

Opinion 9
June 1947
18 Baylor L. Rev. 197 (1966)

UPHOLDING THE HONOR OF THE PROFESSION - CONFIDENCES OF A CLIENT - FALSE ACCUSATIONS. DISCOVERY OF IMPOSITION AND DECEPTION

A Texas attorney falsely accused by a client, a California attorney, in a California disciplinary proceeding against the client, has a duty to disclose the truth in respect to the false accusation.

Canons 26, 34, 38. A.B.A. Canons 29, 34, 41.

QUESTION

The Secretary of the State Bar of California desires an opinion upon the following facts:

"A witness in Texas, who is an attorney, and whose deposition we desire to take, was employed by an attorney in California to secure a Mexican divorce for him. The Texas attorney took him to Juarez, where he registered as a resident and designated an attorney licensed there to represent him. Two days thereafter, and before the divorce action was filed in Juarez, the California attorney was married to another person. Subsequently a disciplinary proceeding was instituted against the California attorney in which proceeding he testified regarding said purported divorce action and his remarriage and as to the advice given to him by the Texas attorney to the effect that he was at liberty to remarry the day following his registration as a resident of Juarez.

We have reason to believe that these facts are not true and that such advice was not given by the Texas attorney. The testimony of this witness as to the advice actually given is very material to our disciplinary proceeding to refute the testimony of the respondent as to his state of mind at the time he remarried and to show that he has falsely testified in these proceedings.

A partial transcript of our disciplinary proceeding, containing the testimony of the respondent regarding this phase of the matter, was furnished to the Texas attorney together with points and authorities which we believe sustain our position that any privilege that might have been claimed by the respondent in our proceedings, or by the Texas attorney, has been waived. However, in view of the fact that the counsel for said respondent has advised the Texas attorney that he refuses to release him and permit him to testify, the Texas attorney has refused to voluntarily permit his deposition to be taken.

If your association has a Committee on Legal Ethics, will you please submit this matter to them for an opinion as to whether or not under the facts as stated it would be improper for the Texas attorney to voluntarily testify as to the facts within his knowledge or of record regarding said divorce action, his representation of the respondent and the advice given by him."

OPINION

The attorney would be justified in voluntarily permitting his deposition to be taken. The California attorney has waived the privileged character of his communications with the Texas attorney. McCormack and Ray, Tex. Law of Evidence, page 321, Sec. 233 and cases cited, *Rodriguez vs. State*, 94 SW 2d 476, 479, 480 and *Hunt vs. Blackburn*, 128 U.S. 464, 32 Law Ed. 488, 491. Furthermore, if the Texas attorney is falsely accused by the California attorney, under the first sentence of the second paragraph of Texas Canon 34 (American Bar Association Canon 37) the Texas attorney is not precluded from disclosing the truth in respect to the false accusation; in fact, under Texas Canon 26 (A.B.A. Canon 29) it is his duty to testify. (See also Tex. Canon 38 - A.B.A. 41.) (7-0)