

Liability of the Attorney who Advises Disobedience

The ABA Code of Professional Responsibility, Ethical Consideration 7-22 informs the attorney that, "Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal." This article will attempt to discuss EC 7-22 as it and its predecessors have been interpreted by the courts, and to chart out a course for future decisions in this field.

The Attorney who Advises Disobedience

"A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding."¹ Thus runs the common refrain regarding an attorney's obligation to the court system and his duty to maintain a proper respect towards that system. Even if the attorney should believe that the court order is incorrect, he must still comply promptly or risk the imposition of sanctions.² Should he attempt to convince the court that his advice to disregard a ruling was given in good faith, it will not save him from liability, for the question of motive or intent for advising violation is irrelevant in this instance.³ An explanation of this result is that there cannot be good faith in such a situation because good faith requires the attorney to submit the question to the court for its determination.⁴ Of course, if an order has been issued and objections or motions overruled, then that particular court has already determined the question. What is normally contemplated is that the attorney reserve his point for appeal, rather than resist the order.⁵

Early case law noted a distinction between advising a client that a court order is void and of no effect, and going further to

1. *Hawk v. Superior Court*, 42 Cal. App. 3d 108, 116, 116 Cal. Rptr. 713, 718 (1974).

2. *See United States v. United Mine Workers*, 330 U.S. 258 (1946).

3. *See Root v. Conkling*, 108 Misc. 234, 177 N.Y.S. 610 (1919).

4. *Leber v. United States ex rel. Fleming*, 170 F. 881 (9th Cir. 1909).

5. *Maness v. Meyers*, 419 U.S. 449 (1975); *Johnson v. Trueblood*, 476 F. Supp. 90 (E.D. Pa. 1979).

urge the client to disobey such an order. While the right to do the former has been almost universally upheld; the latter oftentimes will result in contempt proceedings, suspension, or disbarment. Although never actually discussed in the authorities, the line between the two is at best tenuous. Compare, for example, the cases of *In re J.W. Zeigler Co.*⁶ and *People ex rel. Alexander v. District Court.*⁷ In *Zeigler*, a state receiver was appointed for the bankrupt's property. A federal receiver was then appointed very shortly prior to a pre-arranged bulk sale of the property in the possession of the state receiver. Counsel advised the state receiver that his position was stronger than that of the federal receiver, and that he should retain control of the property. After holding that the federal jurisdiction was exclusive when the receivership order was issued, the Connecticut court nevertheless refused to find contempt on the part of the state receiver's attorney. Noting that the attorney had merely given bad advice, the court felt itself compelled to follow intimations of the Supreme Court that to punish lawyers for giving bad advice "would be an unfair attack upon that independence of judgment which they are entitled to maintain."⁸ A different result was reached in *Alexander*. The state board of assessors had been enjoined from assessing certain property. Pending a decision upon the validity of the injunction, and upon the advice of the attorney general, the assessors applied for an alternative writ of prohibition.⁹ In a situation very similar to that encountered in *Zeigler*, the attorney general admonished the board that it was their duty to keep their oaths of office, and perform their duties, rather than obey an injunction he believed to be null and void. The court found the attorney general guilty of contempt for this advice.¹⁰ "Parties cannot take the law into their own hands and settle their rights according to their own notions of what is right and wrong."¹¹ It is interesting that even an attorney general is subject to such a stricture; his office does not shield him from the same obligations imposed upon his colleagues in private practice.

6. 189 F. 259 (D. Conn. 1911).

7. 29 Colo. 182, 68 P. 242 (1901).

8. *In re J.W. Zeigler Co.*, 189 F. at 261-62.

9. Under cover of the writ the board then proceeded to make assessments, the very act which was prohibited by the injunction. *People ex rel. Alexander v. District Court*, 29 Colo. at —, 68 P. at 258.

10. There was, however, no fine or imprisonment. *Id.*

11. *Id.* at 261.

The decision not to impose any sanction upon the attorney in *Zeigler* may have been due to the peculiar situation of the state court receiver, caught between orders of two competing authorities. On the other hand, this situation was precisely the same as that in *Alexander*; *Zeigler* may have been merely an anomaly in this area. Certainly it is an extremely subtle distinction if, as found by the respective courts, the lawyer in *Zeigler* merely gave bad advice, while the one in *Alexander* went too far and actually urged disobedience.

The more common situation may be exemplified by another pair of cases, *In re Dubose*¹² and *In re Noyes*.¹³ The problem arose when one Alexander McKenzie was appointed receiver of certain mining claims; on appeal a writ was issued ordering him to restore all of the property in controversy—it appears that this mostly consisted of a large amount of gold dust. Dubose, one of his attorneys, recommended that McKenzie disregard the writ; McKenzie followed the advice, and Dubose was subsequently found guilty of contempt of court.¹⁴ On the other hand, in *Noyes*, a different attorney merely told McKenzie that in his opinion not only were the orders appointing him receiver not appealable, but that in addition the writs themselves did not require him to surrender possession of the gold dust. This attorney was able to escape liability, because he did not go so far as to actually advise disobedience of the writs.¹⁵

Although these two cases seem to clarify the path to be followed by an attorney who believes a court order is invalid, other problems may arise. A layman who is informed by counsel that an order is void, might quite naturally assume that he could disregard the order. At least one court may have recognized this possibility. In *McFarland v. Superior Court*,¹⁶ the California Supreme Court held:

The testimony as to the conduct of the attorney in advising R. C. McFarland that the decree was 'no good' and that he, McFarland, could have it set aside, and that the district continued pumping on the advice of the attorney, is sufficient to support the judgment of contempt as to him.

12. 109 F. 971, *aff'd on rehearing*, 111 F. 998 (9th Cir. 1901).

13. 121 F. 209 (9th Cir. 1902).

14. *In re Dubose*, 109 F. at 974.

15. *In re Noyes*, 121 F. at 226.

16. 194 Cal. 407, —, 228 P. 1033, 1039 (1924).

There was no indication in the decision that the lawyer went so far as to advise disobedience; liability may have been predicated upon the failure to counsel compliance.¹⁷ It may well be that, in the future, attorneys will be charged with a positive duty to specifically recommend compliance. No court has as yet, in so many words, imposed liability on the ground of failure to recommend compliance with a court order.¹⁸

Yet another problem involves the fact that many times memories may differ as to what exactly the lawyer said to his client.¹⁹ Given that the client will assume that he may disobey a void order, he may quite naturally later "remember" that his attorney told him to ignore the order. No matter that the lawyer may try to convince the court that, aware of his responsibilities, he counselled no such thing; the attorney could find himself charged with contempt and his advice characterized as being actuated by a spirit of resistance, resulting in a conspiracy to disobey a court order, obstruct the due administration of the laws, and bring the authority of a court of justice into contempt.²⁰

Such damning language is often used to describe the offending attorney's conduct, indicating the depth of feeling on this subject.²¹ Because he is an officer of the court and thus charged with a higher duty than most people, it has been held that the attorney's deliberate advice to resist a court order should result in more severe punishment for him than for the client who actually disobeys

17. There is dicta in *Territory of New Mexico v. Clancy*, 7 N.M. 580, 37 P. 1108 (1884) that an attorney should realize that it is incumbent upon him to admonish observance of court orders.

18. *McFarland* and *Clancy* could be used as authority for imposing such a duty.

19. In both *Dubose* and *Noyes*, for example, there was conflicting testimony as to whether the attorneys advised disobedience or merely gave their opinions on the validity of the order.

20. *In re Dubose*, 109 F. at 974.

21. See *Leber v. United States ex rel. Fleming*, 170 F. at 890 ("thereby exhibiting a spirit of contemptuous resistance to the order and process of the court."); *In re Cooley*, 95 N.J. Eq. 485, —, 125 A. 486, 488 (1924) ("How could he dare to advise and instruct his clients to act in disobedience to a decree upon the strength of what he knew was only his own opinion."); *Territory of New Mexico v. Clancy*, 7 N.M. at —, 37 P. at 1109 (such conduct "cannot be too severely condemned, and it is well settled that any such practice is unworthy, and regarded as contempt."); *Goodenough v. Spencer*, 46 How. Pr. 347 (N.Y. 1874) (attorney who advises violation of laws becomes implicated in his client's guilt).

the order.²² In addition, even though a party who ignores a court order may mitigate his offense with the defense of advice of counsel, the same may not be said for the hapless attorney who relied upon the advice of other lawyers.²³ Once he or she recommends disobedience, counsel may be subject not only to the normal contempt sanction of a fine, but also to imprisonment, suspension, or even disbarment.²⁴ In one case an attorney's grant of permission to appear *pro hac vice* was revoked upon a finding that his numerous motions on matters already ruled upon were not appropriate steps in good faith to test the validity of the rulings.²⁵ Such a sanction could be extended to one who urged disregard of court rulings, and may not be limited to those instances when the attorney himself ignores the rulings. One thing is certain: the penalties for guessing wrong about what one may advise his client can be severe.

Not only must the attorney refrain from counseling disregard of a court order, he must also avoid advocating the violation of laws,²⁶ oaths,²⁷ or even rules.²⁸ A caveat has been added that a stat-

22. *North v. Foley*, 149 Misc. 572, 575, 267 N.Y.S. 572, 575 (1933).

23. *In re Henn*, 113 N.J. Eq. 155, 166 A. 138, *rev'd on other grounds*, 114 N.J. Eq. 452, 169 A. 37 (1933). *But cf.* *State v. Richardson*, 125 La. 644, 51 So. 673 (1910)(Richardson, who had been suspended for one year from the practice of law in Louisiana acted upon the advice of other attorneys that he could practice as counselor at law, but not as attorney at law. The good faith reliance upon this advice shielded him from intentional contempt. Richardson was guilty only of a technical contempt and fined one dollar.).

24. *See Territory of New Mexico v. Clancy*, 7 N.M. 580, 37 P. 1108 (ordered imprisoned in county jail for thirty days and suspended from practice for one year); *In re Disbarment Proceedings*, 321 Pa. 81, 184 A. 59 (1936); *In re Dore*, 165 Wash. 225, 4 P.2d 1107 (1931)(action for disbarment).

25. *Johnson v. Trueblood*, 476 F. Supp. 90 (E.D. Pa. 1979).

26. ABA CODE OF PROFESSIONAL RESPONSIBILITY, Ethical Consideration 7-5; NEW YORK LAWYERS' ASS'N, OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS [hereinafter cited as N.Y. COUNTY OPINIONS], No. 262 (1928); N.Y. COUNTY OPINIONS, No. 331 (1935); H. DRINKER, LEGAL ETHICS 152 (1953).

27. *Schmidt v. United States*, 115 F.2d 394 (6th Cir. 1940) (recommending that clients make inquiries of grand jurors concerning the competency of the evidence before them in contravention to that clause of the jurors' oath which obligated them to secrecy), *rev'd on other grounds*, 124 F.2d 177 (1941).

28. *Fidelity Mortgage Investors v. Camelia Builders, Inc.*, 550 F.2d 47 (2d Cir. 1976)(advising client-creditor to institute suit in state court against debtor despite Bankruptcy Rule 11-44 mandating that filing a Chapter 11 petition automatically stays all other judicial proceedings against the debtor)(a strong dissent argued that under the Bankruptcy Act of 1898 only violations of orders, and not rules, may be punished by contempt) *cert. denied*, 429 U.S. 1093 (1977).

ute must have been first construed and interpreted by competent adjudication before liability may be imposed for advising disobedience,²⁹ but it has also been noted that certain statutes are beyond doubt.³⁰ One may not inform his client that it might be better to pay a penalty imposed by a statute rather than obey its directions,³¹ nor may he recommend that his client absent himself from the territorial jurisdiction of a court in order to avoid what the attorney considers to be an unconstitutional subpoena.³² Surprisingly, though, when "A" was indicted for an assault and battery and bound by a recognizance to answer the charge, and was advised by his attorney that if he could not secure a continuance "A" should leave the jurisdiction and forfeit the recognizance, thus working a continuance until the next term of court, "A"'s attorney was not guilty of a contempt of court for giving such advice.³³

The above discussion constitutes the general boundaries of the injunction against advising disobedience and the penalties for going outside those boundaries. It can readily be seen that the bases of liability are often subtle but nonetheless may result in severe sanctions for the attorney. There do exist, however, certain defined instances when the attorney may in fact advise disobedience without risking adverse consequences.

Exceptions to the General Rules

As noted above, some exceptions to the general rules against advising disobedience do exist. An attorney need not restrict him-

29. *Cleveland Bar Ass'n v. Bilinski*, 177 Ohio St. 43, —, 201 N.E.2d 878, 879 (1964).

30. *Id.* (filing requirements of Internal Revenue Code).

31. N.Y. COUNTY OPINIONS, No. 27 (1913).

32. THE ASS'N OF THE BAR OF THE CITY OF NEW YORK, SELECTED OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS, No. 82 (1927-28).

33. *In re CARY*, 10 F. 622 (S.D.N.Y. 1882); *Ingle v. State*, 8 Blackf. 574 (IND. 1847). *Accord*, *In re Dill*, 32 Kan. 668, 5 P. 39 (1884) (Because an attorney could not be held liable for suggesting client forfeit recognizance in order to obtain continuance, it follows that the client could not be guilty of contempt for following such advice.) *Cf.* *Conley v. United States*, 59 F.2d 929, 936 (8th Cir. 1932) ("Without expressing approval of such strategy on the part of counsel, it may be conceded that much latitude is allowed an attorney in the bona fide defense of a client. In the instant case, no such relationship exists. . . . And if it be conceded that a defendant is not guilty of contempt in failing to appear for trial, but merely violates the terms of his recognizance, we cannot accord the same immunity to a third party who brings about this interruption in the administration of justice.")

self to merely giving an opinion that an order is void, and then allowing the client himself to determine whether he should obey the order or not. Counsel can, in addition, give his or her opinion as to the parameters of an order, and what conduct is and is not forbidden by such order.³⁴ By this device he will not actually be recommending disobedience, but will be limiting himself to an opinion that certain actions will not constitute a disobedience. More recently, the attorney has been permitted to actually urge disobedience when to do otherwise would cause irreparable injury to important rights of a party.³⁵ Commonly, this exception is encountered in fifth amendment cases, in which the party is ordered to testify but to do so would cause him to lose rights which could not be restored upon appeal. Finally, the exception which involves the most risk, the attorney may safely advise his client to disregard an order when the issuing court was without jurisdiction to enter such an order.³⁶ Of course, jurisdictional questions involve many pitfalls, and it might be best to turn to this alternative only as a last resort.

1. *Outlining the limits of a particular order*

Traditionally, the attorney has been permitted to advise his client that, in his or her opinion, a certain act will not be a disobedience or a contempt.³⁷ This has been characterized as both the attorney's privilege and duty.³⁸ If the client is ordered to do or not to do one thing by a court of competent jurisdiction, it is not his duty to contemplate all possible alternatives the court might have also ordered, had they thought of them. It is his duty to comply with the order and not to second-guess the courts.

For example, in *North v. Foley*,³⁹ Foley had been directed to allow the plaintiff an opportunity to examine certain records and to make extracts or copies from such records. In order to facilitate his work, North brought a photocopier on the premises and used this device to make copies of the records he desired. Upon advice of counsel, Foley ordered the photocopier removed. The court re-

34. See notes 37-46, *infra*.

35. See notes 46 ½-62, *infra*.

36. See notes 63-69, *infra*.

37. *In re Cooley*, 95 N.J. Eq. at —, 125 A. at 488.

38. *Id.*

39. *North v. Foley*, 149 Misc. 572, 267 N.Y.S. 572.

fused to find liability for this action, and in fact noted:

There is a difference between acting upon advice of an attorney deliberately given to resist or violate an order of the court and acting upon the expression of a judgement and advice thereon by an attorney relating to the scope of the mandate and method of compliance with the terms of an order.⁴⁰

Because the order did not require the use of copying machines, they could be removed with impunity. Even if it is later discovered that such advice was erroneous, the lawyer will not be found in contempt of court if he limited himself to an opinion on the effect of the language of an order.⁴¹

Counsel is granted much leeway in this exception to the general rule. Before sanctions will be visited on anyone for violation of a court order, that order must be so clearly expressed that it will appear with reasonable certainty that there has indeed been a violation.⁴² "Where the terms of an order are vague and indefinite as to whether or not particular action by a party is required, then, of course, he may not be adjudged in criminal contempt for the willful failure to take such action."⁴³ The normal test is said to be that when the actions taken by the party and the language of the order are capable of a construction consistent with innocence, then that party cannot be found in contempt.⁴⁴ In *Sunbeam Corp. v. Ross-Simons, Inc.*⁴⁵ the Rhode Island Supreme Court enjoined defendant from advertising, offering for sale, or selling in its place of business at 290 Westminister Street, Providence, Rhode Island, any products bearing the Sunbeam trademark, unless he did so at the normal price and not the cut-rate price he had been using. Accordingly, he proceeded to sell Sunbeam frying pans on the sidewalk outside his place of business, with the natural consequence that Sunbeam filed a motion to find the defendant in contempt of court for violating the injunction. The court refused to find liability because defendant was only enjoined from selling the appliances *in* his place of business and therefore his actions were not

40. *Id.* at 575, 267 N.Y.S. at 575.

41. *In re Landau*, 230 A.D. 308, 243 N.Y.S. 732 (1930).

42. *People v. Balt*, 34 A.D.2d 932, 312 N.Y.S.2d 587 (1970).

43. *Id.* at 933, 312 N.Y.S.2d at 589.

44. *See Enschede v. Enschede*, 157 Kan. 107, 138 P.2d 491 (1943).

45. 134 A.2d 160 (R.I. 1957).

inconsistent with the language of the injunction.⁴⁶ With such a case as this for precedent, there is not much that an attorney cannot advise his client to do without fear of incurring liability for contempt of court. It would appear that all *Sunbeam* requires is the ability to find the proverbial loophole.

2. *Threatened loss of important rights*

The second major exception to the general rule is one that has been recognized relatively recently. At one time the law was exemplified by *Leber v. United States ex rel. Fleming*.⁴⁷ The trial court issued a subpoena to defendant Leber to testify as a witness on plaintiff's behalf in his suit against Leber. The subpoena also required that he bring all books, papers, accounts, and other documentary evidence of every nature whatsoever in his possession or under his control relating to the subject matter of the action.⁴⁸ Leber's attorney advised him not to respect the subpoena, and told him that he was under no obligation, legal or moral, to respect it.⁴⁹ The attorney was found in contempt of court because the regular method of testing the subpoena, if he believed it invalid, would have been by a motion to quash. Because the lawyer disdained to follow this course, the court remarked that he had exhibited a spirit of contemptuous resistance to the order and process of the court and thus merited the imposition of sanctions.⁵⁰ *Leber* thus illustrates the normal rule against counseling disobedience to court orders.

In contrast, the modern trend is to permit the attorney to recommend that the client disregard a court order when to comply

46. "This may be a narrow construction of the injunction in its favor, but under the law as we understand it the respondent is entitled to rely on such a construction." *Sunbeam Corp. v. Ross-Simons, Inc.*, 134 A.2d at 163. *Contra*, Court Rose No. 12, *Foresters of America v. Corna*, 279 Ill. 605, 611, 117 N.E. 144, 147 (1917) ("The argument is a mere verbal quibble of a character not entertained by courts of equity, which look to the substance of things and not to the method employed, and if such a distinction were recognized there would be an end to authority in courts.")

46.1. 134 A.2d at 163.

47. 170 F. 881 (9th Cir. 1909).

48. Recent decisions have indicated that such a subpoena would be invalid because not sufficiently definite to provide guidance as to what is to be produced. *See, e.g., United States v. Morton Salt Co.*, 338 U.S. 632 (1950).

49. *Leber v. United States ex rel. Fleming*, 170 F. at 889.

50. *Id.* at 890.

with such order, even if it were later found to be invalid, would result in irreparable harm to the client. This situation arises most frequently in fifth amendment cases when the client is ordered by the court to testify but refuses to do so upon the advice of his counsel. The leading case in this area is *Maness v. Meyers*,⁵¹ reversing a lower court decision finding Michael Maness guilty of contempt for advising his client to refuse, on fifth amendment grounds, to produce subpoenaed material. The Court reiterated that all orders and judgments of courts must be complied with promptly, and if a party believes that an order is incorrect, his remedy is to appeal.⁵² A different situation is presented when a court during trial orders a witness to reveal information. If the attorney counsels compliance even though he believes the order invalid, and it is later determined on appeal that the order was indeed incorrect, then it may often be difficult to "unring the bell."⁵³ In other words, the harm has already been done; nothing can unspeak the words which should never have been spoken in the first place. *Maness* therefore upheld the right of the attorney to make a choice: urge compliance with the order and later appeal, or recommend disobedience and escape liability if it is later decided that the attorney was correct in asserting that the order was invalid. Attorneys in criminal cases have enjoyed this right for many years; the innovation of *Maness* was its extension of the right to any proceeding embracing the power to compel testimony.⁵⁴

The *Maness* holding that good faith advice to disobey a court order will not result in contempt if the attorney is later proved correct, has been extended in *People ex rel. Kunc v. Hogan*⁵⁵ so that the attorney will incur no liability even if his advice later proves to be wrong. It was argued that to condition contempt upon whether or not the good faith advice later turned out to be wrong would only

serve to chill the effective and unfettered representation which attorneys are bound to provide their clients.⁵⁶ We would not hesitate to reverse the contempt adjudication of an attorney

51. 419 U.S. 449 (1975).

52. *Id.* at 458.

53. *Id.*

54. *Id.* at 468.

55. 37 Ill. App. 3d 673, 346 N.E.2d 456 (1976), *modified*, 67 Ill. 2d 55, 364 N.E.2d 50 (1977), *cert. denied*, 434 U.S. 1023 (1978).

56. *Id.* at —, 346 N.E.2d at 464.

for offering a client good faith, albeit incorrect, advice to disobey an order for the disclosure of information, on the ground of the privilege against self-incrimination.⁵⁷

The most recent extension of the *Maness* doctrine may be found with *In re Grand Jury Proceedings*,⁵⁸ in which it was noted that *Maness* is not limited to orders which require the surrender of constitutional rights. The earlier rule was that, "if an order requires an *irrevocable* and permanent surrender of a constitutional right, it cannot be enforced by the contempt power."⁵⁹ But as a result of *In re Grand Jury Proceedings*, the Fifth Circuit held that the *Maness* rule also applies to orders requiring the surrender of other rights and privileges, such as the attorney-client privilege and the attorney-work-product doctrine, when disclosure would cause irreparable harm.⁶⁰

It should be noted that some limitations to the *Maness* doctrine do exist. When the witness has been granted immunity, there is no reason to assert any claim of irreparable harm (assuming of course that he has been given an immunity which extends to *all* actions which might be brought against him) and thus no reason to suspend the contempt sanction for advising him not to testify.⁶¹ The *Maness* doctrine rests upon the assumption that in some instances it would be impossible to "unring the bell" upon appeal, and therefore the attorney will be allowed to urge noncompliance. If this situation does not exist and irreparable harm is not threatened, then in all likelihood the *Maness* exception will not be available to the attorney.⁶²

3. *Orders issued by a court without jurisdiction*

The final exception which will be here discussed lies within the realm of general contempt law. The normal rule is that disobe-

57. *Id.*

58. 601 F.2d 162 (5th Cir. 1979).

59. *Id.* at 169.

60. *Id.*

61. See, *United States v. Snyder*, 428 F.2d 520, *cert. denied*, 400 U.S. 903 (1970).

62. An interesting twist on the *Maness* doctrine is seen in *People v. Marx*, 126 Cal. Rptr. 350, 54 Cal. App. 3d 100 (1975), holding that because the defendant had no right to refuse to comply with a search warrant for a sample of his body fluids and a cast of his teeth, then he could not assert deprivation of right to counsel, who could have only advised him to comply.

dience of an order issued by a court without jurisdiction of the subject matter and parties litigant will not result in imposition of the contempt sanction.⁶³ In addition, a court may have jurisdiction in a general sense over the parties or subject matter, and yet make an order which is beyond its jurisdictional power to make. If this happens, then the order is wholly and completely a nullity, and its disobedience cannot result in contempt.⁶⁴ As a consequence, the attorney may not be held in contempt if he advises disobedience of a court order which is either not within the power of the issuing court, or is given by a court which does not have jurisdiction over subject matter or parties.⁶⁵ It must, however, be manifest at the inception of the proceedings that there was no jurisdiction, and if it only later appears that the court was investigating a matter over which it had no authority, this fact will not relieve the attorney of contempt.⁶⁶ Recall from earlier discussion, that if the order is merely erroneous, but jurisdictional grounds do in fact exist, then advising noncompliance will still result in contempt.⁶⁷ Such was the decision in *State v. Nathans*⁶⁸ wherein it was provided:

The disobedience of any order, judgment or decree of a court having jurisdiction to issue it is a contempt of that court, however erroneous or improvident the issuing of it may have been. Such an order is obligatory until reversed by an appellate court, or until corrected or discharged by the court which made it. But if, in making such order, the court was without jurisdiction, disobedience of it is not a contempt.⁶⁹

Conclusion

It is not the purpose of this article to go into any great detail

63. See generally 17 C.J.S. *Contempt* § 14 (1963) and Annot., 12 A.L.R.2d 1067 (1950) and authorities therein cited. There is a wealth of cases on this subject; they are simply too numerous to cite here.

64. See *Sinquefield v. Valentine*, 160 Miss. 61, 133 So. 210 (1931).

65. See *Lewis v. Peck*, 154 F. 273 (7th Cir. 1907); *Court Rose No. 12, Foresters of America v. Corna*, 279 Ill. 605, 117 N.E. 144; *McHenry v. State*, 91 Miss. 562, 44 So. 831 (1907).

66. *Simon Piano Co. v. Fairfield*, 103 Wash. 206, 174 P. 457 (1918).

67. E.g., *Clarke v. FTC*, 128 F.2d 542 (9th Cir. 1942). But see *In re Thomas*, 56 Utah 315, 190 P. 952 (1920) (Duty of attorney to take proper steps to preserve legal rights of clients (here, advising disobedience) where it appears that the court was without jurisdiction or that the order was improvidently given.)

68. 49 S.C. 199, 27 S.E. 52 (1896).

69. *Id.* at —, 27 S.E. at 53.

on the subject of contempt of court, which is the most often used sanction for the attorney who advises disobedience. The above discussion should suffice to provide some insight for the attorney who conscientiously wishes to advise his client within the boundaries of the law, and yet still obtain the maximum benefits of that same law for his client. In general, he may safely advise disobedience only when irrevocable harm would otherwise result to important rights of his client if the issue had to wait until appeal to be determined, if the issuing court was without jurisdiction over the parties or subject matter, or if the mandate was not within the power of the court to make. If one of these exceptions is not available, then counsel may give his opinion that an order is no good, or he may outline to his client the boundaries of that order and what conduct is and is not included. Except for these limited situations, it is otherwise the duty of the attorney to urge his clients to comply with all orders, rulings, and other court mandates.

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