North Dakota Law Review

Volume 36 | Number 1 Article 3

1960

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One of the things that has always intrigued me about the relations between trust institutions and the Bar is that so many trust officers are lawyers, not merely graduates of a recognized law school but formally admitted to the Bar. Many of them were successfully engaged in the practice of law before they became associated with their institutions. Hence it is difficult to comprehend just how the trust officer, or the vice president and general counsel of a corporation, becomes a layman by becoming a corporate officer. He does not doff his respect for canons of ethical procedure thereby, as though it were a cloak. It is a fiction that a modern corporation, particularly a trust institution, is soulless and without knowledge of its responsibility to society and devoid of ethical standards.

Yet in parts of our country the relations between the Bar and trust institutions—and, I might add, between the Bar and other business and professional groups—have been strained. There have been suspicions, recriminations, and even litigation. These are unfortunate, to be sure. On the other hand, however, there have been sincere attempts by trustmen and lawyers to reach an area of agreement. One of the significant events of 1959 was the publication by the Trust Division of the American Bankers Association of a booklet entitled: *The Respective Spheres of Lawyers and Trust Institutions.* It contains the full text of three outstanding adresses: two by well known trustmen, Reese H. Harris, Jr., executive vice president of The Hanover Bank, New York, and Charles F. Zukoski, Jr., executive vice president and trust officer of The First National Bank of Birmingham, Alabama; and the other by a distinguished past president of the American Bar Association, E. Smythe Gambrell of Atlanta, Georgia. They are very good reading. If you haven't read them, I commend them to your attention. To me, they are fortunate expressions that should lessen the strains and foster a happier relationship between the legal profession and trust institutions.

One of the reasons for the concern of the Bar about trust institutions is that we are doing the job of settling estates and admin-

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* Address given to the 28th Mid-Continent Trust Conference at the Statler-Hilton Hotel, Detroit, Michigan, November 5, 1959.

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istering trusts they used to do. As one lawyer related to Mr. Zukoski:

> "All of us are aware of the fact that these trust departments have deprived the Bar of much lucrative business in the past years. When I first started practicing law a little more than 35 years ago, lawyers were the administrators and executors of a great many estates. This has practically disappeared. While I am sure that the trust departments call on the individual lawyers to draw a great many wills, and we do a good deal of this business ourselves, the feeling of the Bar is that the trust departments of the banks are dominating this business."

I remember an instance early in my career where a customer of my bank came to me for advice about having a will prepared. When I told him he should have his attorney get into the act, he countered with the statement all to frequent—that he did not have one; had never needed one except when he bought his home. I asked who represented him then, and he named a local lawyer of good reputation. I suggested that he ask that lawyer to draw his will. While that was before the day of estate planning, I explained to the customer what we would do for his family and his estate if we were executor and trustee under the will and offered to be of every assistance possible to him and the lawyer. After some months, I called the customer to ask if everything had gone to his satisfaction; it had. Would he care to send me a copy of the will for my files? He would speak to the lawyer about it. Nothing happened—until about five years later, when I read in the Court Review that the will of the customer had been offered for probate with the attorney who drew the will named as both executor and trustee. Fortunately, that sort of thing doesn't happen very often any more. More than likely, the modern attorney would behave as did a friend of mine. I called him on the telephone to ask him if he would act as the attorney for the estate of a decedent whose will he had drawn. He said emphatically that he would not. Surprised, I asked him why. He said: "Young man, I am a lawyer. I draw wills for my clients and they are good wills. But all the grief and trouble in my career have resulted from family settlements and from representing executors and trustees. I don't see why you bankers—who are supposed to be so smart—have trust departments, when all you can possibly get is a multitude of trouble and, more than likely, insufficient compensation."

Another reason for the concern of the Bar about trust institutions is based on the tag-line to the masterpiece, *Scott on Trusts,* where Professor Scott says proudly: "The Law of Trusts is living

law." Because it is dynamic law, the conception of what is commonly understood to be the practice of law is ever changing. Trust institutions do not practice law, and, to be sure, they do not want to practice law. They have enough to do as it is. But with the growth and development of business, together with the great multiplication and complexities of laws occasioned by such growth, particularly the laws with respect to taxation, it has become necessary for lawyers to specialize in particular branches of the law. This specialization has heightened the change in concept just mentioned, and courts are now holding that trust institutions may prepare tax returns and deal with taxing authorities. Not long ago, in some quarters that was considered the practice of law. Furthermore, nothing succeeds like success; or, stated another way, there is no substitute for experience.

I don't suppose there has been a single month in the past ten years that we have not been approached by an attorney who requested assistance in the preparation of a trust instrument. Most lawyers make no bones about it and say they want to use trust powers that are satisfactory to us or that experience shows to have worked well. While we won't even use a standard form instrument for custody or agency services (I don't know what we will do if the Keogh Bill becomes law), we do have a supply of forms which we make available to lawyers on request. We are now in the process of having a will manual prepared for distribution to attorneys in our county. We find such cooperation invaluable, for it helps the lawyer to serve his client and underscores our statement that we do not practice law. At least no one yet has held that our furnishing forms to attorneys constitutes the practice of law. The classic case of this sort occurred about ten years ago when a local lawyer arranged a conference with us and his clients, a prominent oil man and his wife, who wanted wills prepared in a hurry before they left town on an extended trip. After they left our office, the lawyer came back with his notes and asked if we would draft a form with provisions for a testamentary trust as had been discussed, he was tied up in court, and he and his secretary would have to work at night to meet the clients deadline. Fortunately, our draft was a good one, for it came back to us duly executed without any changes, not even the correction of a couple of minor typographical errors we had planted in it.

Because so many trust officers are lawyers, they have no quarrel with the rule that trust institutions do not practice law. But be-

cause these trust officers are fiduciaries, they have a right to expect that the lawyers will practice law, and practice it right and practice it without undue delay. Have you ever recommended to a customer that he go to his attorney (whom you knew well and considered able) to have his will drawn and have the will come back to you without a residuary clause so the testator was intestate with respect to more than half his estate? I have. Have you ever had to defend your trust from a claim that it violated the rule against perpetuities, which it most assuredly did? I have. Have you ever been called on to allow a claim by a contesting lawyer equivalent to one-third of the gross estate? I have—and didn't. Fortunately for the trust business, the great majority of lawyers who are specialists in probate and trust law are competent and, strange as it may seem, among the very best salesmen the trust institutions have. I am sure this is true not only in my home town, Houston, but in other parts of the country as well.

Even among the lawyers who are not specialists in our field, we find more and more that they are recommending to their clients that they name a corporate executor and trustee. This is particularly true where the attorney has had experience with the trust institution and where it is known to be the policy of the bank to retain the attorney who drew the will to represent the executor and trustee in the administration of the estate and trust. This trend will continue, I am sure, if we render excellent service and deal fairly with our beneficiaries and with the lawyers. The whole thing is a matter of educating the lawyers and their clients as regards the simple facts that trust institutions exist to render specialized services for a modest fee and that trust institutions do not practice law.

As in most business relationships, that of the attorney and the fiduciary is a two-way street. We are frequently called upon by banking customers and others to recommend legal council to them. But, I recently had an experience that shook me. A local doctor who has had a managing agency account with us for some time asked us if we would help him and his wife with their estate plans. We told him it was essential that he engage an attorney. He had been introduced to us by a local investment banker, and the attorney who prepared the agency agreement had since died. He asked us to recommend one, saying that anyone we chose would be all right with him. We named several, but he took the first name mentioned, insisting he knew none of them. He said for us

to acquaint the lawyer with his affairs as we knew them, arrange for an estate analysis, get copies of his income tax returns from his accountants, and make the appointment when he and his wife could meet with the lawyer. He has a large practice and is a busy man. Even though the lawyer is a good friend and has represented any number of our customers, he flatly refused to have anything to do with the case unless the doctor approached him direct. In fact, he gave us quite a lecture on legal ethics. Now we are just as familiar with legal ethics as he is and know of cases where trustees have been surcharged when it was shown that the settlor had not been properly represented by counsel, but we are willing to believe that our course of action was in the best interests of our customer, which is our sole criterion. I am sure it is the criterion of trust institutions generally throughout the land.

What, then, is the shooting all about? Is it because corporate fiduciaries have placed their money-making goals above the public interest or because we violate one of the canons of legal ethics when we try to arrange for one of our customers to be represented by counsel? I think it is because we are doing a job that needs to be done, and we are doing it well. No one in his right mind who is familiar with the facts can say that corporate fiduciaries have money-making goals for themselves rather than for their beneficiaries. Break-even goals are about it, even with those of us who manage to stay in the black and make a small profit. There are trust institutions in this country that are consistently profitable; but in my 30 years as a trustman, I've never known of any that made excessive profits. Happily, our business is competitive; and after paying decent salaries and providing for the increasing costs of doing business in this modern push-button world, we would be more inclined to reduce our charges and attract more business than to try to make too much money. Our customers and our competitors won't let us. Furthermore, I don't think the lawyers have any monopoly on the duty of absolute loyalty to the client, and undivided allegiance—nor on competence, either, for that matter.

The fact that the Bar has been zealous in the quite proper and praiseworthy enforcement of its canons of ethics has had an effect on the trust business that I am sure the lawyers never intended. The trust business is becoming a profession, respected, relied upon and growing in public acceptance. The Bar had a lot to do with it. The several Statements of Policies or Principles developed through the Conference method between the American and various state Bar

Associations and various business and professional groups have been salutary. These have tended to place such business and professional groups on a level with the Bar. The thing that rankles is that the Standing Committee on Unauthorized Practice of the Law refers to us as laymen. Historically, there have been three fundamental principles generally associated with a profession: organization; learning—i. e., pursuit of a learned art; and a spirit of public service. The public feels we have met these standards; why not the lawyers?

In 1946 when a joint committee of the State Bar of Texas and the Trust Section of the Texas Bankers Association proposed a Statement of Principles which said simply: "Trust institutions shall not practice law period," I started to protest that the Statement should at least be enlarged to say that trust institutions could engage in trust business, but, on reflection, decided that was obvious and didn't need saying. I resolved to respect the stated prohibition (some wag quoted it as "Trust institutions shalt not practice law.") but at the same time to devote my energies to engage in the trust business as ethically, as properly, as completely, as I could.

It is to the eternal credit of the Bar that through the National Conference Group, established some years ago by the Trust Division of the American Bankers Association and by the American Bar Association, we generally have been able to resolve our differences in a spirit of friendly cooperation. However, despite the fact the Trust Division Executive Committee decided not to intervene and so told the National Conference Group, the American Bar Association considered the case styled *State Bar Asscoiation of Connecticut et al v. The Connecticut Bank and Trust Company* so significant to the lawyers that a brief amicus curiae was filed. I commend to all trustmen and to all lawyers the decision in that case announced 2 July 1959 by the Supreme Court of Errors for Connecticut in which the Court has now ruled again that the test to be applied in determining whether or not independent outside counsel must be employed to represent the corporate fiduciary is whether or not the matters at hand involve "problems of a type such that their solution would be commonly understood to be the practice of law'." Mr. Zukoski believes the decision reiterates a basic legal misconception; namely, that the corporate fiduciary is acting for others and not for itself and so, when acts constituting the practice of law are involved, must employ independent outside counsel, but feels as I do that the decision certainly goes a long

way toward providing a sounder basis for clarifying the relationship in that state between trust institutions and the Bar.

This case is a signal recognition of the right of the trust institution to have dealings with its customers, to prepare instruments in the services incidental to the administration of its estates and trusts, and to deal with taxing authorities. It has always been a cardinal principle of trust institutions that our customers should consult their own attorneys for advice and have them draw any necessary instruments; and, of course, we are only too glad to have an attorney appear with and for us when we go to court; but trust officers have achieved some competence in the administration of trusts and estates, and it is heartening for a court to recognize this and let us go about doing the good job we are doing.

Indeed, it is the very complexity of the problems created by tax law that have highlighted the importance of the professional corporate fiduciary and its able aides—the tax accountant and the tax attorney. Speaking personally, I believe that the Technical Changes Amendments were a contributing factor in the decision of a distinguished member of the Texas Bar, who had achieved just fame in the complicated field of federal taxation, to cast his lot with a corporate trust institution; and he was, accordingly, elected president of my bank last year.

We learned in school that the trust business was a business. We were warned not to consider ourselves professional men, for then we could not advertise and solicit appointments. We were told that our settlors and testators and beneficiaries were customers and not clients. Yet, thanks to the Bar, as I have said, and to the fact that so many trust officers are lawyers, and, more importantly, to the very nature of our business, we are coming generally to be considered professional men. The hallmark of the professional man is the reputation he has earned as a result of excellent service rendered to satisfied customers, or clients, or patients, as the case may be.

Good public relations with us, says Gambrell, as in other callings, starts with being good. Good public relations is simply good service, publicly appreciated. Logically, excellent public relations is simply excellent service, publicly appreciated. It is my belief that the trust institutions of the nation are enjoying excellent public relations; and we must therefore keep faith with the Bar, which has brought us to our high estate, and with the public, which, with the lawyers, we serve.

As Smythe Gambrell said in Birmingham last May:

> "Business, the oldest of the arts, is evolving into a profession. Gradually, through your group organizations, rules are emerging to enforce standards both as to the character of service and methods of doing business. These self-imposed standards, binding on the entire group engaged in similar business, are the distinguishing marks of the new profession. It is a source of gratification to lawyers everywhere that trustmen have assumed the obligation of a profession, which means devotion to your own ideals, the creation of your own codes, the capacity for your own discipline, the awarding of your own honors, and the responsibility of your own service."

A Statement of Principles for Trust Institutions was adopted in 1933 by the Trust Division of the American Bankers Association—by the corporate trustees themselves. It was not ordered by a court, it was not prescribed by a regulatory body, it was not forced upon us. We adopted it ourselves. By so doing, we took the first step toward public acceptance of the fact that the trust business is an honorable profession. Austin Scott points out that a trust institution might quite properly be held to have more than a reasonable degree of care and skill since it is regularly engaged in the business of administering trusts. The modern trust institution represents to its customers and to the Bar and to the public that it is possessed of a high degree of skill based on care, fairness, learning, experience, promptness, impartiality, loyalty—in short, on excellence. May Divine Providence enable us to have wisdom and courage never to represent anything less.