

'Dirty hands' often spoil claims against attorneys

The "unclean hands doctrine" often has been applied to bar malpractice suits even when the client asserts the wrongdoing was the lawyer's idea.

The doctrine generally provides that a court will not aid a party whose actions are founded on illegal or immoral acts. *Buttitta v. Newell*, 176 Ill.App.3d 880, 531 N.E.2d 957 (1st Dist. 1988); *Castronovo v. Murawsky*, 3 Ill.App.2d 168, 120 N.E.2d 871 (2d Dist. 1954).

The *Castronovo* decision demonstrates the extent to which courts will refuse to lend their jurisdiction to aid a wrongdoer. In that case, the 2d District Appellate Court barred the estate of a woman who had consented to the defendant's performance of an illegal abortion from recovering damages, notwithstanding the fact that the abortion was illegal and negligently performed. The court concluded that the plaintiff's right to recover was secondary to the competing doctrine that courts would "not lend their aid to a wrongdoer."

This same doctrine also has been applied to extricate attorneys from legal negligence suits.

In *Mettes v. Quinn*, 89 Ill.App.3d 77, 411 N.E.2d 549 (3d Dist. 1980), the 3d District Appellate Court dismissed the plaintiff's complaint alleging that the defendant, her attorney, had breached his fiduciary duty to her when he advised her to satisfy a settlement that she had made with a third party. The court found, however, that the plaintiff was attempting to benefit from fraudulent acts, which were taken at the advice of the defendant-attorney.

In *Mettes*, a third party had alleged that it had given money to Mary Mettes and another party for "safekeeping." When Mettes later refused to return the money, the third party filed suit against Mettes for its return, and the parties subsequently reached a settlement. Mettes, who was unaware that the third party had marked all the currency before giving it to her, satisfied the settlement using the same marked currency.

In her suit against her attorney, Mettes alleged that her attorney knew or should have known that his advice regarding the settlement would subject her to charges of fraud sufficient to void the favorable agreement.

The appeals court, citing a long series of precedent that established the rule that the courts will not aid a fraudfeasor who invokes the court's jurisdiction to profit by his own fraud by recovering damages, affirmed the lower court's dismissal.

Often, in response to a motion to dismiss a legal negligence claim based on unclean hands, the plaintiff-client attempts to avoid the doctrine by arguing the wrongdoing was not the client's idea. This argument has not met with success in Illinois.

In *Robins v. Lasky*, 123 Ill.App.3d 194 (1st Dist. 1984), the 1st District Appellate Court dismissed the plaintiff's complaint where the plaintiff's verified pleading was evidence that the plaintiff had followed the defendant-attorney's idea to establish the plaintiff's legal residence in a state other than Illinois to avoid service of process here. In *Robins*, the client's claim that the wrongdoing was not the client's idea fell on deaf ears; the idea to engage in the wrongful conduct originated with the attorney-defendant, and the claim was still dismissed. As the *Robins* court stated:

"Both parties involved voluntarily elected to follow advice intended to extricate themselves from a questionable situation. Both parties came to this court with 'unclean hands,' seeking relief from their wrongful conduct." 462 N.E.2d at 774.

The case of *Buttitta v. Newell*, 176 Ill.App.3d 880 (1st Dist. 1988), is another example of the unclean hands doctrine being

Legal malpractice

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applied to bar a malpractice claim.

Plaintiff Joseph J. Buttitta sought recovery of damages that allegedly resulted from the defendant-attorney's negligence in failing to advise the plaintiff that, under the Interest Act, the "points" the plaintiff charged on a residential mortgage loan were treated as part of the interest rate charged on such loans in determining whether the loan was usurious. In upholding the dismissal of the plaintiff's complaint under section 2-619 of the Code of Civil Procedure, the *Buttitta* court stated:

"Plaintiff's attempt to distinguish *Mettes* and *Robins* on the ground that, unlike the plaintiff therein, he did not commit a fraud in violating the Interest Act is meritless. In so arguing, we believe the plaintiff focuses too narrowly on the rules stated in and repeated in *Robins*, that courts will not aid a fraudfeasor who invokes the court's jurisdiction to profit from his own fraud by recovering damages [citation omitted] and totally ignores the cases cited in *Mettes* on which that rule is based.

"Without going into unnecessary detail. We can state that those cases: (1) stand for the general principle that the courts will not aid parties whose causes of action are founded on any illegal or immoral acts, including the violation of a statute, to assert rights growing out of such acts or to relieve themselves of the consequences of those acts; and (2) are not limited to situations involving fraud." (Emphasis added; citations omitted.) 176 Ill.App.3d at 885-886. *Accord, Makela v. Roach*, 142 Ill.App.3d 827, 492 N.E.2d 191 (2d Dist. 1986).

It is apparent from the above cases that clients who engage in wrongful conduct even on the advice of their attorney cannot later use the aid of the courts to seek recovery against the lawyer. The "it wasn't my idea" defense to a motion to dismiss based on the doctrine simply does not work.

Public policy reasons behind this rule remain as valid today as ever. Even though the effect of the rule is to allow an attorney to escape potential exposure to a client, without the doctrine clients and other plaintiffs would be free to seek the aid of the court to recover in claims against third parties based in part on their own wrongful conduct. In effect, the overall common good of protecting the sanctity of the court overrides the individual hardship that a client may incur in situations where the wrongful conduct was prompted upon the advice of the attorney on whom the client relied.