

THE ADMINISTRATION OF JUSTICE

REPORT OF

THE COMMITTEE ON OFFENSES AGAINST

THE ADMINISTRATION OF JUSTICE

to

THE GOVERNOR

and

THE GENERAL ASSEMBLY OF VIRGINIA

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COMMONWEALTH OF VIRGINIA
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THE ADMINISTRATION OF JUSTICE

REPORT OF THE COMMITTEE ON OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE

to

The Governor and The General Assembly of Virginia

Richmond, Virginia, November 1, 1963

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly's attention has been directed to the increase in the unauthorized practice of law, and the rise in running and capping. By the enactment of Chapter 373 of the Acts of Assembly of 1958, there was directed a continuing study of these matters (§§ 30-42 through 30-51 of the Code of Virginia). The directive to the Committee follows:

"§ 30-42. (a) There is hereby created a joint committee of the General Assembly to be known as the Committee on Offenses Against the Administration of Justice, hereinafter sometimes referred to as joint committee. Such joint committee shall investigate and determine the extent and manner in which the laws of the Commonwealth relating to the administration of justice are being observed, administered and enforced and shall specifically direct its attention to the observance and to the methods and means of administration and enforcement of those laws, whether statutory or common law relating to champerty, maintenance, barratry, running and capping and other offenses of any nature relating to the promotion or support of litigation by persons who are not parties thereto.

"(b) The joint committee is further authorized to investigate and determine the extent and manner in which the laws of the Commonwealth relating to State income and other taxes are being observed by, and administered and enforced with respect to, persons, corporations, organizations, associations and other individuals and groups who or which seek to promote or support litigation to which they are not parties contrary to the statutes and common law pertaining to champerty, maintenance, barratry, running and capping and other offenses of like nature. . . ."

The Committee elected Senator Joseph C. Hutcheson of Lawrenceville as Chairman. Other members of the Committee are: Senators Curry Carter of Staunton and William F. Stone of Martinsville; Delegates Russell M. Carneal of Williamsburg, Francis B. Gouldman of Fredericksburg, Lyman C. Harrell, Jr. of Emporia and James M. Thomson of Alexandria. John B. Boatwright, Jr. and Fletcher W. Harkrader, Jr.

served as Secretary and Recording Secretary, respectively. Mr. Harkrader left State employment and was succeeded by Charles A. Christoffersen. William H. King of the Bar of the City of Richmond served as counsel for the Committee. Also, investigators were employed to obtain evidence in areas of interest to the Committee.

ACTIONS OF THE COMMITTEE

Since the last Session of the General Assembly, the Committee has met on numerous occasions, actively conducted investigations directly and through its investigators, held hearings, and generally studied the observation and enforcement of both the statutes and common law concerning the administration of justice in the Commonwealth. Also, much time of the Committee has been spent in litigation resulting from the failure of those under investigation to produce facts and information sought by the Committee, and from contemptuous refusals of witnesses to answer pertinent and proper questions propounded them. Some of such litigation still pends.

Much of the Committee's work has been devoted to a study of the sufficiency and validity of relevant statutes. But at the same time it has been concerned with the activities of individuals and organizations within the area of its operations. In its investigations, the Committee has been guided by whether there was evidence of actions which tended to impair the administration of justice in Virginia. In all its activities the Committee has steered its course by this pole star.

Thus, without passion or prejudice, we have gone our way unmindful of criticism from those who disagree with this objective.

RECOMMENDATIONS

1. Repeal § 59-21.1 which relates to combinations to injure persons in their business; place the same language under Title 18.1 as exists in § 59-21.1.
2. Clarify and expand §§ 54-78, 54-79, 54-82 and 54-83 of the Code relating to "runners" and "cappers".
3. Repeal §§ 54-80 and 54-81 relating to "runners" and "cappers" as being obsolete.
4. Enact a new article under Title 54 making it a misdemeanor for an attorney at law to solicit professional employment.

REASONS FOR RECOMMENDATIONS

1. Section 59-21.1 was enacted at the 1962 Session of the General Assembly, and was patterned after § 134.01 of the laws of the State of Wisconsin, the validity of which was upheld by the Supreme Court of the United States in *Aikens, et al v. Wisconsin*, 195 U. S. 194, 49 L. ed. 154. The Committee has felt that this Section, though highly desirable, has not effectively been placed under Chapter 3 of Title 59 of the Code of Virginia, which Chapter deals with "Trusts, Combinations, and Monopolies". Rather, the Committee considers that such Section should be amended and placed under Chapter 2 of Title 18.1,

which Chapter defines "Offenses Against the Person". In addition to criminal wrongs now prohibited, the amendments proposed would provide to an injured person the right to an action at law or suit in equity against the offender, and further provide that one testifying in any relevant action, suit or prosecution shall not thereby subject himself to criminal penalty as a result of such testimony, unless it be prejured.

2. and 3.: By its decision in *N.A.A.C.P., et al v. Button, et al*, 371 U. S. 415, 9 L. Ed. 2d 405, the Supreme Court of the United States held § 54-78 and § 54-79 of the Code of Virginia, as amended in 1956, unconstitutional as applied to the activities of the National Association for the Advancement of Colored People and its affiliates under the circumstances recited in the opinion of the Court. The Committee feels it advisable to eliminate any future effective challenge of the validity of such "running and capping" statute by re-enacting the statute substantially as it existed prior to its amendment in 1956. The language of the revised statute as recommended by the Committee, has been simplified, and the definition of "agent" in § 54-78 has been changed to meet the objection of the Supreme Court that the language of the existing statute is too broad. The Committee has further recommended that existing §§ 54-80 and 54-81 be repealed, such Sections no longer serving any useful purpose.
4. Although for many years it has been a statutory offense for an agent to solicit professional employment on behalf of a lawyer; it has not been a like offense for the lawyer to solicit such employment for himself, or to authorize an agent to do so. Currently, the only offense committed by the lawyer under such circumstances is that of violating the Canons of Legal Ethics with a possibility of being disbarred or reprimanded. The Committee, believing that the lawyer should be subject to the same penalties as those placed on an agent acting on his behalf, recommends that a new article be enacted under Title 54 which will make it a misdemeanor for a lawyer to solicit professional employment, either directly or through an agent.

Respectfully submitted,

J. C. HUTCHESON, Chairman
 RUSSELL M. CARNEAL
 CURRY CARTER
 FRANCIS B. GOULDMAN
 LYMAN C. HARRELL, JR.
 WILLIAM F. STONE
 JAMES M. THOMSON

A BILL to amend and reenact §§ 54-78 and 54-79, as amended, 54-82 and 54-83 of the Code of Virginia, relating to runners and cappers, and to amend the Code of Virginia by adding in Chapter 4 of Title 54 an article numbered 8, containing a section numbered 54-83.1:1 relating to solicitation of professional employment, and to repeal §§ 54-80 and 54-81 of the Code of Virginia, relating to runner and cappers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54-78 and 54-79, as amended, 54-82 and 54-83 of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding in Chapter 4 of Title 54 an article numbered 8 containing a section numbered 54-83.1:1, the amended and new section being as follows:

§ 54-78. As used in this article:

* (a) A “runner” or “capper” is any person * acting * within this State * as an agent for an attorney at law in the solicitation * of professional employment for such attorney at law.

* (b) An “agent” is one who * acts for another with or without compensation at the request, or with the knowledge and acquiescence, of the other in dealing with a third person or persons.

(c) “Solicitation of professional employment” is the obtaining or attempting to obtain for an attorney at law representation of some other person to render legal services for such other person and whereby such attorney at law will or may receive compensation; provided that neither conduct limited to mere statements of opinion respecting the ability of a lawyer, nor conduct pursuant to a uniform legal aid or lawyer referral plan approved by the Virginia State Bar, shall be deemed the solicitation of professional employment.

(d) A “person” is any person, firm, corporation, partnership or association.

§ 54-79. It shall be unlawful for any person * to act *singly or in concert with others* as a runner or capper * for an attorney at law *

§ 54-82. Any person * violating * the provisions of this article shall be guilty of a misdemeanor, and shall be * *punished as provided by § 18.1-9*. In addition to such punishment, any person * *employed as an officer, director, trustee, clerk, servant or agent of this State or of any county, city or other municipal corporation or subdivision thereof* who shall be found guilty of violating * the provisions of this article shall forfeit the right of his office and *his* employment.

§ 54-83. Any contract for professional * *employment* secured by * an attorney * at law through the service of a runner or capper shall be void and *unenforceable*.

Article 8.

Solicitation of Professional Employment

§ 54-83.1:1. (a) As used in this article:

(1) An “agent” and a “person” shall have the same meaning as defined in Article 7 of this Title.

(2) To "solicit professional employment" is to obtain or attempt to obtain for an attorney at law representation of some other person to render legal services for such person for which the attorney at law will or may receive compensation.

(b) It shall be unlawful for an attorney at law having no legal duty to do so to solicit professional employment either directly or through an agent; provided, that such solicitation shall not be unlawful when made of one related to the attorney at law by blood or marriage for the purpose of aiding the one so related in a matter in which he or she has a direct personal interest, or when conducted pursuant to a uniform legal aid or lawyer referral plan approved by the Virginia State Bar.

(c) Any attorney at law violating the provisions of this article shall be guilty of a misdemeanor and shall be punished as provided by § 18.1-9.

(d) Any contract for professional employment secured by an attorney at law in violation of this article shall be void and unenforceable.

2. That §§ 54-80 and 54-81 of the Code of Virginia are repealed.

3. If any part or parts, section, subsection, sentence, clause or phrase of this act or the application thereof to any person or circumstance is for any reason declared unconstitutional, such decision shall not affect the validity of the remaining portions of this act which shall remain in force as if such act had been passed with the unconstitutional part or parts, section, subsection, sentence, clause, phrase or such application thereof eliminated; and the General Assembly hereby declares that it would have passed this act if such unconstitutional part or parts, section, subsection, sentence, clause or phrase had not been included herein, or if such application had not been made.

A BILL to amend the Code of Virginia by adding sections numbered 18.1-74.1:1 through 18.1-74.1:3, relating to combinations to injure persons in their reputation, trade, businesses or professions and providing criminal and civil penalties for violations; to provide injunctive relief, and to repeal § 59-2.1 of the Code of Virginia, relating to the same matter.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding sections numbered 18.1-74.1:1 through 18.1-74.1:3 as follows:

§ 18.1-74.1:1. (a) Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of wilfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act shall be jointly and severally guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars or by confinement in jail not exceeding twelve months, or by both such fine and imprisonment. Such fine and imprisonment shall be in addition to any civil relief recoverable under § 18.1-74.1:2.

(b) This section shall not affect the right of employees lawfully to organize and bargain concerning wages and conditions of employment.

§ 18.1-74.1:2. (a) Any person who shall be injured in his reputation, trade, business or profession by reason of a violation of § 18.1-74.1:1,

may sue therefor and recover three-fold the damages by him sustained, and the costs of suit, including a reasonable fee to plaintiff's counsel; and without limiting the generality of the term, "damages" shall include loss of profits. Such counsel shall in no case receive any other, further or additional compensation except that allowed by the court and any contract to the contrary shall be null and void.

(b) Whenever a person shall duly file a bill in chancery in the circuit court of any county or the circuit or corporation court of any city against any person alleging violations of the provisions of § 18.1-74.1:1 and praying that such party defendant be restrained and enjoined from continuing the acts complained of, such court shall have jurisdiction to hear and determine the issues involved, to issue injunctions pendente lite and permanent injunctions and to decree damages and costs of suit, including reasonable counsel fees to complainants' and defendants' counsel.

§ 18.1-74.1:3. (a) No natural person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any action, suit, or prosecution authorized by § 18.1-74.1:1 or § 18.1-74.1:2; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

(b) Unless otherwise provided, as used in § 18.1-74.1:1 and § 18.1-74.1:2 a "person" is any person, firm, corporation, partnership or association.

2. That if any part or parts, section, subsection, sentence, clause or phrase of this act or the application thereof to any person or circumstance is for any reason declared unconstitutional, such decision shall not affect the validity of the remaining portions of this act which shall remain in force as if such act had been passed with the unconstitutional part or parts, section, subsection, sentence, clause, phrase or such application thereof eliminated; and the General Assembly hereby declares that it would have passed this act if such unconstitutional part or parts, section, subsection, sentence, clause or phrase had not been included herein, or if such application had not been made.

3. That § 59-21.1 of the Code of Virginia is repealed.

