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## Acceptance of Employment as Expense of One Adversely Interested to Act as Attorney in Behalf of Infant to Secure Authority for Settlement and Release of Infant's Claim for Personal Injury

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ethically be entitled to retain the share of the fee which he receives from his out-of-town corresponding attorney and not account for it to the client?

*ANSWER NO. 180*

1. The Committee reaffirms its opinion that division of fees between attorneys "should be based upon a sharing of professional responsibility or of legal services, and that no such division should be made except with a member of the legal profession associated in the employment as a lawyer. Any other division would appear to be a mere payment for securing professional employment, which is to be condemned." (Question 42).

All division of fees between attorneys is by agreement, expressed or implied, but as to whether a one-third-two-thirds division is customary outside of the collection business, the Committee expresses no opinion. It is assumed that the out-of-town attorney was retained in the "course of litigation," the forwarding attorney shared in the professional responsibility, if not in the actual legal services. Upon the above assumptions, in the opinion of the Committee, the receipt of a share of the fee by the forwarding attorney is justifiable as a compensation for services and it may properly be retained by the forwarding attorney for his own use. The client, however, should be advised of the fact that his attorney received part of the fee of the out-of-town attorney.

2. Assuming, as the Committee does, that the client was not overreached or deceived in fixing the agreed amount, it is not of the opinion that the forwarding attorney owes an accounting to his client; but if the arrangement with the client is of a nature which, for his proper enlightenment or to enable him to make a fair contract with his lawyer, requires a disclosure of the actual disbursements, of course, the client should not be deceived or misled by concealment of the division.

The Committee does not understand the question to imply that the forwarding attorney agrees at all events himself to pay the disbursements.

*QUESTION NO. 183*

ACCEPTANCE OF EMPLOYMENT AT EXPENSE OF ONE ADVERSELY INTERESTED TO ACT AS ATTORNEY IN BEHALF OF INFANT TO SECURE AUTHORITY FOR SETTLEMENT AND RELEASE OF INFANT'S

CLAIM FOR PERSONAL INJURIES.—A defendant covered by insurance injures an infant plaintiff through the negligent operation of his automobile. The insurance company adjustors immediately make overtures to the infant's parents for settlement, and an amount is agreed upon satisfactory to the parents and the company. Thereupon, the insurance company procures an attorney, not connected with its legal staff but on friendly terms with it, to prepare a petition and order appointing one of the infant's parents guardian *ad litem* for the proposed infant plaintiff. This, the outside attorney takes or sends to the parents of the injured infant for execution. The petition is presented and upon motion of the outside lawyer as attorney for the petitioner, an order appointing the parent guardian *ad litem* is entered. Next, by arrangement, the attorney for the guardian *ad litem* delivers a summons to the regular attorney for the insurance company, who defends the action on behalf of the assured, and this attorney gives a notice of appearance in the action. As soon as the summons and notice of appearance are filed in court and the action is at issue, the outside attorney for the guardian *ad litem* prepares a petition for leave to compromise the action for the amount of the agreed settlement. An order granting leave to the guardian *ad litem* is then entered authorizing the guardian *ad litem* to receive the amount of the settlement upon his executing a bond in the required sum. The fee for this bond is paid by the insurance company. After the money is paid over, and a general release taken from the guardian *ad litem* the action is discontinued.

In the opinion of your committee, is such conduct on the part of the outside attorney, whose fee is paid by the insurance company, proper?

ANSWER NO. 183

It does not affirmatively appear by the question that the "outside attorney" makes full disclosure to the Court of his connection with the insurance company. Assuming that there is no such disclosure, the Committee is of the opinion that the conduct on the part of the "outside attorney" is highly improper and unprofessional, because in appearing as attorney of record for the plaintiff he represents to the Court that he owes an undivided duty to the infant, whereas in fact he is employed, and is to be paid, by a company whose interest is adverse to that of the infant. (See *Matter of Reifschneider*, 60 App. Div., 479, Second Department).

And even if the "outside attorney" does make full disclosure to the Court, still in the opinion of the Committee the practice is not to be commended. The interests of the infant should be represented by independent counsel not biased by such method of employment, whose representation of the infant before the Court should be based upon his independent and unbiased judgment. (See Questions and Answers Nos. 25 and 171).

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WEST VIRGINIA BAR ASSOCIATION NOTES:  
NEWS OF THE PROFESSION<sup>1</sup>

APPOINTMENT OF NEW BOARD OF LAW EXAMINERS.—On October 8, 1919, the members of the Board of Law Examiners then holding office handed to the Supreme Court of Appeals their report covering the period from July 1, 1915 to October 1, 1919<sup>2</sup> and therewith tendered their resignations. On November 21, 1919, the Court entered an order accepting the resignations and appointing a new Board. B. Mason Ambler of Parkersburg, one of the new appointees, declined to accept and James W. Ewing of Wheeling has been appointed in his place. The Court's order of November 21 reads as follows:

STATE OF WEST VIRGINIA.

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on Friday, the 21st day of November, 1919, the following order was made and entered, to-wit:

The Board of Law Examiners, consisting of the members of the Law Faculty of the West Virginia University, having on a former day of the present term presented to the Court a detailed report covering the period of their services from July 1, 1915, to October 1, 1919, and therewith tendered their resignations and a request that they be relieved from further services, it is ordered that said report be now filed.

And the Court having read and considered said report, is of the opinion that the State, this Court, and the legal profession generally are under great obligations to the members of the Law Faculty for their very efficient and self-sacrificing services. Their report contains a very interesting and complete record of all their

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<sup>1</sup>Edited by Uriah Barnes, Secretary, The West Virginia Bar Association.

<sup>2</sup>See 26 W. VA. L. Q. 35 for a portion of this report.