties to any solicitation of business.[59] In *United Mine Workers v. Illinois State Bar Association*,[60] the court stated that the goals of the organization providing the legal assistance need not be political to come under the *Button* decision. As the Court pointed out, the grievances for which the right of petition and assembly were insured are not solely religious or political ones. Great secular causes, with small ones, are guarded.[61]

Although these cases arguably support the position of the two attorneys in *Allison*, the state court based its decision primarily on two 1978 United States Supreme Court companion cases which

55. 371 U.S. 415 (1963).
56. 362 So. 2d at 490.
57. 371 U.S. at 431.
58. 377 U.S. 1 (1964).
59. *Id.* at 6-7.
60. 389 U.S. 217 (1967).
61. *Id.* at 223, *citing* Thomas v. Collins, 323 U.S. 516, 531 (1945).

dealt directly with attorney solicitation. In the first, *Ohralik v. Ohio State Bar Association*,[62] the attorney, having heard of an automobile accident, visited both of the victims, informed them of their potential legal rights, and solicited employment. Although recognizing that commercial speech is due some first amendment protection, the Court nonetheless held that in-person solicitations are dangerous because they may exert pressure and often demand an immediate response, without providing an opportunity for comparison or reflection. Persons needing counsel should engage in critical comparison of the availability, nature, and prices of legal services.[63] In-person solicitation does not allow this and, therefore, "may disserve the individual and societal interest . . . in facilitating 'informed and reliable decisionmaking.'"[64] Therefore, the state could regulate such in-person solicitation.[65]

In the second case, *In re Primus*,[66] the United States Supreme Court upheld the actions of an attorney for the American Civil Liberties Union in contacting women who had been sterilized or threatened with sterilization as a condition of their continued participation in a "Medicaid" program and offering them legal services. The Court quickly differentiated this case from *Ohralik*, its companion.[67] The situation in *Primus* was not in-person solicitation for pecuniary gain, but communication of an offer of free assistance by ACLU attorneys. The latter is acceptable according to the Supreme Court.

The Louisiana Supreme Court found that the *Allison* situation fell under the classification of solicitation for pecuniary gain.[68] The fact that the offer was by mail, rather than in-person, did not make enough difference to avoid the conclusion reached in *Ohralik*, although the court itself had noted that solicitation by mail does not present the dangers which are found in personal offers.[69] Because the court could find no constitutional rights involved, except those of the attorneys, even though the *Trainmen* and *UMW* cases had extended some constitutional protections in this area, the prohibition against direct solicitation by lawyers for pecuniary gain was upheld.[70] Former Justice Albert Tate concurred in the result,

62. 436 U.S. 447 (1978).
63. *See* Bates v. State Bar of Arizona, 433 U.S. 350 (1977).
64. 436 U.S. at 458, *citing* Bates v. State Bar of Arizona, 433 U.S. 350 (1977).
65. *Id.* at 464.
66. 436 U.S. 412 (1978).
67. *Id.* at 434.
68. 362 So. 2d at 496.
69. *Id.*
70. *Id.*

although he felt that solicitation might be accepted under further decisions of the United States Supreme Court.[71]

ATTORNEY'S FEES

The Third Circuit Court of Appeal ruled in *Calk v. Highland Construction & Manufacturing, Inc.*[72] that an attorney does not have a special privilege for his fee when the suit is settled and no judgment on the merits is rendered. The court based its decision on Louisiana Revised Statutes 9:5001,[73] which allows a special privilege for fees on "all judgments" obtained by attorneys and on the property recovered as a result. Under this statute the special privilege would prime all other privileges.

The court decided that the language of Revised Statutes 9:5001 refers only to the granting of a first privilege on judgments. Because the statute does not mention "compromises," and because provisions granting privileges must be strictly construed, the statute was not held to grant a special privilege on settlements obtained without a judgment.[74] Two judges dissented, deciding that a compromise was a judgment.[75]

The same court, in *Oliver v. Doga*,[76] decided a few days after *Calk*, ruled that an attorney's contingency fee contract concerning a partition of community property is void if executed while the parties are still married. The wife entered into the contract with the attorney after the judicial separation but before the divorce. After the couple divorced in 1975, they were remarried, apparently before there was any partition of the community. In 1977 the pair divorced again, and the community was partitioned. The attorney sought to enforce his rights under the earlier contract as allowed by Louisiana Revised Statutes 37:218.[77] The court disagreed, citing *Aucoin v.*

71. 362 So. 2d at 497 (Tate, J., concurring).

72. 368 So. 2d 1100 (La. App. 3d Cir. 1979).

73. LA. R.S. 9:5001 (1950) provides: "A special privilege is hereby granted to attorneys at law for the amount of their professional fees on all judgments obtained by them, and on the property recovered thereby, either as plaintiff or defendant, to take rank as a first privilege thereon."

74. 368 So. 2d at 1101.

75. 368 So. 2d at 1102-03 (Foret, J., dissenting); 368 So. 2d at 1103 (Stoker, J., dissenting).

76. 368 So. 2d 467 (La. App. 3d Cir. 1979).

77. LA. R.S. 37:218 (1950) provides:

> By written contracts signed by the client, attorneys at law may acquire as their fee an interest in the subject matter of the suit, proposed suit, or claim in the prosecution or defense of which they are employed, whether the suit or claim be for money or for property. In such a contract for employment, it may be stipulated that neither the attorney nor the client may, without the written consent of

Williams[78] as support for its decision that the contract was void as against public policy. The contract could have hindered a reconciliation between the parties, the court decided, although in this case it did not stop the pair from getting back together the first time.[79] The court also ruled that the attorney did not have a special privilege under Revised Statutes 9:5001.[80] Because the contract, though recorded, was void, the attorney had failed to file an affidavit or other notice of the privilege in the mortgage or suit records, he could not enforce his privilege against third parties; therefore, the attorney's consent was not required for the cancellation of the judgment.[81]

The fourth circuit in *Singleton v. Bunge Corp.*[82] also required the recordation of the contingency fee contract when the clients and the attorney disagreed over whether consent had been given for a settlement. The attorney had stated in court that his clients, husband and wife, had reached a settlement in a tort case. The trial court had proceeded with the case without those clients. The couple had later contended that they had not consented to the settlement as required by Revised Statutes 37:218[83] and that, therefore, the settlement did not affect them. The fourth circuit disagreed. Contingency fee contracts must be recorded to have effect against third parties. Furthermore, an attorney's oral confession of compromise in court is binding under the provisions of Civil Code article 2291.[84] A judicial confession is full proof against the party making it.[85] Therefore, the couple could not contest the settlement agreement.[86]

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the other, settle, compromise, release, discontinue or otherwise dispose of the suit or claim. Either party to the contract may, at any time, file it with the clerk of the district court in which the suit is pending or is to be brought and have an original or certified copy made and served by registered or certified mail on the opposing party. After such service, any settlement, compromise, discontinuance, or other disposition made of the suit or claim by either the attorney or the client without the written consent of the other is null and void and the suit or claim shall be proceeded with as if no such settlement or discontinuance had been made.

78. 295 So. 2d 868 (La. App. 3d Cir. 1974).
79. 368 So. 2d at 470.
80. See note 73, *supra*.
81. 368 So. 2d at 471.
82. 364 So. 2d 1321 (La. App. 4th Cir. 1978).
83. See note 77, *supra*.
84. LA. CIV. CODE art. 2291 provides:

The judicial confession is the declaration which the party, or his special attorney in fact, makes in a judicial proceeding.

It amounts to full proof against him who has made it.

It can not be divided against him.

It can not be revoked, unless it be proved to have been made through an error in fact.

It can not be revoked on a pretense of an error in law.

85. 364 So. 2d at 1325.
86. *Id.*

The fourth circuit also decided that a widow may contract with an attorney to recover damages for the wrongful death of her husband on behalf of her children. In *Southern Shipbuilding Corp. v. Richardson*[87] the mother had contended that, because she had not been judicially declared the tutrix of her minor children, she could not contract on their behalf. The court disagreed, ruling that the mother's obligation to conserve the minor's estate until a tutor is approved—including retaining an attorney to recover damages due the children—should prevail over the technical requirements of the Code of Civil Procedure,[88] except in cases of clear abuse. The court also found that the widow had ratified the contract by accepting the benefits of the services provided by the attorney.[89] In response to her claim that the contract was so vague as to not represent a meeting of the minds, the court found under the evidence that she understood what the contract meant.[90]

In *Ragan v. Scullin*[91] an attorney was found liable for the payment of experts who worked on his behalf in preparation for litigation because he, not the firm he had asked to do the "legwork," had obligated himself to advance the money. The attorney had been in contact with the experts and with the second law firm and had thus obligated himself.[92]

Collecting the fee can be a problem for many attorneys. In *LeNy v. Friedman*,[93] one law firm found a solution, and the Fourth Circuit Court of Appeal upheld it, although the court did term it a "bizarre billing practice and one hardly to be recommended to other members of the Bar."[94] Two attorneys had a client of a number of years sign a consent judgment for their fee. The court ruled that a person signing a written document is presumed to know its contents. The procedure was not an "ill practice" prohibited by the Code of Professional Responsibility because the client failed to show that it violated "the Canons *as applied to her*."[95] The court found that she knew what she was doing when she signed the document, so she could not be harmed by its effects.[96]

87. 363 So. 2d 1329 (La. App. 4th Cir. 1978).
88. 363 So. 2d at 1332, *citing* LA. CODE CIV. P. arts. 4061 & 4171.
89. 363 So. 2d at 1332-33.
90. *Id.* at 1333.
91. 368 So. 2d 196 (La. App. 1st Cir. 1979).
92. *Id.* at 198.
93. 372 So. 2d 721 (La. App. 4th Cir. 1979).
94. *Id.* at 724.
95. *Id.* (Emphasis in original.)
96. *Id.*

MALPRACTICE

There were only two attorney malpractice suits decided by circuit courts in 1978 and 1979. In the first, the Third Circuit Court of Appeal ruled in *Johnson v. Daye*[97] that a petition alleging malpractice filed against an attorney may state a claim both *ex delicto* and *ex contractu*, even though the petition may read like one sounding only in tort. Prescription on the claim, therefore, may be based on the contractual action, which would not prescribe for ten years.[98]

The third circuit also reprimanded Concordia Parish in a footnote for requiring a litigant to request that a court reporter record the testimony and further asking that a $25 appearance fee be paid. All court testimony should be recorded, the court noted. The trial court and police jury of the individual parishes should make the necessary arrangements.[99]

In the second suit, the first circuit in *Keller v. LeBlanc*[100] agreed with the jury finding in the trial court that there had been no attorney-client relationship under the facts of the case. And, without an attorney-client relationship, there can be no malpractice.[101]

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97. 363 So. 2d 940 (La. App. 3d Cir. 1978).
98. *Id.* at 941, *citing* LA. CIV. CODE art. 3544.
99. 363 So. 2d at 941 n.1.
100. 368 So. 2d 193 (La. App. 1st Cir. 1979).
101. *Id.* at 194.