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## Attorney and Client—Attorney not Disqualified to Notarize Client's Affidavit

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the problem could have been raised by the parties and their failure to do so should not give them a right of collateral attack. Any attack should be limited to direct attack by appeal. See Comment, 60 HARV. L. REV. 305 (1946). The *Landreth* case, *supra*, would seem to be an application of this to administrative determinations. *Contra: Bretsky v. Lehigh Valley R. R.*, *supra*. See Boskey & Braucher, *Jurisdiction and Collateral Attack: October Term 1939*, 40 COL. L. REV. 1006, 1012 (1940); Schopflocher, *supra*.

In conclusion it is submitted that the West Virginia Supreme Court in failing to apply the *Chicot County* case principle rejected a sound doctrine. It is hoped that they will give a fuller consideration to the "bootstrap doctrine" as applied to administrative determinations when the problem arises. It should also be noted that were the problem to arise in a federal court they would give the same effect to administrative determinations as the West Virginia court, being bound by our rule. *Hoffman v. N. Y., N. H. & Hartford R. R.*, *supra*.

D. A. B.

ATTORNEY AND CLIENT—ATTORNEY NOT DISQUALIFIED TO NOTARIZE CLIENT'S AFFIDAVIT.—*A*, who was *C*'s attorney in an equity suit, administered an oath to *C* for the purpose of verifying an answer. *Held*, on appeal, that an attorney may act as notary for his client if his interest in the litigation goes no further than that normally arising from the attorney-client relationship. *Calhoun County Bank v. Ellison*, 54 S. E.2d 182 (W. Va. 1949). Affirmed.

The principal case presents for the first time in West Virginia the question whether or not an attorney who is qualified to act as a notary may take the oath of his client in making affidavits for pleadings. In reaching its conclusion, the West Virginia Supreme Court of Appeals stated that there is no statute or rule of court which would disqualify *A* from taking *C*'s oath. Nor does the Canon of Ethics of the American Bar Association, nor any rule of the West Virginia State Bar, nor the constitution or by-laws of the West Virginia Bar Association forbid this action. The court adopted dicta from *Richardson v. Ross*, 111 W. Va. 464, 163 S. E.2d (1932), which affirms the proposition but seems to disapprove of it. Apparently this is the view taken in a number of jurisdictions where the practice is allowed but frowned upon. *Yeagley v. Webb*,

86 Ind. 424 (1882); *McDonald v. Willis*, 143 Mass. 452, 9 N. E. 835 (1887); *Birmingham v. Simmons*, 222 Ala. 111, 130 So. 896 (1930); *People v. Springfield*, 328 Ill. 172, 159 N. E. 248 (1927).

The legislatures of many states have seen fit to prohibit the practice by statute. GA. CIV. CODE §4417 (1895); KAN. CIV. CODE §641 (1873); MICH. COMP. LAWS §2640 (1897); NEB. CODE OF CIV. PROC. §376 (1898); OHIO REV. STATS. §5271 (1910). Other states, such as Colorado, *Frybarger v. McMillan*, 15 Colo. 349, 25 Pac. 713 (1891), and New Jersey, *Pullen v. Pullen*, 46 N. J. Eq. 318, 17 Atl. 310 (1889), reach the same result without legislative action. And this view would seem to be the orthodox common law rule. *Collins v. Steward*, 16 Neb. 52, 20 N. W. 11 (1884). In these jurisdictions, unlike the ones which allow the practice, the disapproval has resulted in action either by the court in the form of a court rule or by statute. The motivating force is public policy. *Ward v. Ward*, 16 Ohio Dec. 656 (1900). Stated another way, such a practice would open the door to fraud. *Crawford v. Ferguson*, 5 Okla. Cr. 377, 115 Pac. 278 (1911). It is to be noted that in some instances the effect of this rule has been ameliorated by the manner of its application. The rule has been limited in its application to affidavits taken before one who was attorney for the affiant at the time it was taken. *Lynch v. Carpenter*, 129 Mich. 110, 88 N. W. 387 (1901). In Arkansas and New York the affidavit, when sworn to before the attorney, is only voidable, not void. *Coleman v. Fraventhal*, 46 Ark. 302 (1885); *Gilmore v. Hempstead*, 4 How. Pr. (N.Y.) 153 (1849). In New Jersey it is deemed to be a mere matter of judicial policy and may be waived by the court. In re *Ungaro's Will*, 88 N.J. Eq. 25, 102 Atl. 244 (1917).

A review of the cases, then, shows that the courts are squarely split on the question. Even though the practice is allowed in some jurisdictions, it is not sanctioned, and as the principal case indicates, West Virginia is no exception. It would not seem unreasonable to say that the practice is considered as bordering on the realm of the unethical, and this in itself should be enough to militate against an attorney acting as notary for his client.

W. J. W.

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FEDERAL TORT CLAIMS ACT—ARMED FORCES—INJURY INCIDENT TO MILITARY SERVICE.—A surgeon at an army hospital negligently left a towel in a soldier's stomach causing injuries for which \$7,500