

FINAL REPORT
OF THE
COMMITTEE ON CODE OF PROFESSIONAL ETHICS.

To the American Bar Association:

Your committee have the honor to report as follows:

I. A draft for the proposed canons of professional ethics was transmitted to each member of the Association in May, 1908, accompanied by a preliminary report as follows:

"1. As directed by the Association at the 1907 meeting (*vide* A. B. A. Reports xxxi, 64), we have prepared and herewith transmit to you a draft for the proposed canons of professional ethics, and we very earnestly request your suggestions and criticisms. We ask, however, that if opposed to any of the canons you aid us by accompanying your remarks by a draft of the precise form in which you recommend wording the canons upon which you may comment. Our final report, based upon the suggestions and criticisms received, will be submitted to the Association in August, at Seattle, Washington, in accordance with our instructions.

"2. We summarize briefly the movement which has culminated in this draft:

"At the 1905 meeting of the Association held in Rhode Island, the Chairman of the Executive Committee presented a resolution, which was adopted unanimously, providing for a special committee to report upon the 'advisability and practicability' of the adoption of a code of professional ethics by the Association (Reports, xxviii, 132). At the Association's 1906 meeting, held in Minnesota, the committee reported favorably upon both points (*id.* xxix, 600-604; reprinted as Appendix A of the committee's 1907 report *id.* xxxi, 681-684), and its recommendation, providing for a committee from Bench and Bar to draft a series of canons of professional ethics 'suitable for adoption and promulgation' by the Association, was adopted unani-

mously (*id.* xxix, 35). In 1907, at the meeting in Maine, your committee submitted a report (*id.* xxxi, 676-736), containing a compilation of the codes of ethics adopted in different states of the union, and much other information, including a reprint of the *Hoffman Resolutions* in regard to professional deportment. The committee in its 1907 report *inter alia* recommended that Chief Justice Sharswood's book on *Professional Ethics* be reprinted as a volume of the A. B. A. Reports, and it has already been issued as volume xxxii. The committee in 1907 also reported:

"We believe that such canons (*i. e.*, of professional ethics), to become practically effective, should be adopted only after mature and careful deliberation, and much fuller consideration on the part of our membership than is possible at one of our annual meetings.

"We believe that your committee in drafting the code should have the active assistance of every member of the Association with thoughts upon the subject, and that the recommendations which your committee may see fit to make should be considered, not only in connection with what has already been done in those states having codes of ethics, but also in the light of what has been said by individuals who have directed their attention particularly to the subject."

"The 1907 report of the committee was approved by the Association (Reports xxxi, p. 64), and the committee was directed to transmit a copy of the Sharswood reprint and of the committee's 1907 report to each member of the Association and to request a careful examination of the documents set forth in the appendix thereto, and the submission of opinions and suggestions in the matter of the proposed canons of ethics; your committee was also directed to send the reprint and report to the Secretary of each State Bar Association in the United States with similar requests, and to suggest that the same be referred to such committee as may be appropriate (*id.* p. 64). These directions were followed by your committee in its printed letter of November 29, 1907, to each member of the American Bar Association, and by its typewritten letter of December 19, 1907, to the Secretary of each State Bar Association in the United States. We received in reply many suggestions of value, which, with excerpts from able articles on the subject in some of the professional journals, American and English, were printed in a 'Red Book' of 131

pages for the use of your committee and as an aid to it in its deliberations.

" 3. In the following states there are codes of ethics, more or less complete, which exist as the result either of codification by statutory enactments of some of the 'duties' of lawyers, or of the action of Bar Associations therein in adopting canons of professional ethics: Alabama, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, West Virginia and Wisconsin. In addition to these states, there are in the following, Bar Association committees which have been charged within the last year with the duty either of reporting upon or aiding in the work your committee has in hand, to wit: Illinois, Kansas, Massachusetts, Montana, New York, Ohio, Pennsylvania and Vermont. There are also committees co-operating in a number of the states which already have codes, and your committee is at frequent intervals being advised that State Bar Association committees are being named to help the movement—a movement which should culminate in an authoritatively declared standard of professional conduct, which will not only serve as a guide to the youthful practitioner, but will place the profession, *qua* profession, before the public in its true light, and thereby free it from the unmerited public criticism and censure which have at times been bestowed upon it by the unthinking, as a result of the misconduct of the small percentage of unworthy men who steal into its ranks, yet who in no way represent its spirit or *morale*.

" 4. The foundation of the draft for canons of ethics, herewith submitted, is the code adopted by the Alabama State Bar Association in 1887, and which, with but slight modifications, has been adopted in eleven other states. The committee in this connection desire to record their appreciation of the help they have received in this work from their fellow member, Honorable Thomas G. Jones,¹ of Alabama, who was the draftsman of the Alabama code of ethics, and who attended the three days' session of your committee in Washington, March 30 to April 1, 1908, and moved the adoption of a number of your committee's modi-

¹ Judge Jones desires to be recorded as not concurring in the personal reference to himself.

fications of the Alabama code drafted by him more than a score of years ago.

"The committee approved the suggestions of Mr. Justice Brewer (reported A. B. A. Reports, vol. xxxi, pp. 62-63): The first of his two proposals, '*the preparation of a body of rules, few in number, clear and precise in their provisions, so that there can be no excuse for their violation, to be given operative and binding force by legislation or the action of the highest courts of the states, assuming that those courts have, as doubtless they have in some states, the power to make and enforce such rules,*' has resulted in the recommended form for Oath of Admission. The second is embodied in subdivision II.

"The annexed draft for the canons represents our best present judgment after a most careful consideration of the subject; but we hope that the committees of the respective State Bar Associations will aid us with their advice, and that every member of the American Bar, whether a member of the American Bar Association or not, will freely and frankly criticise the canons and before June 15 next advise the committee of any points, whether of substance or phraseology, with which he is not in accord, and will also submit *draft* for any additional canons which he believes should be inserted. All such criticisms and suggestions will receive your committee's careful consideration. Only in this way can our final report be presented to the Association in the best possible form and in harmony with the consensus of opinion in the profession.

"Suggestions and criticisms should be addressed to the committee at the office of the Secretary, 713 Arcade Building, Philadelphia, and to be of service should reach us not later than June 15, 1908."

II. Prints of the draft and preliminary report were also sent to the Committees on Professional Ethics of State Bar Associations having such committees and to the Secretaries of all State Bar Associations, with the same earnest request for suggestions and criticisms which was extended to each member of the American Bar Association.

In response to your committee's invitation, more than one thousand replies were received by letter and postal card from every section of the United States, many of them evidencing

that deep and earnest thought which the importance of the subject demands, and we record our appreciation of the help thereby received in the work. All the replies were carefully analyzed, briefed and classified, and we are able to report that, with the exception of the canon on contingent fees, the preliminary draft has been overwhelmingly approved by those communicating with us, adverse criticisms of the other canons and of the oath being few in number and relating mainly to matters of phraseology. Upwards of two hundred members of the Association wrote us specifically on the subject of the contingent fee canon, many desiring that the same be made more stringent and some that it define the proposed court control.

We have endeavored at many points to make the canons more precise by slight changes in phraseology, and in a few instances have redrafted particular canons.

The one on contingent fees we hope in its present form will meet the views of all who have communicated with us on the subject. We have not attempted to particularize concerning the proposed court control, as we believe that to be rather a matter for legislative and judicial action than for incorporation in a canon of ethics. The subject is one, however, of vital import to the welfare of the profession, and those who would pursue it further are referred to the very able report of the Special Committee on Contingent Fees of the New York State Bar Association, with its scathing arraignment of the abuses of the contingent fee and proposal of a remedy therefor, presented in January, 1908, and printed pp. 99-124, vol. xxxi of the Reports of that Association. A special committee has also recently been created upon the subject by the Pennsylvania Bar Association, with directions to investigate and report in 1909.

In accordance with some suggestions made we have shortened the Preamble, and we recommend that the quotations from Sharswood, Ryan and Lincoln be printed with the canons, facing the Preamble.

We have reframed the third paragraph of the recommended form for oath of admission, embodying therein the distinction, indicated by Sharswood at p. 90 *et seq.* of his *Professional Ethics* (A. B. A., Reports, vol. xxxii), which should be made "between the case of prosecution and defense for crimes; between appearing for a plaintiff in pursuit of an unjust claim, and for a defendant in resisting what appears to be a just one." The subject is too abstruse to discuss within the limitations of this report.

Some have asked, indeed urged, that we incorporate in our report canons concerning the judiciary. The resolution providing for the organization of the committee and those adopted from time to time directing the prosecution of the work did not specify that such canons be prepared, and we have accordingly confined our report to the Ethics of the Bar, as distinguished from the Ethics of the Bench; but it may be that hereafter the Association will deem it advisable to treat of that phase of professional activity.

In conclusion we desire to acknowledge our indebtedness for the aid and support given in this work by committees of numerous State Bar Associations and of several County and City Bar Associations.

III. We submit the annexed form for the canons with the recommendation that if they meet with the approval of the Association, they be adopted and printed annually in the reports of the Association at such appropriate place as the Secretary may deem best, and that they be reprinted forthwith in pamphlet form, and two copies be forwarded to each member of the American Bar Association and ten to the Secretary of each State Bar Association in the United States, with the information that the American Bar Association will furnish each State Association upon request with such numbers of prints as may be necessary to enable such State Association to distribute a copy to each member of the Bar within its state jurisdiction, should it desire so to do.

We also recommend that the American Bar Association advise that the subject of professional ethics be taught in all law schools, and that all candidates for admission to the Bar be examined thereon.

All of which is respectfully submitted.

HENRY ST. GEORGE TUCKER, Virginia, Chairman,
LUCIEN HUGH ALEXANDER, Pennsylvania, Secretary,
DAVID J. BREWER, District of Columbia,
FREDERICK V. BROWN, Minnesota,
J. M. DICKINSON, Illinois,
FRANKLIN FERRISS, Missouri,
WILLIAM WIRT HOWE, Louisiana,
THOMAS H. HUBBARD, New York,
JAMES G. JENKINS, Wisconsin,
THOMAS GOODE JONES, Alabama,
ALTON B. PARKER, New York,
GEORGE R. PECK, Illinois,
FRANCIS LYNDE STETSON, New York,
EZRA R. THAYER, Massachusetts.

Committee on Code of Professional Ethics

August, 1908.

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belong commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."—GEORGE SHARSWOOD.

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wiliest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere, in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar."—EDWARD G. RYAN.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."—ABRAHAM LINCOLN.

CANONS OF ETHICS.

I.

PREAMBLE.

In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II.

THE CANONS OF ETHICS.¹

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. **The Duty of the Lawyer to the Courts.** It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

¹ For Index and Synopsis of Canons, see p. 586, *infra*.

2. The Selection of Judges. It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court. Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. When Counsel for an Indigent Prisoner. A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. The Defense or Prosecution of Those Accused of Crime. It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. Adverse Influences and Conflicting Interests. It is the duty of a lawyer at the time of retainer to disclose to the client

all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

7. Professional Colleagues and Conflicts of Opinion. A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. Advising Upon the Merits of a Client's Cause. A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment

may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. Negotiations With Opposite Party. A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. Acquiring Interest in Litigation. The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

11. Dealing With Trust Property. Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. Fixing the Amount of the Fee. In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession

is a branch of the administration of justice and not a mere money-getting trade.

[13. **Contingent Fees.** Contingent fees lead to many abuses, and where sanctioned by law should be under the supervision of the Court.]

13. **Contingent Fees.** *Contingent fees, where sanctioned by law, should be under the supervision of the Court in order that clients may be protected from unjust charges.*

14. **Suing a Client for a Fee.** Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. **How Far a Lawyer May Go in Supporting a Client's Cause.** Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

16. **Restraining Clients from Improperities.** A lawyer should use his best efforts to restrain and to prevent his clients from

¹ The form in brackets was originally contained in the report. The form in italics was substituted at the meeting (see page 80).

doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

17. **III Feeling and Personalities Between Advocates.** Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. **Treatment of Witnesses and Litigants.** A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. **Appearance of Lawyer as Witness for His Client.** When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.

20. **Newspaper Discussion of Pending Litigation.** Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. **Punctuality and Expedition.** It is the duty of the lawyer not only to his client, but also to the Courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. Candor and Fairness. The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. Attitude Toward Jury. All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. Right of Lawyer to Control the Incidents of the Trial. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross inter-

rogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. Taking Technical Advantage of Opposite Counsel; Agreements With Him. A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.

26. Professional Advocacy Other Than Before Courts. A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. Advertising, Direct or Indirect. The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. Stirring up Litigation, Directly or Through Agents. It is unprofessional for a lawyer to volunteer advice to bring a law-

suit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital *attachés* or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. Upholding the Honor of the Profession. Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

30. Justifiable and Unjustifiable Litigations. The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. Responsibility for Litigation. No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into

Court for plaintiffs, what cases he will contest in Court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

32. **The Lawyer's Duty in Its Last Analysis.** No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

III.

OATH OF ADMISSION.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other states of the union¹—duties

¹Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wisconsin. The oaths administered on admission to the Bar in all the other states require the observance of the highest moral principle in the practice of the profession, but the duties of the lawyer are not as specifically defined by law as in the states named.

which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of

I will maintain the respect due the Courts of Justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. **SO HELP ME GOD.**

We commend this form of oath for adoption by the proper authorities in all the states and territories.

INDEX AND SYNOPSIS OF CANONS.

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¹The *Arabic* numerals in the brackets immediately following the synoptic titles of the canons are cross-references to the compilation of canons as set forth in Appendix B of the 1907 report of the Association's Committee on Canons of Ethics (A. B. A. Reports XXXI, 685-713); the *Roman* numerals are cross-references to *Hoffman's Resolutions*, reprinted as Appendix H of the committee's 1907 report (*id.* 717-735).