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proper only for state and federal action, municipalities will be on tenuous constitutional ground if they attempt to legislate without express state authorization. It would be desirable to give the decision that limitation since local efforts to supplement state standards in many areas of public interest may be justified, and should not be hindered by unnecessary restrictions theoretically flowing from this case.

Leslie G. Foschio

CONTRACTS

ATTORNEY-ACCOUNTANT AGREEMENT TO SPLIT FEE ENFORCEABLE PROVIDED EACH RENDERS SERVICES ONLY IN HIS RESPECTIVE FIELD

In the same written contract, Neubecker, the defendant, retained Glickman, an accountant, and Blumenberg, an attorney to represent him in a tax matter which involved a deficiency pending before a Federal Tax Court. Each was to receive $\frac{1}{2}$ of $\frac{1}{3}$ of the difference between the alleged deficiency and the amount of the settlement. There was evidence that each person was to perform services in his respective field. The deficiency was reduced by \$625,000 through their efforts. Blumenberg, as the assignee of Glickman and in his own right sued Neubecker on the express contract and in quantum meruit. A judgment on the express contract was rendered for \$208,354.69. On defendant's appeal, the Appellate Division reversed and ordered a new trial for only the attorney's quantum meruit count because the express contract contemplated the rendition of legal services by a layman and because the contract was a fee splitting agreement forbidden by the Penal Law.¹ Both parties appealed to the Court of Appeals. Blumenberg, the attorney, claimed that a suit on the express contract was permissible and Neubecker, the taxpayer, claimed that a suit in quantum meruit should not be permitted because the equally guilty attorney should not be benefited from the alleged illegal joint retainer. The Court of Appeals *held*, reversed, new trial ordered for both causes of action. The Court decided that a single agreement whereby a lawyer and an accountant were to receive an equal amount of a contingent sum as their fees was enforceable provided each was to render services in his respective field. *Blumenberg v. Neubecker*, 12 N.Y.2d 456, 191 N.E.2d 269, 240 N.Y.S.2d 730 (1963).

In order to protect the general public, it is necessary that those who practice law in New York State meet minimum qualifications. The State not only regulates licensed attorneys in regard to matters of practice and compensation, but also those who are not licensed. One aspect of the State's policy is to prohibit people who are not attorneys, licensed in New York, from practicing law on another's behalf in New York Courts of record and from holding themselves

1. N.Y. Penal Law § 276.

out as attorneys.² A layman who renders legal service is forbidden from receiving compensation by statute.³ In civil suits for compensation for legal services rendered, the courts will accept as a defense the fact that the plaintiff is not a licensed attorney in New York.⁴ The reception of a portion of a lawyer's fee by a layman as an inducement for placing a claim or a demand in the lawyer's control, is illegal.⁵ This illegality renders a contract by which the lawyer is to split his fees with a layman for furnishing interested parties unenforceable.⁶ Recovery of compensation by an attorney on the express contract need not be allowed where the express contract is forbidden by law⁷ or contrary to public policy.⁸ But, the fact that the express contract of the attorney is against public policy does not preclude the attorney from recovering the reasonable value of his legal services through an action for quantum meruit.⁹ In another jurisdiction, that State's policy was reflected when a joint contract entered into by a law firm with a client was declared null, void and unenforceable in light of a statute because one of the firm's contracting attorneys did not pay his license tax.¹⁰

The attorney is also governed by the canons of his profession. One of the canons provides that "no division of fees for legal services is proper except with another lawyer, based upon a division of service or responsibility."¹¹ According to this canon, an attorney is permitted to retain an accountant on a salary basis if his salary is not computed according to the fees received by the attorney.¹² The New York City Committee on Professional Ethics voiced the opinion that it is a violation of Canon 34 if an attorney and accountant agree to share a single fee.¹³ This canon was also applied where an attorney was not permitted to retain a fee because "he performed no legal services and assumed no responsibility."¹⁴ In that case the court mentioned that Canon 34 was "entitled to the force of law."¹⁵ The Federal Tax Court has set down as its policy for its bar the carrying on of practice in accord with the letter and spirit of the Canons of the American Bar Association.¹⁶ In a disbarment proceeding, *Matter of Welch*, a retainer contract was said to be void where an attorney contracted with a client that he would split up part of his contingent

2. N.Y. Penal Law § 270; see *People v. Alfani*, 227 N.Y. 334, 125 N.E. 671 (1919).

3. N.Y. Penal Law §§ 271, 272.

4. *Fein v. Ellenbogen*, 84 N.Y.S.2d 787 (Sup. Ct. App. T. 1948); *Woodard v. Southampton Fed. Savings & Loan Ass'n*, 161 N.Y.S.2d 522, 527 (Sup. Ct. 1957).

5. N.Y. Penal Law § 276; *S. Stern, Henry & Co. v. McDermott*, 38 Misc. 2d 50, 236 N.Y.S.2d 778 (Sup. Ct. 1962).

6. *In re Martin's Estate*, 178 Misc. 43, 33 N.Y.S.2d 81 (Surr. Ct. 1941).

7. N.Y. Judiciary Law § 474.

8. *Delahunty v. Canfield*, 118 App. Div. 883, 103 N.Y. Supp. 939 (1st Dep't 1907).

9. *Matter of Snyder*, 190 N.Y. 66, 82 N.E. 742 (1907).

10. *McIver v. Clarke*, 69 Miss. 408, 10 So. 581 (1892).

11. A.B.A. Canons of Professional Ethics 34.

12. A.B.A. Op. No. 297 (1961); see 47 A.B.A.J. 527, 528 (1961).

13. Bar Ass'n City of New York, Committee on Professional Ethics, Op. No. 614 (1942).

14. *Matter of Annunziato*, 201 Misc. 971, 973, 108 N.Y.S.2d 101, 103 (Surr. Ct. 1951).

15. *Id.* at 973, 108 N.Y.S.2d at 103.

16. Fed. Tax Ct. R. 2.

fee with doctors who examined the client.¹⁷ In another jurisdiction, it was declared that splitting an attorney's fee with a layman for non-legal investigative services was against public policy in light of a statute.¹⁸ In a federal court a contract for the equal division of an attorney's fee with a layman for non-legal services rendered in searching for witnesses to testify has been adjudicated contrary to sound public policy without reliance on a statute.¹⁹

The Court of Appeals interpreted from the record that there was a jury question as to whether or not the accountant had contemplated the rendition of legal services. There was evidence of an understanding that the accountant and attorney were to furnish services in their own respective fields. The benefit to the taxpayer of an agreement of this type was emphasized. The public interest was said to be supported by utilizing the services of both professions in a tax case. Even though there was a single agreement for the fees of both representatives and the contingent amount was to be in a lump sum, as long as each person was to perform the services only of his respective field, the contract is valid and enforceable.

The view of the dissent was that because the express contract was not in accord with the Rules of the Tax Court or the Canons of Professional Ethics, the express contract was against public policy and no suit should have been had on the express contract. But the suit on the quantum meruit count would be permitted.

The majority accepts, as its policy reason for not holding the contract to be against public policy, the joint statement of the State Society of Certified Public Accountants and the State Bar Association. These groups suggest "that a lawyer and a certified public accountant working together on behalf of a common client in the tax field constitute a very effective team."²⁰ As long as there is a strong policy to have attorneys and accountants cooperating with each other and one profession does not infringe on the practice of the other, the combined agreement should be allowed. This can effectuate good service for the client and eliminate the necessity of negotiating fees in another contract. But, as long as part of the contractual matter involves the rendition of legal services, there lurks a danger that the accountant will venture into that field. In regard to the *Welch* case, that proceeding was for disbarment, and the comment about the nullity of the contract, which contemplated the apportioning of part of the lawyer's fee to a non-attorney, was dictum. Also, in that case, the contract was tainted with an element of ambulance chasing. In the instant case, the danger of an attorney splitting his fee with an accountant for leads is present. But, the risk of illegal and unfair methods appears not to be so great in light of the benefit to the taxpayer. Here, there is proof that Glickman,

17. *Matter of Welch*, 156 App. Div. 470, 475, 141 N.Y. Supp. 381, 385 (1st Dep't 1913) (dictum). See also *Matter of Coleman (Cohen)*, 256 App. Div. 262, 9 N.Y.S.2d 681 (1st Dep't 1939) (attorney censured for giving part of fee for doctor's testimony).

18. *Cain v. Burns*, 131 Cal. App. 2d, 439, 280 P.2d 888 (1st Dist. Ct. App. 1955).

19. *Porter v. Jones*, 176 F.2d 87, 89-90 (10th Cir. 1949).

20. N.Y. Judiciary Law, App. 328 (McKinney Supp. 1963).

the accountant, was personally retained by the taxpayer and not by the attorney. The attorney and accountant merely took a share of the recovery independent of the other's fee. It is incidental that the fee of each is the same percentage. But, this retainer agreement, since the money came from a lump sum, may have been a technical departure from Canon 34. The policy reflected in this case is not to deny recovery on the express contract for a technical departure from Canon 34 in light of the evident beneficial results to the taxpayer as long as the accountant does not render legal services. In light of this decision, there is no indication whether the Court will or will not uphold an agreement between a layman who renders non-legal services and an attorney to split the attorney's fee, as where the attorney personally retains an accountant whose salary is computed according to the attorney's fee.

Anthony S. Kowalski

CONTRACT INTENDED TO RELEASE LIABILITY FOR NEGLIGENCE INVALIDATED—
LANGUAGE NOT SUFFICIENTLY EXPLICIT

The defendant is a manufacturer of motion picture film. A number of reels of its film were sold to the plaintiff in standard packages on which were printed certain conditions of sale stating, in part, that the film price did not include processing, and that, except for replacement of the film, defendant would not assume liability of any kind in any subsequent handling of the film.¹ The plaintiff, in fulfillment of a contract with another party, traveled to Alaska, exposed the film and returned it to defendant for processing. While in defendant's possession, a substantial part of the film was damaged beyond usefulness. The case was submitted to the Appellate Division on an agreed statement of facts.² The Court held, first, that an inference of negligence was warranted and, second, that the conditions of sale could not be construed so as to relieve defendants of liability for negligence. In an appeal based on the latter point, the Court of Appeals affirmed, holding that, since contracts purporting to absolve the offeror from liability for negligence are not favored by the courts, and must therefore meet strict standards of interpretation, the language of the present contract was not sufficiently clear to relieve the defendants of liability. *Willard Van Dyke Prods. v. Eastman Kodak Co.*, 12 N.Y.2d 301, 189 N.E.2d 693, 239 N.Y.S.2d 337 (1963).

The agreement involved here purported to release the offeror of *future* liability for *ordinary* negligence. Although the rule applicable to such agreements may generally be said to support their validity,³ considerations of policy

1. The relevant language is as follows: "This film will be replaced if defective in manufacture, labeling, or packaging, or if damaged or lost by us or any subsidiary company. Except for such replacement, the sale or subsequent handling of this film for any purpose is without warranty or other liability of any kind. Since dyes used with color films, like other dyes, may, in time, change, this film will not be replaced for, or otherwise warranted against, any change in color." Instant case at 303, 189 N.E.2d at 694, 239 N.Y.S.2d at 339.

2. N.Y. Sess. Laws 1920, ch. 925, § 546.

3. See *Ciofalo v. Vic Tanney Gyms*, 10 N.Y.2d 294, 177 N.E.2d 925, 220 N.Y.S.2d 962