

Henry VII Appointed to the Commission for Lawyer Discipline

During his prior employment as King of England, Henry VII installed the Court of the Star Chamber to regulate the conduct of his subjects. According to Maitland and Montague, that court operated without clear rules of procedure or the conduct deemed punishable. As a free agent the court imposed pillory, branding, whippings, nose splitting, ear cropping, and indeterminate imprisonment to deal with those who engaged in conduct the court or King found objectionable. Henry's court finally came acropper when enlightened Englishmen stood together to cause its abolishment. See Maitland and Montague, *A Sketch of English Legal History* (1915). Now as counsel for the Commission for Lawyer Discipline (CLD), Henry is up to his old tricks. An examination of three recent cases which are indistinguishable from each other will demonstrate the point.

In *McCleery v Commission for Lawyer Discipline*, 2006 Tex App Lexis 8708 (Tex App Houston 1st 2006, petition denied) a lawyer was prosecuted with having charged an unconscionable fee. McCleery came to represent Alonzo Williams in a DTPA action on a referral from the Houston Volunteer Lawyers Program (HVLP). Under that program the lawyer agrees to represent the client without imposition of a fee. The lawyer further agrees to contribute any court awarded fee to HVLP. The day before the trial was to occur, McCleery had the client, who was elderly, infirm, indigent, and uneducated, sign a 40% contingent fee contract without referring him to an independent lawyer for advice concerning the new fee agreement. The trial resulted in a favorable verdict, and the case was settled for a cash payment of \$36,210 and forgiveness of a debt in the amount of \$13,790. McCleery charged and received a fee in the amount of \$20,000 plus \$1427 for expenses. Further McCleery declined to contribute the fee to HVLP. The client filed a grievance with the State Bar. A local District Grievance Committee (DGC) found the lawyer guilty of violating the prohibitions against unconscionable fees, recommended restitution of the ill gotten fee, and imposed a sanction of a public reprimand. McCleery declined to agree to these findings and recommendations so the CLD pursued the case in the District Court. The trial court found that the lawyer charged the client an unconscionable fee, directed restitution of the fee, and imposed a sanction of a public reprimand. The court of appeals affirmed.

In *Piro and Lilly v. Sarofim*, 2002 Tex App Lexis 2656 (Tex App Houston 1st 2002, no petition) the lawyers represented a client in a divorce case on an hourly basis. Shortly before trial the lawyers had the client agree to a contingent fee arrangement without referring the client to an independent lawyer for consultation concerning the new fee agreement. Under the new agreement the lawyers charged and received an attorney's fee in the amount of \$3,000,000. The client then sued the lawyer for breach of fiduciary duty in charging an unconscionable fee and sought its forfeiture under the *Burrow v Acre*, line of cases. At trial the jury found that the lawyer had in fact violated his fiduciary duties to the client, and the trial court ordered fee forfeiture of the entire \$3,000,000. To make matters worse the trial court also pointed out that one to the lawyers had established a "romantic" relationship with the client. While the case was highly publicized, the CLD took no action against the lawyers.

In *Goldstein v Committee for Lawyer Discipline*, 109 SW3d 810 (Tex App Dallas 2003, petition denied) the lawyer represented the client in a divorce case on an hourly

basis. Shortly before the case was settled the lawyer had the client agree to a contingent fee agreement. Under that agreement the lawyer charged and received a fee in the amount of \$5,000,000. A short while later the client sued the lawyer for charging an unconscionable fee and other damages. Trial resulted in a verdict for the client in the amount of \$110,000,000. The case was then settled for restitution in the amount of approximately \$2,500,000. The client then filed a grievance with the State Bar. A DGC heard the case and recommended disbarment. Goldstein declined to accept the sanction, and the CLD initiated a law suit in the District Court seeking a sanction of disbarment. The trial court found that the lawyer had charged an unconscionable fee and imposed the requested sanction. While Goldstein had several prior grievance complaints against him, only one of which had been found justified, the only distinguishing feature in this case from the other two was here the client did seek independent counsel for consultation concerning the change in fee agreement.

We must ask ourselves just how this disparagement of treatment of the three cases can be justified. Although I represented Goldstein in his travail, the Goldstein case is much more than a war story. Attached is the legal article I prepared concerning the miscarriage of justice achieved in his case. I urge you to read the article and decide for yourself whether Henry's work should be perpetuated.