

ABA

BAR RULE

7-HB85

#5

Harper Lee

one who is that we live  
a new world of peace  
for America  
The world is a better place  
in which to live in  
It is a new world  
in which to live in



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

#### MEMORANDUM

February 21, 1980

TO: Members of the House Judiciary Committee  
FROM: Charles H. Parr, Chairman  
SUBJECT: Options for Bar Association Sunset Review

It appears to me that there are a number of options for the Committee in dealing with the Sunset Review of the Bar Association. I have listed these very sketchily and hope that they may serve as a framework for our discussions.

*Limited period, & modify*

- 1 - Continue the existing situation in which the Supreme Court has final authority and delegate to the Bar Association the responsibility for admissions, discipline, and rule proposal.
- 2 - Same as No. 1 above except that no State funds will be made available to the Bar Association and it would be made clear to the Supreme Court that such funds should not be included in its budget.
- 3 - De-integrate the Bar Association, which would then become purely a private organization. Make the Supreme Court directly responsible for admissions and discipline.
- 4 - Establish a Board of Legal Practice similar to the existing boards for other professions. Make this board responsible for admissions and discipline. Under this option the Bar Association would be a private organization and would carry out any other functions it might choose.
- 5 - Do away with mandatory membership in the Bar Association, leaving other things as they are.
- 6 - *extension, but with law changes - keep on short lease of 1-2 yrs.*

CHP:vc



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Advisors  
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~~then become purely a private organization.~~  
Make the Supreme Court directly responsible for admissions and discipline.
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Establish a Board of Legal Practice similar to the existing boards for other professions. Make this board responsible for admissions and discipline. Under this option the Bar Association would be a private organization and would carry out any other functions it might choose.
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*fred C.* 6. *Malone Phillips Brown*  
*2 yr extension*  
*com. amend the integrated Bar act*

CHP:vc

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1980

SUBJECT: The practice of law in Alaska  
(Work Order Number 8357)

TO: Representative Charles H. Parr  
Chairman, House Judiciary Committee

FROM: Richard A. Bradley   
Legislative Counsel

We have delivered to you the bill responding to your request for a bill disestablishing the integrated bar in Alaska.

Since it was delivered to you, an omission from the bill has come to our attention which should be corrected in any committee substitute requested.

In a series of places in the statutes, the law requires that certain things be done by a "member of the Alaska Bar Association." This phrase has historically been synonymous with "admitted to the practice of law in Alaska" but the bill requested will change that.

Accordingly, I proposed to add amendments to these sections in a committee substitute:

- (1) AS 09.43.200;
- (2) AS 18.85.060;
- (3) AS 41.17.130; and
- (4) AS 41.17.140.

Several sections already contain the appropriate language and would not be changed. See, AS 24.20.075, AS 42.06.060, and AS 47.37.080.

These sections turned up in a quick computer search. Others may exist and we will seek to identify them if a committee substitute is requested.

RAB:ljb

# STATE OF ALASKA THE LEGISLATURE

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I chose not to follow the format of your request, a suggested repeal and reenactment of AS 08.08; rather, I have amended existing law where possible to reflect the changes made in AS 08.08.

The request of the committee directs that a bill be prepared abolishing the integration or unification of the Alaska Bar Association. The request then confers extensive police powers on the governing board of the resulting voluntary association.

I am concerned with the allocation of substantial police powers to a voluntary association. In my view, the mixed character of the resulting Alaska Bar Association offers the substantial possibility that what results will be found by the courts to be unconstitutional.

The bill imposes the responsibility of a public agency on a voluntary association. It is required to act in the same manner that a public agency would act. These safeguards cloud, in my judgment, the otherwise clear prohibition of the grant of police powers to a private, voluntary organization.

And I must confess, in candor, to the committee that the co-mingling of public responsibilities on a voluntary association has made difficult the task of drafting the bill before you. I will seek to identify the issues that have concerned me in the following analyses:

Section 10. The only change requested in this section is the substitution of "agency" for "instrumentality". The change is essentially semantic; I recognize, however, as does the committee, that "agency" is the customary word used to describe a unit of government. The change should help resolve the apparent concern of the committee which I discuss subsequent in this memorandum. For added emphasis, a subsection (b) is added to the section in place of the section requested by the committee as sec. 150.

Section 20. The provision is repealed and reenacted and the essential change is from a law requiring membership of all attorneys admitted to practice to a voluntary association.

Section 30. The provisions of sec. 30 are unchanged and the section does not appear within this draft.

Section 40(a). The only change in (a) is the deletion of any authority to the board regarding regulations. To my knowledge the bar has not adopted any regulations since statehood. What other regulatory agencies adopt as regulations, it proposes to to the Supreme Court as bar rules; by definition, "bar rules" are not administrative regulations.

The board has adopted by-laws regarding its internal procedures, particularly on the responsibilities of officers of the board and procedures for their election.

Note that I propose no amendment to AS 08.08.100, a section which excludes the bar from the application of the Administrative Procedures Act and that I propose to repeal AS 08.08.090 as inconsistent with Alaska Bar Rule 62.

Section 40(b). This subsection is amended consistently with the committee's request. See, sec. 50.

Section 50(a). An amendment decreasing the attorney members of the board from nine to six and providing nonattorney members to be appointed by the governor and confirmed by the legislature is added.

Section 50(b). The section is amended to implement the provisions of sec. 50(a).

Section 50(c). This section establishes the procedure for the selection of members, both appointed and elected, over a three year period.

This provision must be read with sec. 23 of the bill which establishes a transitional period for the implementation of sec. 50.

Section 60. The apparent request of the committee was that the officers of the association not be selected at the associations annual convention.

Section 70(a). This amendment was not requested by the committee in its present format. Elections [except under sec. 60] have traditionally been held by mail. As such, it seems logical to call a special election by mail to fill vacancies in the elected positions on the board. Whatever delay results from the conduct of the election by mail ballot is insignificant and the result seems preferable.

Section 70(b). The language of this subsection is as requested by the committee.

Section 70(c). The language is as requested by the committee.

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practice of medicine; and AS 08.68, relating to the practice of nursing, and found no similar provision. Notwithstanding this conclusion, the language of the committee's request is included in the bill.

Section 80. This section brings into focus my difficulty in determining what powers, particularly what police powers, are proper to a voluntary association.

Section 80(a). I added the reference to "this chapter" as requested by the committee.

Section 80(a)(1). I retained the provision regarding the "classification of membership." A voluntary association may well have levels of membership but they are typically not set out in statute. Because of the mixed status of the Alaska Bar, I retained the language.

Section 80(a)(4). I added the authority to establish fees to this subsection. The provision regarding investment, as requested by the committee, is also added. I deleted the reference to licensing fees because of my transfer of these responsibilities to the Supreme Court. See, sec. 20 of the bill, infra, which adds amendments to AS 22.05.

I omitted the draft sec. 80(a)(5) relating to the maintenance of a register of attorneys. The Supreme Court typically exercises this responsibility in states without an integrated bar. See, here also the provisions relating to the authority of the Supreme Court in sec. 18 of the bill.

I added (a)(7) [continuing legal education] and (a)(8) [specialization] in a format different from the request by the committee.

Section 80(b). The provision requested by the committee directing the board to make recommendations for amendments to this chapter as well as to law of a general nature are incorporated into sec. 85, the section dealing with the annual report of the board of governors.

Section 80(b)(1). The provision relating to "continuing legal education" is incorporated in sec. 80(a)(7) and is not repeated here.

Similarly, the "licensing" function is transferred to the Supreme Court and is not duplicated here.

Section 80(b)(4). The concept of fees for inactive members seems unnecessary to a voluntary association. Licensing fees as such are collected by the Supreme Court under the fees set by the legislature. See, sec. 22.05.180, added in this bill by sec. 20.

Section 85. This section reflects the elements contained within draft sec. 90.

Section 90. I do not believe the committee proposed to amend sec. 90. I propose to repeal it.

The section does very little other than provide that the active members of the association may amend the by-laws and regulations prescribed by the board of governors. This power has sometimes been exercised by the membership at the annual convention. The provision appears to be superceded by Alaska Bar Rule 62 which provides for "adoption of recommended rules, by-laws, and regulations."

Section 95. This provision defines the "practice of law" and contains the material proposed in draft sec. 140.

The language is minimally unchanged from the draft.

I offer no endorsement of its content; I consider it altogether inadequate as a definition of the practice of law. Several further comments may be made:

(1) For many, the practice of law is essentially undefinable. To a large extent, this premise concedes that large aspects of commercial activity exist in the shadow of the legal profession, but for historical, practical, or other reasons have been left unregulated or included in the regulation of other professions.

(2) Sec. 95(b) is a somewhat cynical statement suggesting that bankers, realtors, and others may practice law so long as they do not do it on a full-time basis. From a public policy perspective, the provision seems to suggest that incompetence will be implicitly permitted so long as it is not a full-time activity.

(3) The provisions of sec. 95 totally ignore paralegal activity; they also ignore the field of increasing economic importance occupied by individuals in narrow fields of expertise where assistance is offered to the public in obtaining licenses, permits, and the like.

(4) I offer no provisions to the committee which are better than those suggested in sec. 95. I am personally aware that the bar association locally, as well as the bar association nationally, has been concerned for some time with the practice of law and has not been able to come up with a better definition than that offered. I suggest it would be better to delete this provision than it would be to believe that it is comprehensive and effective.

Section 205. This section responds to sec. 170 of the committee's request.

This section and several other sections that follow it delete the requirement that applicants for admission to the Alaska Bar be a graduate of an accredited law school. These sections are contained within the draft identically to the committee's request. And, I offer no comment on their significance or implications.

Section 207. This section responds to sec. 180 of the committee's request and it is contained within the bill in the format requested by the committee.

Section 210. This section responds to sec. 150 of the committee's draft and is contained in the bill in the format requested by the committee.

Section 220. This section is repealed. The section is obsolete.

Section 230. This section responds to sec. 200 of the committee draft and is included within this bill in the format requested by the committee.

Section 18 of the bill adds a new article to AS 22.05. to deal with the responsibility of the Supreme Court over the annual license of attorneys and the maintenance of the register of licensed attorneys.

Representative Charles H. Parr  
Page 7  
March 29, 1980

These sections are a substitute for sec. 120 and sec. 130 of the committee draft. I discussed my difficulty with Peggy Berck on the inclusion of the responsibilities to a voluntary association and suggested that the responsibilities be transferred to the Supreme Court. She agreed.

Section 45.50.495. The section cannot be fitted within the single subject requirement. It does not deal with the practice of law but rather with anti-trust activities of attorneys.

If the committee is concerned with the problem, I suggest repealing AS 45.50.481(1) in a separate bill.

Section 19 and section 20 amend Alaska Bar Rules in the format requested by the committee.

Section 21 repeals secs. 220, and 250.

Section 22 repeals sec. 3 of Alaska Bar Rule 2.

Section 23 is a transitional section which is designed to enable AS 08.08.050(c) added by sec. 5 by the bill to work.

Section 24 provides that the effective date of the act is January 1, 1981.

As noted, several sections of this bill amend Alaska Bar Rules. I wish to call to the committee's attention the question of whether the legislature may amend Alaska Bar Rules.

The source of the question is, of course, Article IV, sec. 15, of the Alaska Constitution, which provides:

SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

The Supreme Court has had a number of opportunities to comment on the implications of this section, and it has

March 29, 1980

generally limited its comments to the judicial embellishment that the provision of the bill amending rules, either directly or indirectly, must be indentified in the bill and must be voted on separately. [It is for this reason that the fact of the Alaska Bar Rules amendment is noted in the bill title.]

We assumed that based on the logic of the Bradner v. Hammond decision, 553 P.2d 1 (1976), the Supreme Court will determine that the provisions of this section will constitute the outer limits of the authority of the legislature to amend rules of the Supreme Court. Since the Alaska Bar Rules may not fairly be described as either "rules governing the administration of all courts," or "rules governing practice and procedure in civil and criminal cases in all courts," we believe that conservative legal advice to the committee would suggest that the legislature is without the authority to amend the Alaska Bar Rules.

If we may assist further, please advise.

RAB:ljb

Enclosure

# WENDELL P. KAY

6914 Exmoor Drive  
Mesa, Az. 85208

March 11, 1980

Dear Charles:

As one of the few lawyers around pre-dating the integrated bar, let me express an opinion on the bill to "sunset" the Bar and go back to a voluntary association. This is a really big step backward.

I practiced briefly in Illinois before integration, and in Alaska. A voluntary association is a pleasant social club run by a few insiders. It is nothing, zero.

I was one of the sponsors of the act integrating the bar in 1955 and there is no comparison. You may not like everything the association does, but it is a working, functioning, democratic group with much participation. Thanks.

Sincerely,  
Wendell

ALASKA BAR ASSOCIATION

OFFICERS

DONNA C. WILLARD  
PRESIDENT  
ANCHORAGE

WILLIAM B. ROZELL  
PRESIDENT ELECT  
JUNEAU

JONATHAN H. LINK  
VICE PRESIDENT  
FAIRBANKS

EDWARD G. KING  
SECRETARY  
KETCHIKAN

P.O. BOX 279  
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RANDALL P. BURNS, EXECUTIVE DIRECTOR  
WILLIAM GARRISON, BAR COUNSEL

BOARD MEMBERS

ALBERT H. BRANSON  
STANLEY T. FISCHER  
KAREN L. HUNT  
ELIZABETH P. KENNEDY  
EDWARD G. KING  
JONATHAN H. LINK  
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RICHARD D. SAVELL  
DONNA C. WILLARD



Honorable Charles Parr  
Chairman  
House Judiciary Committee  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811

Re: Alaska Bar Association  
Sunset Review

Dear Chairman Parr,

Patrick Anderson, vice-chairman of the ABA Committee on Legal Educational Opportunities, and I offered testimony to the House Judiciary Committee by teleconference network with regard to the activities of our bar association committee. Since that hearing, our committee has met and asked that I convey the committee's feelings about its work and the related usefulness of the Alaska Bar Association:

1. Our committee has raised money from a private foundation Outside to be used for the association's scholarship program. The money was allocated to the association on the strength of a few phone calls and letters from me on behalf of the bar association. I am convinced that my having the name and authority of the Alaska Bar Association behind me was a determining factor in my successful efforts. I cannot imagine being as persuasive had I been calling on behalf of the "Ad Hoc Committee of Some Alaska Lawyers Dedicated To Giving Scholarships to Alaskans." Nor can I imagine the private bar and local bar associations' contributions as forthcoming without the ABA's support.

2. Our committee has offered to provide an individual review of the bar exam for those candidates who fail the exam. We believe that this assistance will help the unsuccessful candidates understand why they failed and what techniques they can use to be more successful on their next exam.

3. As a result of our personal experiences with the review of these bar exams, we have concluded that the major cause of failure is the applicants' inability to organize their answers, to discuss the facts of their exam problem in terms of the relevant legal rules and to convey their legal knowledge in writing. This is most distressing when one realizes that these unsuccessful candidates have spent seven years in school, paid for and taken a bar review course and paid to take the exam. We are notifying the Board of Governors of our conclusions and will ask the Board of Governors to advise the organizations administering bar review courses that a greater emphasis be placed on sharpening writing skills and that additional time be allocated to writing practice exams.

4. We are in written contact with the State Bar of California to keep advised of their research with regard to the bar exam and its impact on ethnic minorities. The California research is extremely valuable to our committee's work because 80% of the Alaska bar exam is the same as the California bar exam and because we are benefiting from the California research at no cost to our association, its members or the taxpayers of this state. I believe the State Bar of California is more likely to respond to the requests of another bar association than it would to requests from a private group not within California.

5. The committee is committed to working jointly with the Alaska Federation of Natives, the U. of A. Criminal Justice Center, the Anchorage Native Caucus and the state R.E.A.A.s, to create a series of films designed to interest Alaskan Natives in the practice of law and related occupations.

6. We are developing and maintaining a list of law schools that are affirmatively interested in having minority students.

7. We are developing and maintaining a list of law school scholarships available to Alaska students.

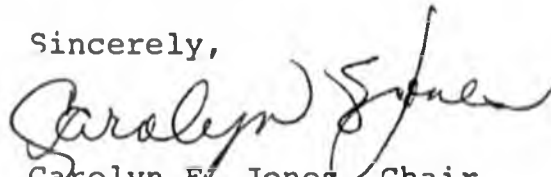
8. The bar association office answers most inquiries about the work this committee does, distributes information to

Honorable Charles Parr  
House Judiciary Committee  
March 5, 1980  
Page 3

the unsuccessful bar candidates about the work of this committee, distributes and collects scholarship applications, deposits and manages the scholarship funds raised by the committee, and provides secretarial assistance to us. As civic-minded as we believe ourselves to be, there is just so much time in each of our lives to take away from our job and our families. Without the bar association, these additional responsibilities would be an intolerable burden on this statewide committee.

In conclusion, I am sure that at some point in our lives each one of our committee members has been annoyed with the Alaska Bar Association. On balance, however, we believe that the Alaska Bar Association has more to offer its members and the people of Alaska by its continued existence than by its demise and we ask for the opportunity to continue our work within the association to change those practices with which we are dissatisfied.

Sincerely,



Carolyn E. Jones, Chair  
Alaska Bar Association  
Committee on Legal Educational  
Opportunities

CEJ:tb

Oral Testimony

Donna Williard

Bart Rozell

Kathryn Kalkhorst

Frank Marvin

Karen Hunt

Jordan Evans

Joseph Seidhoff

Nels - Hop.?

Hugh - Kenai Bar Assn?

1. How many of the 87 points did the Bar Assn answer?
2. How many hearings in June on Bar Assn.
3. How much ~~oral~~ <sup>written</sup> testimony was taken?
4. How much oral testimony was taken?

<del>1</del>	<del>16</del>	<del>31</del>	<del>45</del>	<del>61</del>	<del>75</del>
<del>2</del>	<del>17</del>	<del>32</del>	<del>47</del>	<del>62</del>	<del>77</del>
<del>3</del>	<del>18</del>	<del>33</del>	<del>48</del>	<del>63</del>	<del>178</del>
<del>4</del>	<del>19</del>	<del>34</del>	<del>49</del>	<del>64</del>	<del>79</del>
<del>5</del>	<del>20</del>	<del>35</del>	<del>50</del>	<del>65</del>	<del>80</del>
<del>6</del>	<del>21</del>	<del>36</del>	<del>51</del>	<del>66</del>	<del>81</del>
<del>7</del>	<del>22</del>	<del>37</del>	<del>52</del>	<del>67</del>	<del>82</del>
<del>8</del>	<del>23</del>	<del>38</del>	<del>53</del>	<del>68</del>	<del>83</del>
<del>9</del>	<del>24</del>	<del>39</del>	<del>54</del>	<del>69</del>	<del>84</del>
<del>10</del>	<del>25</del>	<del>40</del>	<del>55</del>	<del>70</del>	<del>85</del>
<del>11</del>	<del>26</del>	<del>41</del>	<del>56</del>	<del>71</del>	<del>86</del>
<del>12</del>	<del>27</del>	<del>42</del>	<del>57</del>	<del>72</del>	<del>87</del>
<del>13</del>	<del>28</del>	<del>43</del>	<del>58</del>	<del>73</del>	
<del>14</del>	<del>29</del>	<del>44</del>	<del>59</del>	<del>74</del>	73
<del>15</del>	<del>30</del>	<del>45</del>	<del>60</del>	<del>75</del>	13
					<hr/>
					86

STATE OF ALASKA  
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Section 80(b)(4). The concept of fees for inactive members seems unnecessary to a voluntary association. Licensing fees as such are collected by the Supreme Court under the fees set by the legislature. See, sec. 22.05.180, added in this bill by sec. 20.

Section 85. This section reflects the elements contained within draft sec. 90.

Section 90. I do not believe the committee proposed to amend sec. 90. I propose to repeal it.

The section does very little other than provide that the active members of the association may amend the by-laws and regulations prescribed by the board of governors. This power has sometimes been exercised by the membership at the annual convention. The provision appears to be superceded by Alaska Bar Rule 62 which provides for "adoption of recommended rules, by-laws, and regulations."

Section 95. This provision defines the "practice of law" and contains the material proposed in draft sec. 140.

The language is minimally unchanged from the draft.

I offer no endorsement of its content; I consider it altogether inadequate as a definition of the practice of law. Several further comments may be made:

(1) For many, the practice of law is essentially undefinable. To a large extent, this premise concedes that large aspects of commercial activity exist in the shadow of the legal profession, but for historical, practical, or other reasons have been left unregulated or included in the regulation of other professions.

(2) Sec. 95(b) is a somewhat cynical statement suggesting that bankers, realtors, and others may practice law so long as they do not do it on a full-time basis. From a public policy perspective, the provision seems to suggest that incompetence will be implicitly permitted so long as it is not a full-time activity.

March 29, 1980

(3) The provisions of sec. 95 totally ignore paralegal activity; they also ignore the field of increasing economic importance occupied by individuals in narrow fields of expertise where assistance is offered to the public in obtaining licenses, permits, and the like.

(4) I offer no provisions to the committee which are better than those suggested in sec. 95. I am personally aware that the bar association locally, as well as the bar association nationally, has been concerned for some time with the practice of law and has not been able to come up with a better definition than that offered. I suggest it would be better to delete this provision than it would be to believe that it is comprehensive and effective.

Section 205. This section responds to sec. 170 of the committee's request.

This section and several other sections that follow it delete the requirement that applicants for admission to the Alaska Bar be a graduate of an accredited law school. These sections are contained within the draft identically to the committee's request. And, I offer no comment on their significance or implications.

Section 207. This section responds to sec. 180 of the committee's request and it is contained within the bill in the format requested by the committee.

Section 210. This section responds to sec. 150 of the committee's draft and is contained in the bill in the format requested by the committee.

Section 220. This section is repealed. The section is obsolete.

Section 230. This section responds to sec. 200 of the committee draft and is included within this bill in the format requested by the committee.

Section 18 of the bill adds a new article to AS 22.05. to deal with the responsibility of the Supreme Court over the annual license of attorneys and the maintenance of the register of licensed attorneys.

These sections are a substitute for sec. 120 and sec. 130 of the committee draft. I discussed my difficulty with Peggy Berck on the inclusion of the responsibilities to a voluntary association and suggested that the responsibilities be transferred to the Supreme Court. She agreed.

Section 45.50.495. The section cannot be fitted within the single subject requirement. It does not deal with the practice of law but rather with anti-trust activities of attorneys.

If the committee is concerned with the problem, I suggest repealing AS 45.50.481(1) in a separate bill.

Section 19 and section 20 amend Alaska Bar Rules in the format requested by the committee.

Section 21 repeals secs. 220, and 250.

Section 22 repeals sec. 3 of Alaska Bar Rule 2.

Section 23 is a transitional section which is designed to enable AS 08.08.050(c) added by sec. 5 by the bill to work.

Section 24 provides that the effective date of the act is January 1, 1981.

As noted, several sections of this bill amend Alaska Bar Rules. I wish to call to the committee's attention the question of whether the legislature may amend Alaska Bar Rules.

The source of the question is, of course, Article IV, sec. 15, of the Alaska Constitution, which provides:

SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

The Supreme Court has had a number of opportunities to comment on the implications of this section, and it has

generally limited its comments to the judicial embellishment that the provision of the bill amending rules, either directly or indirectly, must be indentified in the bill and must be voted on separately. [It is for this reason that the fact of the Alaska Bar Rules amendment is noted in the bill title.]

We assumed that based on the logic of the Bradner v. Hammond decision, 553 P.2d 1 (1976), the Supreme Court will determine that the provisions of this section will constitute the outer limits of the authority of the legislature to amend rules of the Supreme Court. Since the Alaska Bar Rules may not fairly be described as either "rules governing the administration of all courts," or "rules governing practice and procedure in civil and criminal cases in all courts," we believe that conservative legal advice to the committee would suggest that the legislature is without the authority to amend the Alaska Bar Rules.

If we may assist further, please advise.

RAB:ljb

Enclosure

# Sunset: A Progress Report

by Randall Burns

On June 30, 1980, without some affirmative action to the contrary, the Board of Governors of the Alaska Bar Association will terminate as a statutorily created entity. The Board, if terminated, will continue in existence an additional year, however, "for the purpose of concluding its affairs" [see AS 44.66.010(b)]. This event takes place as a part of what is known as "sunset," an ironic misnomer for a terminal process the legislature adopted to establish "an effective and regular system of scrutiny of the programs and activities of all agencies, boards, and commissions" [see Sec. 1, Ch. 149 SLA 1977]. It goes without saying that the Legislature assumes, pursuant to AS 08.08.010, that the Alaska Bar Association is an "instrumentality of the state," and that the Board of Governors, established as the governing body of the Alaska Bar (see

AS 08.08.030 - .080), is subject to the sunset review process.

The Board of Governors has gone on record as opposing both the assumption that the Association is a state agency and that it is subject to legislative termination. Hence, the Board has only partially cooperated with the Legislative Audit Division's request for information and records for the purpose of rendering its performance audit of the Bar, since the Board maintains it does not have the authority to waive the confidentiality provisions of Alaska Bar Rules, particularly as regards the discipline and admission files, member files, and executive session minutes. Currently, to end that dispute, the Department of Law—on behalf of the Legislative Budget and Audit Committee—is in the process of petitioning the Supreme Court for a waiver of the Bar Rules regarding the confidentiality of the Association's records. Although the Legislative Audit Division has stated it would utilize procedures similar to those previously established by that Division when auditing confidential tax records, the Board's position is that the Court is the final authority in this matter and the Board itself cannot waive any Bar Rule.

## Paradox

The fact that the Department of Law is petitioning on behalf of the Legislature is interesting, if only because it is the Attorney General's contention that the Bar Association

[continued on page 10]

# The Alaska **BAR RAG**

Volume 3, Number 2

*Dignitas. Semper Dignitas.*

February 1980 \$1.00

## Sunset

[continued from page 1]

is a state agency, in which case the office of the Attorney General should also be representing the Bar in this matter against the Legislature, thereby raising valid conflict of interest questions. The Attorney General has not yet commented on the representation question.

Legal questions aside, however, the most immediate result of this sunset process will be the bill which comes out of the House of Representative's Committee on the Judiciary. Chaired by Representative Charles H. Parr from Fairbanks, the House Judiciary Committee is the "committee of reference" (see AS 44.66.010) as concerns sunset review of the Board of Governors, and it is the responsibility of this Committee to hold public hearings regarding whether there is a demonstrable public need for the continued existence of the Board or its program. The Board has the burden of demonstrating this need, and also must suggest changes in its current mode of operation which might increase its effectiveness. A bill must be out of the Committee by March 14th.

### The Parr Program

In conversations with Representative Parr, and from comments made during hearings held last year, it seems relatively clear that the forthcoming bill will undoubtedly reflect Chairman Parr's beliefs that the Alaska Bar should 1) be de-integrated; 2) made voluntary, and 3) stripped of the admissions and discipline functions and powers now vested in the Board. It is apparently his intent to create a State board or commission, give that body admissions and grievance duties, and place it within the Department of Commerce and Economic Development, Division of Occupational Licensing. Although it has not been specifically stated, it

can be fairly assumed that this new entity would contain a majority of non-attorney members, would be appointed by the Governor (subject to legislative approval), and not be subject to Judicial Branch control.

That Chairman Parr is ruffling separation of powers feathers does not seem to bother him, in fact, he has on a number of occasions publicly suggested that the Court's authority to regulate the practice of law could be constitutionally amended, if necessary. Association President Donna Willard and President-Elect Bart Rozell gave formal testimony on the 14th of February regarding the Association's professional ac-

tivities and their concomitant benefit to the public. Teleconference hearings were held on February 19th and 20th throughout Alaska to elicit further comment.

Association members Carolyn Jones and Patrick Anderson (Legal Educational Opportunities Committee), George Georig (Taxation Committee), Sandra Saville (CLE Committee), Alex Bryner (Law Examiners Committee), Ben Walters (Fee Arbitration), John Reese (Lawyer Referral Service and Family Law Committee), Bill Erwin (at-large comments), Carolyn Johnson (Ethics Committee and Law Related Education Committee) and Harry Branson (Board of Governors) testified before the Committee in Anchorage. All who testified spoke concerning the Association's work, specifically aiming their comments to the public benefit derived from the Association's myriad activities, and the hundreds of hours of volunteer service put in by members of the Association to do the work the Association has set for itself.

### Is the Bar Necessary?

The Committee's comments primarily focused on three areas: minorities and the bar exam, the affects of de-integration on volunteerism and the Association, and the "special status" accorded attorneys in

On Sunday, February 24th, 1980, the Anchorage Times carried a story on its front page captioned "House Majority Leader Calls for End to State Bar Association."

According to the Times, House leader Nels Anderson, a democrat from Dillingham wants the Bar Association abolished. He would have certain unspecified Association duties (presumably Admissions and Discipline) turned over to the Alaska Supreme Court and the remainder would remain

with the Bar if it continues to exist as a voluntary professional organization for lawyers.

The Times' story quoted Anchorage Attorney Ken Jensen, describing him as a noted dissident within the Bar, on the subject of the destruction of the integrated Bar thusly: "Anderson has done half a job; the other half is the manner in which the public can be protected by establishing and maintaining certain professional standards."

Alaska. Representative Thelma Buchholdt and Nels Anderson questioned a number of witnesses concerning the bar exam, specifically as regards the failure rate of minority examinees, and what the Association was doing to encourage the interest of minority students in pursuing a legal career in Alaska. Nels Anderson also came right to the point a number of times by asking witnesses: "Is the Bar necessary?" Representative Fred Brown, a Fairbanks attorney, asked a related question: "If the Alaska Bar Association were no longer an integrated bar, would a voluntary, private organization carry on the same activities and to the same ex-

tent as currently provided by the Bar?" Most of the Association members present responded to those basic questions. Patrick Anderson remarked that the Bar Association was currently the only forum available which provided him the opportunity to put his ideas to work, allowing him to encourage Native students to take up law. Ben Walters stated that the voluntary nature of his work on the Fee Arbitration panels was important. If the Bar were de-integrated, and the current work of the Association (i.e., admissions, discipline, conciliation, fee arbitration, substantive law committee work, continuing legal education, etc.) done by a newly created board or agency of the State, or by order of the Court, Mr. Walters stated that the "imposed" duty would alter the membership's current feeling of responsibility for the state of the legal profession, and that its existing dedication to improvement of the currently self-regulated Association would be substantially reduced. Mr. Walters viewed the services provided voluntarily by attorneys on behalf of the public as done out of a commitment to the profession and in recognition of attorneys' need to demonstrate their acceptance of the duties and responsibilities that accompany certification as an "Officer of the Court."

atmosphere gave "clique-ish control" to a small, dominant group within that profession, and that there was a resultant loss of "participatory pride" since the organizations were not "democratic" associations. The Bar Association membership, which by statute elects its representatives to the Board of Governors, and which meets annually to determine questions of Association policy, can direct the Association by majority rule.

#### Saville Speaks

Sandra Saville spoke of the value of the Association's continuing legal education programs, and commented that although she assumed a somewhat diminished CLE program would continue should the Association be de-integrated and organized instead by the State entity given responsibility for such activities, she felt that the current large blocks of time volunteered by attorney members would be drastically reduced. She said that many attorneys currently feel an obligation to their profession to assist with and attend CLE programs, and that obligation evolved from a pride in doing something for the betterment of the legal profession as a whole. If the administration of CLE were taken over by a State entity, for instance, she felt sure that many attorneys would not as willingly volunteer their time and services, or feel compelled to, and that the resultant increased costs of having to pay people to put on a CLE program would have to be taken into account by the House Judiciary Committee when determining how those services would be provided. She stated that she knew of no other profession in Alaska that spent as much time on, or expressed as much interest in, the continued education of its members as the legal profession. She said that this commitment obviously stemmed from the Association's acknowledgement of responsibility to the public to keep its members current on legal issues.

#### Reese Ruminates

John Reese said that he felt that as members of an Association which was statutorily created, that it mandated and insured "an accountability to the Court and the public" which would be lost if the Bar were de-integrated. Obviously, he stated, a "voluntary club" could not be held to the same accountability as an instrumentality of the State, since a private organization would technically have no responsibility to the public or necessarily feel a need to provide services of public benefit. If the Legislature were interested in continuing the services currently provided by the Association, he did not think sunset of the Board and de-integration of the Bar was the proper solution.

Bill Erwin noted that in his experience with those professions which were not "integrated" member associations, the private club

Representative Charlie Parr wanted to know "why lawyers have to be treated differently" from the other professions, what claim did lawyers have to a "special status?" (i.e., why should attorneys have to continue to be a part of an integrated association?). The answer given by Carolyn Jones and others was that as "Officers of the Court," the legal profession functioned in many ways as public officials. In as much as an entire branch of government—the Judiciary—functioned in cooperation with the legal profession, it seemed clear to those testifying that no other profession was so intimately tied to our democratic system of government. A good example: what other profession could be told it must provide its services at a substantially reduced cost - or at no cost - because the State was running out of money and could not afford to fully pay for the services it requested?

(RIGHT  
1/2 of page 10)



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### MEMORANDUM

February 21, 1980

TO: Members of the House Judiciary Committee  
FROM: Charles H. Parr, Chairman  
SUBJECT: Options for Bar Association Sunset Review

It appears to me that there are a number of options for the Committee in dealing with the Sunset Review of the Bar Association. I have listed these very sketchily and hope that they may serve as a framework for our discussions.

- 1 - Continue the existing situation in which the Supreme Court has final authority and delegates to the Bar Association the responsibility for admissions, discipline, and rule proposal.
- 2 - Same as No. 1 above except that no State funds will be made available to the Bar Association and it would be made clear to the Supreme Court that such funds should not be included in its budget.
- 3 - De-integrate the Bar Association, which would then become purely a private organization. Make the Supreme Court directly responsible for admissions and discipline.
- 4 - Establish a Board of Legal Practice similar to the existing boards for other professions. Make this board responsible for admissions and discipline. Under this option the Bar Association would be a private organization and would carry out any other functions it might choose.
- 5 - Do away with mandatory membership in the Bar Association, leaving other things as they are.

*Fred - 6 - Extension for short time*

CHP:vc

3898

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 14, 1979

SUBJECT: References for bar association admission and disciplinary proceedings in states without an integrated bar

TO: Peggy Berck  
House Judiciary Committee

FROM: Richard A. Bradley *B*  
Legislative Counsel

You asked that I provide the committee with references for the source of the authority over admissions and discipline in those states not employing integrated bar associations.

I wrote to the American Bar Association. (While Ron Kull may have had the information, his departure from the executive director's position and his replacement by an attorney not experienced in bar management led me to conclude that the Alaska Bar office would not be as useful as it had been in the past.)

The ABA's National Center for Professional Responsibility sent me some information. And they informed me that my use of terminology is archaic. The now preferred term is "unified" or "non-unified" bar.

While my request asked for information on both admissions and discipline, the Center has supplied me information relating directly only to discipline.

RAB:slk

# STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800


## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 24, 1979

SUBJECT: Statutory references for admission and disciplinary actions in states without unified bars. (Work Order #7287)

TO: Representative Charles Parr, Chairman  
House Judiciary Committee

FROM: Richard A. Bradley   
Legislative Counsel

You have requested this office to provide you with statutory references for admission and disciplinary actions against attorneys in states not utilizing unified bar associations.

In a subsequent conversation with Ms. Berck, she asked that I also provide her with examples of five or so statutes.

It should be noted that in some states, as in Alaska, court rules parallel and to some extent overlap statutory references. Since the request asked only for statutory references, I usually provided only those references. The court rules are, however, typically accessible with ease from the statutory references.

The format of the references provided in this analysis typically lists the main statutory section dealing with admission followed by the main statutory section dealing with discipline. In those instances where copies of the references are enclosed, (they are indicated by asterisks) I have provided the entire statutory chapter dealing with admissions/discipline in that state. No judgment was made as to the value of the particular law; I have included codes from both large or urban states and from smaller, rural states. Others can be provided easily if you request them.

In preparing this analysis, I have used the latest information available to me on the question of the status of the state as one not possessing a unified bar association: a study done by the American Bar in 1979. The analysis follows:

August 24, 1979

Arkansas: Ark. Stat. §§ 25-101 -- 25-111; 25-401 -- 25-417.

Colorado: C.R.S. 12-5.

\*Connecticut: G.S.C. 51-80, 51-90.

Delaware: D.C.A. 10 § 1905. 1/

Hawaii: H.R.S. § 605-1. 2/

\*Illinois: S.H.A. ch. 13, § 1; ch. 110A [Court rules] §§ 701, 751.

Indiana: B.I.S.A. §§ 33-2-3-1, 33-2-3.1-1 -- 33-2-3.1-3.

\*Iowa: Code §§ 610.1, 610.24.

Kansas: K.S.A. § 7-103. 3/

Maine: M.R.S.A. §§ 4-801, 4-851.

Maryland: A.C.M. Art. 10, §§ 1-8, 11-26.

Massachusetts: M.G.L.A. 221 §§ 36, 40.

\*Minnesota: Minn. Stat., §§ 481.01, 481.15.

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1/ Delaware has no law "regulating the legal profession" but has left it "in the hands of the courts as one of their ancient prerogatives." Delaware Optometric Corp. v. Sherwood, 128 A.2d 812 (Del. 1957). "This section [is] legislative recognition of the inherent powers of the Supreme Court to establish the Bar and maintain its standards." In re Member of the Bar, 257 A.2d 382 (Del. 1969). Cited in annot. to 10 § 1905.

2/ Discipline is apparently handled under Court Rules, Sup. Ct. Rules 15 to 17.

3/ The Section authorized the Supreme Court to admit and discipline attorneys. KSA § 7-124, though given a statutory number, is a court rule on these subjects.

New Jersey: N.J. Const., Art. 6, § 2, ¶ 3. 4/  
\*New York: C.L.S. C.P.L.R. §§ 9401-9407; Jud. Law  
§ 90.  
\*Ohio: O.R.C. §§ 4705.01, 4705.02.  
\*Rhode Island: G.L.R.I., § 8-1-2. 5/  
Tennessee: T.C.A., §§ 29-102, 29-308.  
\*Vermont: V.S.A., § 4-901.

RAB:slk

Enclosures

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4/ This appears to be the only "enactment" in New Jersey.

5/ The American Bar analysis suggested that Rhode Island is a "Registration [non-unified] - Unified state. Its status is accordingly unclear.

SUPREME COURT RULES

ARTICLE VII. RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS

PART A. ADMISSION TO THE BAR

Section

- 701. General Qualifications.
- 702. Board of Law Examiners.
- 703. Educational Requirements.
  - (a) Preliminary and College Work.
  - (b) Legal Education.
  - (c) Waiver.
- 704. Qualification on Examination.
- 705. Qualification on Foreign License.
- 706. Fees of Applicants.
- 707. Foreign Attorneys in Isolated Cases.
- 708. Committee on Character and Fitness.
- 709. Power to Make Rules, Conduct Investigations, and Subpoena Witnesses.
- 710. Reserved.
- 711. Representation by Supervised Senior Law Student:
  - (a) Eligibility.
  - (b) Agencies Through Which Services Must Be Performed.
  - (c) Services Permitted.
  - (d) Compensation.
  - (e) Certification.
- 712 to 720. Reserved.

PART A-1. PRACTICE OF LAW

- 721. Professional Service Corporations and Associations for the Practice of Law.
- 722 to 750. Reserved.

PART B. REGISTRATION AND DISCIPLINE OF ATTORNEYS

- 751. Attorney Registration and Disciplinary Commission.
- 752. Administrator.
- 753. Inquiry, Hearing and Review Boards.
  - (a) Inquiry Boards.
  - (b) Filing a Complaint.
  - (c) Hearing Boards.
  - (d) Review Board.
  - (e) Review Procedure.
- 754. Compulsory Process.
- 755. Assistance of Members of the Bar; Rule Making Power of Boards.
- 756. Registration and Fees.
- 757. Transfer to Inactive Status upon Involuntary Commitment or upon Judicial Determination of Incompetency.

Section

- 758. Transfer to Inactive Status upon Conviction for Drugs or Intoxication.
- 759. Reinstatement upon Conviction.
- 760. Appointment of Member of the Bar.
- 761. Suspension upon Conviction.
- 762. Disbarment on Conviction.
- 763. Reciprocal Discipline.
- 764. Notification to Convicted Attorney.
- 765. Service.
- 766. Nature of Proceedings.
- 767. Reinstatement.
- 768. Notification of Disbarment.
- 769. Clerk Not to Announce Disbarment.
- 770. Voluntary Transfer to Another State.

PA

Attorneys and counselors at law. Barratry, see ch. 13, § 21. Maintenance, see ch. 13, § 22. Oath of attorney, see ch. 13, § 23. Privilege from arrest, see ch. 13, § 24. Solicitation of legal business, see ch. 13, § 25.

Admission requirements and bar. William L. E. 1982, 27 Ill. Law Review 27.

Admission to practice of law. Robert A. Sprecher, Jan. 1971, 27 Ill. Law Review 811.

Attorney-client privilege. L. Rev. 263 (1963).

Bar admission procedure. Bar admission procedure into political beliefs and actions. 1972, 22 De Paul L. Rev. 524.

Change of name on roll. Jan. 1945, 29 Chicago Bar L. Rev. 1.

Comparative law in legal education. John N. Hazard, 1951, 18 De Paul L. Rev. 264.

Concealment at time of admission to bar of prior conviction. 1955, 23 Chicago-Kent L. Rev. 1.

Consideration of Committee on Bar Membership in determination of character and fitness of applicant for admission to the Bar, 1944, 10 De Paul L. Rev. 67.

Constitutionality of regulation of the bar from accredited law schools. Chicago-Kent L. Rev. 287.

## ADMISSION TO THE BAR

### Section

758. Transfer to Inactive Status for: Mental Disability or Addiction to Drugs or Intoxicants.  
759. Reinstatement upon Termination of Disability.  
760. Appointment of Medical Experts.  
761. Suspension upon Conviction of Certain Crimes.  
762. Disbarment on Consent.  
763. Reciprocal Disciplinary Action.  
764. Notification to Clients.  
765. Service.  
766. Nature of Proceedings.  
767. Reinstatement.  
768. Notification of Disciplinary Action.  
769. Clerk Not to Announce Filings.  
770. Voluntary Transfer to Inactive Status.

### PART A. ADMISSION TO THE BAR

#### Cross References

- Attorneys and counselors in general, see ch. 13, § 1 et seq.  
Barratry, see ch. 13, § 21.  
Maintenance, see ch. 13, § 22.  
Oath of attorney, see ch. 13, § 4.  
Privilege from arrest, see ch. 13, § 9.  
Solicitation of legal business, see ch. 13, § 15 et seq.

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Change of name on roll of attorneys. Jan. 1948, 29 Chicago Bar Record 161.  
Comparative law in legal education. John N. Hazard, 1951, 18 U.Chicago L. Rev. 264.  
Concealment at time of seeking admission to bar of prior conviction for crime. 1955, 33 Chicago-Kent L.Rev. 157.  
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Constitutionality of requiring graduation from accredited law school. 1956, 34 Chicago-Kent L.Rev. 287.  
Criminal conviction, concealment at time of seeking admission. March 1955, 33 Chicago-Kent Law Rev. 157.  
History of Illinois state board of law examiners. Robert A. Sprecher, Nov. 1954, 36 Chicago Bar Record 69.  
Illinois bar and individual freedom. March 1955, 50 Northwestern Univ.Law Review 94.  
Illinois' bar examination; time for a 75-year overhaul. Charles C. Bingaman, 1971, 60 Ill.Bar J. 129.  
Job of American law school. John Ritchie, 1957, 38 Chicago Bar Rec. 455.  
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# 110A § 701 SUPREME COURT RULES

## S.Ct.Rule 701

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Legal education. Dec. 1939, Chicago Bar Rec. 98; Edward H. Levi, 1961, 42 Chicago Bar Rec. 218.

Legal education for an industrial society. Carl McGowan, 1959, 41 Chicago Bar Rec. 22.

Legal education today. Edward H. Levi, 1951, 32 Chicago Bar Rec. 151.

Loyalty tests. Ralph S. Brown, Jr., and John D. Fassett, Spring, 1953, 20 Chicago Law Rev. 480.

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Occupational licensing. May 1951, 47 Ill.Law Review 328.

Occupational licensing in Illinois. 1951, 46 Ill.L.Rev. 328.

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What makes a law school great? A. James Casner, 1956 Law Forum 270.

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Ch. 13, § 2.)

Certificate of character,  
Citizenship or declaration

Attorney and Client

In general 1  
Action on application 4  
General fitness 3  
Powers of supreme court 2

1. In general  
The responsibility for ch  
sonnel of the Illinois bar  
nois so long as method of  
not violate a federal right  
Fourteenth Amendment.  
mers, 1945, 65 S.Ct. 1307, 35  
L.Ed. 1795, rehearing denied  
326 U.S. 807, 90 L.Ed. 491.

2. Powers of supreme court  
Supreme Court has inher  
prescribe regulations for  
and admission of applicants  
of law. People ex rel  
Ass'n v. Goodman, 1937, 8  
N.E.2d 941, 111 A.L.R. 1,  
nied 58 S.Ct. 49, 302 U.S.  
362, rehearing denied 58 S.  
U.S. 777, 82 L.Ed. 601.

## § 701. (Supreme Court Rule 701). General Qualifications

(a) Persons may be admitted to practice law in this State by the Supreme Court if they are at least 21 years of age, of good moral character and general fitness to practice law, and have satisfactorily passed an examination conducted by the Board of Law Examiners or have been licensed to practice law in another jurisdiction, subject, however, to the requirements contained in these rules.

(b) Any person admitted to practice law in this state is privileged to practice in every court in Illinois. No court shall by rule or by practice abridge or deny this privilege by requiring the retaining of local counsel or the maintaining of a local office for the service of notices.

Amended eff. Oct. 2, 1972.

### Historical and Practice Notes

By Albert E. Jenner, Jr. and Arthur M. Martin

This rule was originally adopted in the 1966 revision of the Supreme Court Rules, effective January 1, 1967. Paragraph (a) was the first paragraph of Section 1 of old Supreme Court Rule 58, but without the former rule's requirement that a candidate for admission to the bar be a citizen of the United States. The new rule also made it clear that admission to the bar of this state was to be by the authority and action of the Supreme Court. In 1972, paragraph (a) was amended by adding to it the words "and general fitness to practice law." Similar additions were also made at that time to rules 704(c), 705(c), 708(b) and (c) and 709(b).

## § 702. (Supreme

(a) The Board of L  
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a term of three years  
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# ADMISSION TO THE BAR 110A § 702

S.Ct. Rule 702

Paragraph (b) was the second paragraph of Section 1 of former Supreme Court Rule 58, carried over to the new rule unchanged. It was originally added to the revisions to the Supreme Court rules made effective January 1, 1956.

Section 1 of Chapter 13 of the Illinois Revised Statutes is a general grant of authority to the Illinois Supreme Court to license attorneys as a condition precedent to their practice in this state. That chapter of the statute also lays a duty on the Clerk of the Supreme Court to make and keep a roll of attorneys (Ill.Rev.Stat. Ch. 13, § 5), and provides that no person may receive a license to practice law in Illinois "unless he is a citizen of the United States or unless he has made a declaration to become a citizen" or has filed a petition for naturalization and has obtained a prescribed certificate. (Ill.Rev.Stat. Ch. 13, § 2.)

### Cross References

Certificate of character, see ch. 13, § 2.  
Citizenship or declaration of intention, see ch. 13, § 2.

### Library References

Attorney and Client ⇨ 4. C.J.S. Attorney and Client §§ 7, 8.

### Notes of Decisions

In general 1  
Action on application 4  
General fitness 3  
Powers of supreme court 2

#### 3. General fitness

By virtue of applicant's refusal to answer questions regarding possible Communist or other subversive affiliations, he failed to demonstrate the good moral character and general fitness to practice law necessary for admission to the bar. *In re Anastasio*, 1960, 18 Ill.2d 182, 163 N.E.2d 429, affirmed 81 S.Ct. 978, 366 U.S. 82, 6 L.Ed.2d 135, rehearing denied 82 S.Ct. 21, 368 U.S. 669, 7 L.Ed.2d 69.

#### 4. Action on application

Under Illinois law, an application for admission to the bar is an application for appointment as an officer of the Court, and action of Illinois Supreme Court on application is a ministerial act performed by virtue of the judicial power, rather than a judicial proceeding. *In re Summers*, 1945, 65 S.Ct. 1307, 325 U.S. 561, 89 L.Ed. 1795, rehearing denied 66 S.Ct. 94, 326 U.S. 807, 90 L.Ed. 491.

#### 1. In general

The responsibility for choice as to personnel of the Illinois bar rests with Illinois so long as method of selection does not violate a federal right secured by the Fourteenth Amendment. *In re Summers*, 1945, 65 S.Ct. 1307, 325 U.S. 561, 89 L.Ed. 1795, rehearing denied 66 S.Ct. 94, 326 U.S. 807, 90 L.Ed. 491.

#### 2. Powers of supreme court

Supreme Court has inherent power to prescribe regulations for study of law and admission of applicants for practice of law. *People ex rel. Chicago Bar Ass'n v. Goodman*, 1937, 366 Ill. 346, 8 N.E.2d 941, 111 A.L.R. 1, certiorari denied 58 S.Ct. 49, 302 U.S. 728, 82 L.Ed. 462, rehearing denied 58 S.Ct. 138, 302 U.S. 777, 82 L.Ed. 601.

## § 702. (Supreme Court Rule 702). Board of Law Examiners

(a) The Board of Law Examiners shall consist of five members of the bar, appointed by the Supreme Court, and each shall serve a term of three years and until his successor is duly appointed and qualified.

**110A § 702 SUPREME COURT RULES**  
S.Ct.Rule 702

(b) A majority of the board shall constitute a quorum. A president, secretary, and treasurer shall be annually elected. One member may hold the office of both secretary and treasurer.

(c) The members of the board and the officers thereof shall receive such salaries as the Court may provide and such further sum for necessary disbursements as may be approved by the Court, all payable out of moneys received from applicants for admission to the bar as fees for examination and admission.

(d) The board shall audit annually the accounts of its treasurer and shall report to the Court at each November term a detailed statement of its finances, together with such recommendations as shall seem advisable. All fees paid to the board in excess of its expenses shall be applied as the Court may from time to time direct.

**Historical and Practice Notes**

*By Albert E. Jenner, Jr. and Arthur M. Martin*

Rule 702 was adopted effective January 1, 1967. It was taken from Section 11 of old Supreme Court Rule 58, the present paragraphs (a)-(d) corresponding to numbered paragraphs 1 through 4 of Section 11 of the old rule, but without the old rule's requirement, found in paragraph 1, that the Board of Law Examiners were to be appointed from different appellate court districts.

**Law Review Commentaries**

Illinois' bar examination: time for a 75-year overhaul. Charles C. Bingaman, 1971, 60 Ill.Bar J. 129.

**Library References**

Attorney and Client ☞6.

C.J.S. Attorney and Client § 10.

**§ 703. (Supreme Court Rule 703). Educational Requirements**

Every applicant seeking admission to the bar on examination shall meet the following educational requirements:

(a) Preliminary and College Work. Each applicant shall have graduated from a four-year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois, or shall have become otherwise eligible for admission to such freshman class; and shall have satisfactorily completed at least 90 semester hours of acceptable college work, while in actual attendance at one or more colleges or universities approved by the Board of Law Examiners. In lieu of such preliminary or college work, the board may, after due

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investigation, accept the satisfactory curriculum of a particular preliminary education may be given or by certificate that admission to such college or university thereof. Proof of the satisfactory college work. In the case of an applicant who has completed the prescribed herein, the board may waive the law school and college work required for admission to the bar and college work.

(b) Legal Education. An applicant for admission to the bar shall have completed each applicant within the jurisdiction making application shall have fulfilled the requirements for admission from a law school approved by the board. An applicant shall make proof of such education and received a degree, in the case of an applicant, the board and examiners shall require.

(c) Waiver. The Board may waive the six year requirement in the case of any applicant who has been admitted to the bar and who has not practiced therein for a period of five years. Admission in Illinois on a foreign license shall require.

**Historical**

*By Albert E. Jenner, Jr.*

This rule was adopted by the Supreme Court rules effective January 1, 1967. It was taken from Supreme Court Rule 58, after the 1967 amendment. The test satisfying the Preliminary Examination (what is now paragraph (a)) was available only to graduates of a four-year law school; such candidates were required to complete acceptable college work. The detailed proof requirement from the former rule was in favor of the discretion of the board.

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Attorney and Client ☞4.

## ADMISSION TO THE BAR 110A § 703

S.Ct. Rule 703

investigation, accept the satisfactory completion of the program or curriculum of a particular college or university. Proof of preliminary education may be made either by diploma showing graduation or by certificate that the applicant has become eligible for admission to such college or university, signed by the registrar thereof. Proof of the satisfactory completion of college work may be made by certificate, signed by the registrar of the college or university, that the applicant has satisfactorily completed the required college work. In lieu of the diploma and certificates described herein, the board may accept as proof of the preliminary and college work required herein, a certificate from an approved law school that the law school has on file proof of such preliminary and college work.

(b) **Legal Education.** After the completion of both the preliminary and college work above set forth in paragraph (a) of this rule, each applicant within the period of six years immediately prior to making application shall have pursued a course of law studies and fulfilled the requirements and received a first degree in law from a law school approved by the Board of Law Examiners. Each applicant shall make proof that he has completed such law study and received a degree, in such manner as the Board of Law Examiners shall require.

(c) **Waiver.** The Board of Law Examiners in its discretion may waive the six year requirement of paragraph (b) of this rule in the case of any applicant who meets the other requirements of this rule and who has been admitted to practice in a foreign jurisdiction, but who has not practiced there for the required period of time to gain admission in Illinois on a foreign license.

### Historical and Practice Notes

*By Albert E. Jenner, Jr. and Arthur M. Martin*

This rule was adopted in the general revision of the Supreme Court rules effective January 1, 1967. It was section III of old Supreme Court Rule 58, altered in two respects. First, an alternative test satisfying the Preliminary or College Work requirement of what is now paragraph (a) was eliminated as obsolete. That alternative was available only to those who had attended a four-year full-time law school; such candidates needed to have only 60 hours of acceptable college work. The second change was to eliminate a detailed proof requirement from what is now paragraph (b) of the rule, in favor of the discretion now vested in the Board of Law Examiners.

### Library References

Attorney and Client ☞ 4.

C.J.S. Attorney and Client §§ 7, 8.

110A § 704 SUPREME COURT RULES  
S.Ct. Rule 704

§ 704. (Supreme Court Rule 704). Qualification on Examination

(a) Any person who meets the educational requirements set forth in Rule 703 may make application to the Board of Law Examiners for admission on examination.

(b) Applications shall be in such form as the board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Rule 701, together with proof of his educational qualifications. In the event the proof shall be satisfactory to the board, the applicant shall be admitted to examination.

(c) The Board of Law Examiners shall conduct two examinations annually, one in March and the other in September, or at such other times as the board, in its discretion, may determine. The examinations shall be conducted under the supervision of the board by uniform printed questions. The examination may be upon the following subjects: administrative law; agency; business organizations; commercial paper; conflict of laws; contracts; criminal law and procedure; domestic relations; equity jurisprudence, including trusts and mortgages; evidence; federal and state constitutional law; federal jurisdiction and procedure; federal taxation; Illinois procedure; legal ethics; personal property, including sales and bailments; real property; suretyship; torts; and wills and administration of estates.

(d) If an applicant fails to pass his first examination, he may be permitted to take successive examinations provided he furnishes the board with satisfactory evidence of diligent study of the law since his prior examination. An applicant who has been rejected at a fifth examination shall not again be admitted to an examination except upon the permission of the Board of Law Examiners or the Supreme Court. The board or Court so granting the permission may, as a condition to the granting of another examination, prescribe a further course of study.

(e) In the event the Board of Law Examiners shall find that such applicant meets the requirements of these rules, and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission.

Amended eff. Oct. 2, 1972.

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ADMISSION TO THE BAR 110A § 705  
S.Ct.Rule 705

**Historical and Practice Notes**

*By Albert E. Jenner, Jr. and Arthur M. Martin*

Rule 704, adopted effective January 1, 1967, was Section IV of old Supreme Court Rule 58, but with three changes. One was the authority added to paragraph (c), to conduct the yearly examinations at some time other than March and September. Another was the elimination of the Board of Law Examiners' discretion to prescribe examinations in addition to written questions. The third change was the addition to paragraph (c) of the requirement that the Board of Law Examiners certify not only the fact that a candidate had passed the bar examination but also that he had received certification from the Committee on Character and Fitness of his good moral character and (effective with the 1972 amendments) his "general fitness to practice law."

**Law Review Commentaries**

Illinois' bar examination: time for a 75-year overhaul. Charles C. Bingham, 1971, 60 Ill.Bar J. 129.

**Library References**

Attorney and Client ☞ 4.

C.J.S. Attorney and Client §§ 7, 8.

**Note & Decisions**

In general 2  
Validity 1

**1. Validity**

Illinois bar examination was not unconstitutional, even if background of applicant who failed examination five times established his ability to practice law. *Whitfield v. Illinois Bd. of Law Examiners*, C.A.1974, 504 F.2d 474.

Mere allegation that essay-type examination for admission to state bar required subjective evaluation and that standards of grading were not susceptible to precise definition was not sufficient to state claim for federal relief by applicant who had failed the examination five times. *Id.*

Even if bar examination had prevented one exceptionally qualified individual from practicing law, that would not be sufficient reason to declare examination violative of Fourteenth Amendment. *Id.*

**2. In general**

In absence of showing that applicant had been denied admission to state bar

for a constitutionally impermissible reason, applicant was not entitled to have federal court overrule judgment of state board of law examiners on theory that, in light of applicant's background, it was impossible for him to have failed bar examination five times and, therefore, he must have passed and should be so certified. *Whitfield v. Illinois Bd. of Law Examiners*, C.A.1974, 504 F.2d 474.

Procedural due process did not require that applicant for admission to state bar be permitted to see his bar examination papers and to compare them with model answers or answers of successful applicants, where he had been given opportunities to retake bar examination, there was no allegation that, in future he would be denied same opportunity and at least one of examiners personally discussed with applicant his general performance in the examination and even graded sample answers which he wrote. *Id.*

**§ 705. (Supreme Court Rule 705). Qualification on Foreign License**

(a) Any person who has been admitted to practice in the highest court of law in any other State or territory of the United States or

**110A § 705 SUPREME COURT RULES**  
S.Ct. Rule 705

the District of Columbia, or admitted to practice as an attorney (or the equivalent) in another country whose jurisprudence is based upon the principles of the English common law, may make application to the Board of Law Examiners for admission to the bar without examination upon the following conditions:

(1) The educational qualifications of the applicant are such as would entitle him to write the bar examination in this State at the time he seeks admission; and he has resided and actively and continuously practiced law in such other jurisdiction for at least three years within the period of five years immediately prior to making application in Illinois.

(2) Any person who is unable to meet the requirements set forth above in (1) may be admitted to the bar of Illinois without examination if he has actively and continuously practiced law in such other jurisdiction for a period of at least five years within the period of seven years immediately prior to making application in Illinois.

(3) In addition, each applicant referred to in paragraphs (1) and (2) shall establish that he is an actual resident of the State of Illinois and shall prove to the satisfaction of the Board of Law Examiners that he will maintain a law office in the State of Illinois for the continuous and active practice of law.

(b) Applications shall be in such form as the board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Rule 701, together with proof of such residence, admission to practice, and, if required, of such practice; and such proof shall be supported by such documentary evidence as to the standing of the applicant in such other jurisdiction as shall be satisfactory to the Committee on Character and Fitness.

(c) In the event the Board of Law Examiners shall find that such applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission.

(d) An applicant who has taken and failed to pass the bar examination in Illinois shall not be eligible to apply for admission on foreign license.

Amended eff. Nov. 15, 1971; Oct. 2, 1972.

**Historical**

*By Albert E. Jen*

Paragraphs (a), (b) and V of old Supreme Court Rule for the elimination of one That option permitted admission which did not require if the applicant had actively

Paragraph (d) was added. It had no counterpart in rule

The 1972 amendment to of the last clause that the supported by a certificate of tion in such other jurisdiction so admitted and is of good n graph (d) added the words "

This section should be r 13, § 12, which gives attorney fee in the courts of this manner" as Illinois attorney's home jurisdiction.

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**§ 706. (Supreme Co**

(a) Each applicant for ad in advance a fee of \$75, and tion. If the applicant does not be refunded unless good

(b) Each applicant for ad pay in advance a fee of \$20

(c) All fees shall be paid to the Board of Law Examiners to be held by Amended eff. March 1, 1975.

**Historic**

*By Albert E. Jen*

This was section VI of sentence of paragraph (a) and the fees were raised examination and from \$1 mission on foreign license.

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ADMISSION TO THE BAR 110A § 706  
S.Ct. Rule 706

**Historical and Practice Notes**

*By Albert E. Jenner, Jr. and Arthur M. Martin*

Paragraphs (a), (b) and (c) of this rule were taken from Section V of old Supreme Court Rule 58 without change of substance, except for the elimination of one option from what is now paragraph (a). That option permitted admission without examination from a jurisdiction which did not require at least two years of law school study if the applicant had actively practiced law for 8 of the last 10 years.

Paragraph (d) was added to the rule effective January 1, 1967. It had no counterpart in rule 58.

The 1972 amendment to paragraph (c) eliminated the requirement of the last clause that the proof referred to in that paragraph be supported by a certificate of a "judge of a court of general jurisdiction in such other jurisdiction, certifying that the applicant has been so admitted and is of good moral character." The amendment to paragraph (d) added the words "general fitness to practice law."

This section should be read in conjunction with Ill.Rev.Stat. Ch. 13, § 12, which gives attorneys residing in other states a right to practice in the courts of this state "upon the same terms and in the same manner" as Illinois attorneys are admitted to practice in the applicant's home jurisdiction.

**Cross References**

Attorneys residing in other states, practice in this state, see ch. 13, § 12.

**Library References**

Attorney and Client ☞ 10.

C.J.S. Attorney and Client § 16.

**§ 706. (Supreme Court Rule 706). Fees of Applicants**

(a) Each applicant for admission to the bar on examination shall pay in advance a fee of \$75, and a similar fee for each subsequent examination. If the applicant does not appear for an examination, the fee shall not be refunded unless good cause is shown for failure to appear.

(b) Each applicant for admission to the bar on a foreign license shall pay in advance a fee of \$200.

(c) All fees shall be paid to the Treasurer of the Board of Law Examiners to be held by him subject to the order of the Court.

Amended eff. March 1, 1975.

**Historical and Practice Notes**

*By Albert E. Jenner, Jr. and Arthur M. Martin*

This was section VI of old Supreme Court Rule 58. The second sentence of paragraph (a) was added effective January 1, 1967, and the fees were raised at that time from \$40.00 to \$50.00 for the examination and from \$100.00 to \$150.00 on an application for admission on foreign license.

**Library References**

Attorney and Client ☞ 6.

C.J.S. Attorney and Client § 10.

# 110A § 707 SUPREME COURT RULES

S.Ct.Rule 707

## § 707. (Supreme Court Rule 707). Foreign Attorneys in Isolated Cases

Anything in these rules to the contrary notwithstanding, an attorney and counselor-at-law from any other jurisdiction in the United States, or foreign country, may in the discretion of any court of this State be permitted to participate before the court in the trial or argument of any particular cause in which, for the time being, he is employed.

### Historical and Practice Notes

By Albert E. Jenner, Jr. and Arthur M. Martin

This rule was derived from Section VII of old Supreme Court Rule 58, without change.

### Cross References

Attorneys residing in other states, practice in this state, see ch. 13, § 12.

### Library References

Attorney and Client ⇨10.

C.J.S. Attorney and Client § 15.

### Notes of Decisions

Construction and application 2  
Validity 1

#### 1. Validity

This section governing participation of foreign attorneys in isolated cases was not unconstitutional as applied to limit participation of out-of-state attorneys in pending Federal Employers' Liability Act and Jones Act litigation in state court, notwithstanding fact that such attorneys had been permitted to appear without limitation numerous times in the past, that cases in question were being prepared for trial, that such attorneys were specialists regularly representing the companies in question, that the companies had freedom to select forum of their choice, that accidents involved occurred elsewhere and that the

attorneys had caused no disciplinary problems. *Norfolk & W. Ry. Co. v. Beatty*, D.C.1975, 400 F.Supp. 234.

#### 2. Construction and application

This Supreme Court rule governing foreign attorneys in isolated cases will be treated as a "statute" within meaning of federal three-judge court statute governing injunction against enforcement of state statutes. *Norfolk & W. Ry. Co. v. Beatty*, D.C.1975, 400 F.Supp. 234.

State procedure was controlling in action before federal three-judge court challenging constitutionality of this section as applied to limit participation of plaintiffs' attorneys in pending Federal Employers' Liability Act and Jones Act litigation in state courts. *Id.*

## § 708. (Supreme Court Rule 708). Committee on Character and Fitness

(a) At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the Judicial Districts of this State, consisting of not less than three members of the bar. The members of the Board of Law Examiners shall be ex-officio members of the committee.

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(b) Before admission to the bar upon by the committee in his character and general fitness to the committee with an affidavit. The Examiners shall prescribe the applicant shall appear before the member thereof and shall be of his good moral character as in the opinion of the committee the bar.

(c) If the committee is of good moral character and so certify to the Board of Law Examiners thereafter be entitled to admission is not of that opinion, it shall file a statement that it is of its findings and conclusions.

(d) An applicant who has exercised his rights before the Committee deems himself aggrieved by its decision may, on notice to the committee, apply for relief.

Amended eff. Nov. 15, 1971; C

### Historical

By Albert E. Jenner, Jr.

Paragraphs (a)-(e) of the old Supreme Court Rule 58, which provided for the elimination of the former requirement of present affidavits of three members of the committee, was amended to be of good moral character and fitness to practice law, set forth in detail in the "Notes" based." In 1972 the rule of the rule was reintroduced, and to several other requirements, however, was not adopted.

Paragraph (d) was new, effective January 1, 1967. It is designated as an improper deletion to that time, the court's decision on admission to the bar was not "normally" reviewed. In *re Anastasio*, 3 Ill.2d 481, 1957. See, general character and fitness proceedings, N.E.2d 68 (1973).

Attorney and Client ⇨7.

ADMISSION TO THE BAR 110A § 708

3.Ct.Rule 708

(b) Before admission to the bar, each applicant shall be passed upon by the committee in his district as to his good moral character and general fitness to practice law. He shall furnish the committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history. Each applicant shall appear before the committee of his district or some member thereof and shall furnish the committee such evidence of his good moral character and general fitness to practice law as in the opinion of the committee would justify his admission to the bar.

(c) If the committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the bar. If the committee is not of that opinion, it shall file with the Board of Law Examiners a statement that it cannot so certify, together with a report of its findings and conclusions.

(d) An applicant who has availed himself of his full hearing rights before the Committee on Character and Fitness and who deems himself aggrieved by the determination of the committee may, on notice to the committee, petition the Supreme Court for relief.

Amended eff. Nov. 15, 1971; Oct. 2, 1972.

Historical and Practice Notes

By Albert E. Jenner, Jr. and Arthur M. Martin

Paragraphs (a)-(e) of this rule were derived from Section IX of old Supreme Court Rule 58. The only change of substance was the elimination of the former requirement that a candidate for admission present affidavits of three personal acquaintances residing in the same county he resides in testifying "that the applicant is known to be of good moral character and general fitness to practice law, setting forth in detail the facts upon which such knowledge is based." In 1972 the "general fitness to practice law" language of the rule was reintroduced into both paragraphs (b) and (c) of the rule, and to several other rules in part A as well. The affidavit requirement, however, was not reintroduced.

Paragraph (d) was new in the revision of the rules effective January 1, 1967. It is designed to preclude any attack on these provisions as an improper delegation of the judicial power. Even prior to that time, the court had declared that passage on petitions for admission to the bar was an administrative not a judicial function. In re Amstaple, 3 Ill.2d 471, 121 N.E.2d 826 (1954). That discretion was not "normally" reviewable. In re Latimer, 11 Ill.2d 327, 143 N.E.2d 20 (1957). See, generally, on the constitutionality of these character and fitness proceedings. In re Martin-Trigona, 55 Ill.2d 301, 302 N.E.2d 68 (1973).

Library References

Attorney and Client ☞

C.J.S. Attorney and Client § 11.

S.Ct. Rule 708

In proceeding on petition to obtain admission to practice of law in Illinois, evidence as to lawyers allegedly known to applicant as Communists was improper, had no bearing upon the inquiry, and was properly excluded. *Id.*

termining the qualifications of an applicant to the bar, will not ordinarily be reviewed. *In re Anastaplo*, 1960, 18 Ill.2d 152, 163 N.E.2d 79, affirmed 81 S.Ct. 978, 366 U.S. 82, 6 Ill.2d 135, rehearing denied 82 S.Ct. 21, 368 U.S. 669, 7 L.Ed.2d 69.

9. — Adequacy of hearing

In proceeding upon application for admission to practice of law in Illinois, evidence established that applicant had been given a full and adequate hearing and that no constitutional right had been violated. *In re Latimer*, 1957, 11 Ill.2d 327, 143 N.E.2d 20, appeal dismissed and certiorari denied 78 S.Ct. 153, 355 U.S. 82, 2 L.Ed.2d 111.

Committee on Character and Fitness of the First Appellate Court District is an arm of the Supreme Court, and normally the Supreme Court will not review the discretion exercised by the committee, except in the unlikely event that there has been an arbitrary refusal to certify that applicant is fit to practice law. *In re Latimer*, 1957, 11 Ill.2d 327, 143 N.E.2d 20, appeal dismissed and certiorari denied 78 S.Ct. 153, 355 U.S. 82, 2 L.Ed.2d 111.

10. Review

Where petitioner for admission to Illinois bar sought relief in Illinois Supreme Court against action of bar committee on character and fitness in refusing to grant petitioner a certificate, and Illinois Supreme Court took cognizance of complaint, even though without requiring appearance of committee or its members and denied petitioner's assertion of a present right to admission, there was a "case or controversy" between adversaries presenting a case which could be reviewed by United States Supreme Court, provided federal questions were raised. *In re Summers*, 1945, 65 S.Ct. 1307, 325 U.S. 561, 89 L.Ed. 1795, rehearing denied 66 S.Ct. 94, 326 U.S. 807, 90 L.Ed. 491.

Though determination on petition for admission to the bar, though a judicial function, is an administrative act rather than a judicial proceeding, and discretion exercised by Committee on Character and Fitness will not ordinarily be reviewed, review of Committee's denial of petition for admission was granted in light of petitioner's claims that Committee abused its discretion and that certain of his constitutional rights were infringed upon. *In re Anastaplo*, 1954, 3 Ill.2d 471, 121 N.E.2d 826, certiorari denied and appeal dismissed 75 S.Ct. 439, 345 U.S. 246, 99 L.Ed. 540, rehearing denied 75 S.Ct. 579, 349 U.S. 905, 99 L.Ed. 1283.

The discretion exercised by the Committee on Character and Fitness, in de-

§ 709. (Supreme Court Rule 709). Power to Make Rules, Conduct Investigations, and Subpoena Witnesses

(a) Subject to the approval of the Supreme Court, the Board of Law Examiners and the Committee on Character and Fitness shall have power to make, adopt, and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

(b) The Board of Law Examiners and the Committee on Character and Fitness for each judicial district are hereby respectively constituted bodies of commissioners of this court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for admission to the bar, examinations given by or under the supervision of the Board of Law Examiners, and the good moral character and general fitness to practice law of applicants for admission. They may call to their assistance in such inquiries other members of the bar

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ADMISSION TO THE BAR 110A § 711

S.Ct. Rule 711

and make all necessary rules and regulations concerning the conduct of such inquiries and investigations, and take the testimony of witnesses. The hearings before the commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the commissioners, the clerk of the Supreme Court shall issue writs of subpoena ad testificandum, writs of subpoena duces tecum or dedimus potestatem to take depositions. Witnesses shall be sworn by a commissioner or any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the court, if requested. The commissioners shall report to the Supreme Court the failure or refusal of any person to attend and testify in response to a subpoena.

Amended eff. Nov. 15, 1971; Oct. 2, 1972.

Historical and Practice Notes

By Albert E. Jenner, Jr. and Arthur M. Martin

This rule was taken from Section X of old Supreme Court Rule 58, the only change being the grant of power to the commissioners under rule 700 to administer oaths. The 1972 amendment added the references to general fitness to practice law. The grant of power is similar to rule 753's appointment of commissioners to administer the disciplinary system.

Cross References

Necessity of license and certificate of character, see ch. 13, §§ 1, 2  
 Subpoenas in general, see ch. 110, § 62.

Library References

Attorney and Client ☞ 32.

C.J.S. Attorney and Client § 55.

Notes of Decisions

1. In general

Even if bar examination had prevented one exceptionally qualified individual from practicing law, that would not be sufficient reason to declare examination violative of Fourteenth Amendment. *Whitfield v. Illinois Bd. of Law Examiners*, C.A.1974, 504 F.2d 474.

cial department, and an inherent adjunct thereof is to prescribe regulations for the study of law and the admission of applicants for the practice of the profession. *In re Latimer*, 1947, 11 Ill.2d 327, 143 N.E.2d 20, appeal dismissed and certiorari denied 76 S.Ct. 153, 355 U.S. 82, 2 L.Ed.2d 111.

Power to regulate and define the practice of law is a prerogative of the judi-

§ 710. Reserved

§ 711. (Supreme Court Rule 711). Representation by Supervised Senior Law Students

(a) Eligibility. A student in a law school approved by the Board of Law Examiners pursuant to Rule 703 may be certified by the

**110A § 711 SUPREME COURT RULES**

S.Ct. Rule 711

dean of the school to be eligible to perform the services described in paragraph (c) of this rule, if he satisfies the following requirements:

- (1) He must have received credit for work representing at least two thirds of the total hourly credits required for graduation from the law school.
- (2) He must be a student in good academic standing, and be eligible under the school's criteria to undertake the activities authorized herein.

**(b) Agencies Through Which Services Must Be Performed.** The services authorized by this rule may only be carried on in the course of the student's work with one or more of the following organizations or programs:

- (1) A legal aid bureau, legal assistance program, organization, or clinic chartered by the State of Illinois or approved by a law school located in Illinois;
- (2) The office of the public defender;
- (3) A law office of the State or any of its subdivisions.

**(c) Services Permitted.** Under the supervision of a member of the bar of this State, and with the written consent of the person on whose behalf he is acting which shall be filed in the case and brought to the attention of the judge or presiding officer, an eligible law student may render the following services:

- (1) He may counsel with clients, negotiate in the settlement of claims, and engage in the preparation and drafting of legal instruments.
- (2) He may appear in the trial courts and administrative tribunals of this State, subject to the following qualifications:
  - (i) Appearances, pleadings, motions, and other documents to be filed with the court may be prepared by the student and may be signed by him with the accompanying designation "Senior Law Student" but must also be signed by the supervising member of the bar.
  - (ii) In criminal cases, in which the penalty may be imprisonment, in proceedings challenging sentences of imprisonment, and in civil or criminal contempt proceedings, the student may participate in pretrial, trial, and post-trial proceedings as an assistant of the supervising member of the bar, who shall be present and responsible for the conduct of the proceedings.
  - (iii) In all other civil and criminal cases the student may conduct all pretrial, trial, and post-trial proceedings.

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and the present

- (3) He may prepare other documents may set forth the designation "Senior Law Student" and the name of the supervising member of the bar.

**(d) Compensation.**

this rule shall not require compensation for whom he renders the services in an agency described in paragraph (b) of this rule, provided program.

**(e) Certification**

- (1) Upon request of the dean of the law school, he may, if he finds that the student is qualified in paragraph (c) of this rule, certify to the Director a certificate and until it is revoked, and is temporary in paragraph (c) of this rule.
- (2) Unless sooner revoked, the certificate shall remain in effect until the student is admitted to the bar, or until the student fails the examination for admission to the bar earlier. The certificate shall continue in effect until the student is admitted to the bar.
- (3) The certificate shall be without prior notice of the Director and copies of the certificate shall be furnished to the agencies to which the student is assigned.
- (4) The certificate shall be without prior notice of the Director and the termination of the certificate shall be without notice to the student had been notified by the Director.

Amended eff. May 27, 1964.

L

Attorney-client privilege.  
Chicago-Kent L. Rev. 54.

ADMISSION TO THE BAR 110A § 711

S.Ct. Rule 711

and the supervising member of the bar need not be present.

- (3) He may prepare briefs, excerpts from record, abstracts, and other documents filed in courts of review of the State, which may set forth the name of the student with the accompanying designation "Senior Law Student" but must be filed in the name of the supervising member of the bar.

(d) **Compensation.** A student rendering services authorized by this rule shall not request or accept any compensation from the person for whom he renders the services, but may receive compensation from an agency described in paragraph (b) above in accordance with an approved program.

(e) **Certification**

- (1) Upon request of a student or the appropriate organization, the dean of the law school in which the student is in attendance may, if he finds that the student meets the requirements stated in paragraph (a) of this rule, file with the Administrative Director a certificate so stating. Upon the filing of the certificate and until it is withdrawn or terminated the student is eligible, and is temporarily licensed, to render the services described in paragraph (c) of this rule.
- (2) Unless sooner withdrawn or terminated, the certificate shall remain in effect until the expiration of 18 months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. The certificate of a student who passes that examination shall continue in effect until he is admitted to the bar.
- (3) The certificate may be withdrawn by the dean at any time, without prior notice, hearing, or showing of cause, by the mailing of a notice to that effect to the Administrative Director and copies of the notice to the student and to the agencies to which the student had been assigned.
- (4) The certificate may be terminated by this court at any time without prior notice, hearing, or showing of cause. Notice of the termination may be filed with the Administrative Director, who shall notify the student and the agencies to which the student had been assigned.

Amended eff. May 27, 1969.

**Law Review Commentaries**

Attorney-client privilege. 1969, 46 Chicago-Kent L.Rev. 54.

Law clerks and the unauthorized practice of law. 1969, 46 Chicago-Kent L.Rev. 214.

**110A § 711 SUPREME COURT RULES**  
S.Ct.Rule 711

**Library References**

Attorney and Client § 11(1).

C.J.S. Attorney and Client § 16.

**§§ 712 to 720. Reserved**

**PART A-1. PRACTICE OF LAW**

**Law Review Commentaries**

Group legal practice. Charles R. Bernardini, 1972, 61 Ill.Bar J. 134.

**§ 721. (Supreme Court Rule 721). Professional Service Corporations and Associations for the Practice of Law**

(a) Professional service corporations formed under the Professional Service Corporation Act, H.B. 664, approved September 15, 1969, (Ill. Rev.Stat.1969, ch. 32, § 415--1 et seq.) or professional associations organized under the Professional Associations Act (Ill.Rev.Stat.1967, ch. 106½, § 101 et seq.) may engage in the practice of law, provided that:

- (1) All shareholders, officers, and directors of the corporation or members of the association, and others of its employees engaged in the practice of law shall be members of the bar of Illinois.
- (2) The corporation or association shall do nothing which, if done by an individual attorney, would violate the standards of professional conduct applicable to attorneys licensed by this court.

(b) This rule does not diminish or change the obligation of each attorney engaged in the practice of law in behalf of the corporation or association to conduct himself in accordance with the standards of professional conduct applicable to attorneys licensed by this court. Any attorney who by act or omission causes the corporation or association to act in a way which violates standards of professional conduct, including any provision of this rule, is personally responsible for such act or omission and is subject to discipline therefor. Any violation of this rule by the corporation or association is a ground for the court to terminate or suspend the right of the corporation or association to practice law or otherwise to discipline it.

(c) No corporation or association shall engage in the practice of law under the Professional Service Corporation Act or the Professional Associations Act, or open or maintain an establishment for that purpose, without a certificate of registration issued by this court.

(d) The articles of incorporation or association shall provide, and the shareholders of the corporation or members of the association shall be

deemed to agree by virtue of all shareholders or members, errors and omissions of employees of the corporation of professional services shareholders or member

(e) An application for shareholders of the corporation with the clerk of this court contain the following:

1. The name and
2. The statute under
3. The names and corporation or
4. A statement of a calendar or
5. A statement of officers of the corporation of Illinois and any of them.
6. Such other information from time to time

(f) A certificate of suspension or revocation of days following the clerk's renewal shall be signed by the clerk of this court with the corporation or association shareholders of the corporation certify that all shareholders of the bar of Illinois

(g) Nothing in this

(h) Associations with Professional Associations Act provisions of this rule

(i) This rule shall Adopted eff. March 18

By All

This rule was adopted in paragraph

deemed to agree by virtue of becoming shareholders or members, that all shareholders or members shall be jointly and severally liable for the acts, errors and omissions of the shareholders or members and other employees of the corporation or association arising out of the performance of professional services by the corporation or association while they are shareholders or members.

(e) An application for registration shall be in writing signed by all shareholders of the corporation or members of the association and filed with the clerk of this court with a fee of \$25. The application shall contain the following:

1. The name and address of the corporation or association.
2. The statute under which it is formed.
3. The names and residence addresses of the shareholders of the corporation or members of the association.
4. A statement of whether the corporation or association is on a calendar or fiscal year basis and if fiscal, the closing date.
5. A statement that all shareholders or members, directors and officers of the corporation or association are members of the bar of Illinois and that no disciplinary action is pending against any of them.
6. Such other information and documents as the court may from time to time require.

(f) A certificate of registration shall continue in effect until it is suspended or revoked subject, however, to renewal annually within 30 days following the close of each calendar year. The application for renewal shall be signed by all shareholders or members and filed with the clerk of this court with a filing fee of \$10. It shall state the name of the corporation or association, the names and residence addresses of the shareholders of the corporation or members of the association, and shall certify that all shareholders or members, directors, and officers are members of the bar of Illinois. No certificate is assignable.

(g) Nothing in this rule modifies the attorney-client privilege.

(h) Associations which have heretofore organized under the Professional Associations Act have until January 31, 1970, to comply with the provisions of this rule.

(i) This rule shall be effective November 15, 1969.

Adopted eff. March 18, 1969. Amended eff. Nov. 15, 1969.

#### Historical and Practice Notes

*By Albert E. Jenner, Jr. and Arthur M. Martin*

This rule was new in 1969. It was enacted in aid of the statutes cited in paragraph (a) of the rule.

deemed to agree by virtue of becoming shareholders or members, that all shareholders or members shall be jointly and severally liable for the acts, errors and omissions of the shareholders or members and other employees of the corporation or association arising out of the performance of professional services by the corporation or association while they are shareholders or members.

(e) An application for registration shall be in writing signed by all shareholders of the corporation or members of the association and filed with the clerk of this court with a fee of \$25. The application shall contain the following:

1. The name and address of the corporation or association.
2. The statute under which it is formed.
3. The names and residence addresses of the shareholders of the corporation or members of the association.
4. A statement of whether the corporation or association is on a calendar or fiscal year basis and if fiscal, the closing date.
5. A statement that all shareholders or members, directors and officers of the corporation or association are members of the bar of Illinois and that no disciplinary action is pending against any of them.
6. Such other information and documents as the court may from time to time require.

(f) A certificate of registration shall continue in effect until it is suspended or revoked subject, however, to renewal annually within 30 days following the close of each calendar year. The application for renewal shall be signed by all shareholders or members and filed with the clerk of this court with a filing fee of \$10. It shall state the name of the corporation or association, the names and residence addresses of the shareholders of the corporation or members of the association, and shall certify that all shareholders or members, directors, and officers are members of the bar of Illinois. No certificate is assignable.

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## 110A § 751 SUPREME COURT RULES

S.Ct.Rule 751

the Administrator, shall be governed by Rules 751-768 of the Court and the Rules of the Disciplinary Commission issued pursuant thereto.

3. Complaints heretofore voted but with respect to which no hearing has commenced shall likewise be referred to the Administrator for prosecution before the appropriate Hearing Board established by Rule 753 of the Court. The Administrator shall be substituted as the complainant in all such cases. The hearing and review of such complaints shall be governed by Rules 751-768 of the Court and the Rules of the Disciplinary Commission issued pursuant thereto.

4. No complaints shall be referred to the Administrator in which a hearing has commenced.

5. In all matters in which a complaint has been voted and a hearing has commenced, the hearing and review shall be governed by the rules in effect prior to February 1, 1973.

### Historical and Practice Notes

By Albert E. Jenner, Jr. and Arthur M. Martin

Rule 751 *et seq.*, set up a complete apparatus for disciplining attorneys practicing law in Illinois, under the direction of the Illinois Supreme Court. Rules 751 through 756 were adopted by the court effective February 1, 1973. Additional rules 757 through 768 were adopted effective April 1, 1973. The rules then in effect were all amended effective May 17, 1973 to effect a change in the formal name of the body responsible for assisting the Supreme Court in administering discipline from the Disciplinary Commission to the Attorney Registration Commission. Subsequently, on April 1, 1974, all the rules then in effect were amended again, this time to change the name of the commission to the Attorney Registration and Disciplinary Commission. At the same time rule 769 was added. Rule 770 was added effective October 1, 1975, completing the present series of rules.

In connection with the discipline of Illinois attorneys see also Chapter 13 of the Illinois Revised Statute. That chapter directs the Clerk of the Supreme Court to maintain a roll of attorneys and authorizes the striking of an attorney's name from the roll under certain circumstances. See Ill.Rev.Stat. Ch. 13, §§ 5-8.

## § 751. (Supreme Court Rule 751). Attorney Registration and Disciplinary Commission

The registration of, and disciplinary proceedings affecting, members of the Illinois Bar shall be under the administrative supervision of an Attorney Registration and Disciplinary Commission.

The Commission shall consist of 5 members of the Illinois Bar appointed by the Court. One member shall be designated by the Court as Chairman. Three members, including the Chairman, shall initially be appointed for a three-year term and the other 2 members shall initially be appointed for a two-year term. Thereafter, all members shall

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## DISCIPLINE OF ATTORNEYS 110A § 751

S.Ct. Rule 751

be appointed for three-year terms. Any member of the Commission may be removed by the Court at any time, without cause.

~~None of the members of the Commission shall receive compensation for serving as such but all members shall be reimbursed for their necessary expenses.~~

Three members of the Commission shall constitute a quorum for the transaction of business. The concurrence of 3 members shall be required for all action taken by the Commission.

The Commission shall have the following duties:

(a) To make rules for disciplinary proceedings not inconsistent with the rules of this Court;

(b) To supervise the activities of the Administrator;

(c) To authorize the Administrator to hire attorneys, investigators and clerical personnel and to set the salaries of such persons;

(d) To appoint from time to time, as it may deem appropriate, members of the Bar to serve as Commissioners in addition to those provided for in Rule 753;

(e) To collect and administer the disciplinary fund provided for in Rule 755, and, on or before April 30 of each year, file with the Court an accounting of the monies received and expended for disciplinary activities and a report of such activities for the previous calendar year. Such accounting and report shall be published by the Court. There shall be an independent annual audit of the disciplinary fund as directed by the Court, the expenses of which shall be paid out of the fund; and

(f) To submit an annual report to the Court evaluating the effectiveness of the registration and disciplinary system and recommending any changes it deems desirable.

Adopted eff. Feb. 1, 1973. Amended eff. May 17, 1973; April 1, 1974; May 21, 1975.

### Editorial Note

A former section 751, adopted November 25, 1967, eff. Jan. 1, 1967, relating to proceedings to strike an attorney's name from the rolls, was superseded by sections 751 to 756, effective February 1, 1973.

### Historical and Practice Notes

By Albert E. Jenner, Jr. and Arthur M. Martin

#### Evolution of the Disciplinary System in Illinois

Discipline of Illinois attorneys was originally accomplished by the filing of an information by the Attorney General in the Supreme Court. The court, upon taking up the petition, would order the attorney who was the subject of the information to answer it.

The earliest Supreme Court rules on the subject codified and elaborated on this system. Rule 41 of the schedule of rules adopted

DISCIPLINE OF ATTORNEYS 110A § 752  
S.Ct. Rule 752

§ 752. (Supreme Court Rule 752). Administrator

The Court will appoint an Administrator of the registration and disciplinary system to serve at its pleasure as the principal executive officer of the registration and disciplinary system. The Administrator shall receive such compensation as the Court authorizes from time to time.

Subject to the supervision of the Commission, the Administrator shall:

(a) On his own motion, on the recommendation of an Inquiry Board or at the instance of an aggrieved party, investigate conduct of attorneys which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute;

(b) Assist each Inquiry Board in its investigations and prosecute disciplinary cases before the Hearing Boards, the Review Board and the Court;

(c) Employ at such compensation as may be authorized by the Commission such investigative, clerical and legal personnel as may be necessary for the efficient conduct of his office;

(d) Discharge any such personnel whose performance is unsatisfactory to him; and

(e) Maintain such records, make such reports and perform such other duties as may be prescribed by the Commission from time to time.

Adopted eff. Feb. 1, 1973. Amended eff. May 17, 1973; April 1, 1974.

**Editorial Note**

A former section 752, adopted November 28, 1966, eff. Jan. 1, 1967, relating to the reinstatement of attorneys whose names have been stricken from the rolls, was superseded by sections 751 to 756, effective February 1, 1973.

**Historical and Practice Notes**

*By Albert E. Jenner, Jr. and Arthur M. Martin*

This rule provides for the appointment of an Administrator to head the Attorney Registration and Disciplinary Commission. Paragraph (a) of the rule gives the Administrator power to investigate on his own motion, as well as on the recommendation of an Inquiry Board or an aggrieved party. The Administrator is also the chief prosecutor of any disciplinary cases which ripen out of investigations.

**Law Review Commentaries**

Disciplinary procedures in Illinois—a short history. Thomas J. Murphy, 1972, 60 Ill. Bar J. 525.

**Library References**

Attorney and Client ¶ 9, 32.

C.J.S. Attorney and Client ¶ 13, 14, 55.

**110A § 753** SUPREME COURT RULES  
S.Ct.Rule 753

**§ 753. (Supreme Court Rule 753). Inquiry, Hearing and Review Boards**

The members of the Inquiry and Hearing Divisions of the Disciplinary Committees of the Illinois State Bar Association and the Chicago Bar Association are appointed as commissioners of the Court to serve on the Inquiry and Hearing Boards established by the following subparagraphs of this rule.

(a) **Inquiry Boards.** There are hereby established an Inquiry Board for disciplinary matters arising outside Cook County and an Inquiry Board for disciplinary matters arising in Cook County.

Each Board shall have not less than 10 members, consisting of members of the Inquiry Divisions of the Disciplinary Committees of the Illinois State Bar Association and the Chicago Bar Association, respectively, and such additional members as the Commission may appoint pursuant to Rule 751(d). The members of each Board shall be appointed for annual terms.

The Inquiry Boards shall inquire into and investigate matters referred to them by the Administrator. The Boards may also initiate investigations on their own motion and may refer matters to the Administrator for investigation.

After investigation and consideration, the Inquiry Boards shall dispose of matters before them by voting to dismiss the charge, to discontinue an investigation undertaken on their own motion or to file a complaint with the Hearing Board.

The Inquiry Boards may act in panels of not less than 3 members each, as designated by the Chairman of the respective Boards, who shall also designate one of the members of each panel as Chairman thereof. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the Chairman of a panel at a meeting, the members present shall designate one of their number as Acting Chairman.

(b) **Filing a Complaint.** A complaint voted by an Inquiry Board shall be prepared by the Administrator and filed with the appropriate Hearing Board. The complaint shall reasonably inform the attorney of the acts of misconduct he is alleged to have committed.

(c) **Hearing Boards.** There are hereby established a Hearing Board for disciplinary matters arising outside Cook County and a Hearing Board for disciplinary matters arising in Cook County. Each Board shall have not less than 21 members, consisting of members of the Hearing Divisions of the Disciplinary Committees of the Illinois State Bar Association and the Chicago Bar Association, respectively, and such additional members as the Commission may appoint pursuant to Rule

751(d). The members shall serve for annual terms.

The Hearing Boards shall each, as designated by the Commission, also designate one of their members as Chairman. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the Chairman of a panel at a meeting, the members present shall designate one of their number as Acting Chairman.

The Hearing Boards shall hear and determine the merits of the charges against the attorney respondent and shall make findings of fact and conclusions of law. The Hearing Boards shall make findings of fact and conclusions of law together with a recommendation of discipline, or no discipline, or petition, or non-discipline.

The Hearing Boards shall hear and determine the merits of the charges against the attorney respondent within 21 days of the filing of the complaint and a notice of hearing to the attorney respondent.

Proceedings before the Hearing Boards shall be heard in public in the practice in civil and criminal cases and in the Commission pursuant to the rules of the Commission.

Except as otherwise provided, the rules of evidence shall apply in all hearings before the Hearing Boards.

(d) **Review Boards.** There are hereby established a Review Board for disciplinary matters arising outside Cook County and a Review Board for disciplinary matters arising in Cook County. Each Board shall be designated by the Commission and shall have not less than 5 members, who shall be appointed for a term of 2 years and their appointments shall be staggered. The majority of a Board shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the Chairman of a Board at a meeting, the members present shall designate one of their number as Acting Chairman.

(e) **Review Proceedings.** The proceedings of the Hearing Boards shall be reviewed by the Review Boards. If the Review Board has been recommended by the Hearing Board and the Administrator made to the Review Board, the Review Board shall report shall be furnished to the Commission.

In any case in which the Review Board has been recommended by the Hearing Board and the Administrator made to the Review Board, the Review Board shall report shall be furnished to the Commission at the same time.

## DISCIPLINE OF ATTORNEYS 110A § 753

S.Ct.Rule 753

751(d). The members of each Board shall be appointed for annual terms.

The Hearing Boards may act in panels of not less than 3 members each, as designated by the Chairman of the respective Boards, who shall also designate one of the members of each panel as Chairman thereof. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the Chairman of a panel at a hearing the members present shall designate one of their number as Acting Chairman.

The Hearing panels shall conduct hearings on complaints filed before the Hearing Board and on petitions referred to the Hearing Board. The panel shall make findings of fact and conclusions of fact and law, together with a recommendation for discipline, dismissal of the complaint or petition, or non-disciplinary suspension.

The Hearing Board shall set a date for hearing on a complaint not earlier than 21 days after the filing of such complaint. A copy of the complaint and a notice of the date for hearing shall be served on the attorney respondent not less than 14 days prior to the date set for hearing.

Proceedings before the Hearing Board shall be conducted according to the practice in civil cases, as modified by rules promulgated by the Commission pursuant to Rule 751(a).

Except as otherwise expressly provided in these rules, the standard of proof in all hearings shall be clear and convincing evidence.

(d) **Review Board.** There shall be a nine-member Review Board which shall be appointed by the Court. One member shall be designated by the Court as Chairman. Of the initial appointments 3 members shall be appointed for a term of 3 years, 3 members for a term of 2 years and 3 members for a term of 1 year. Thereafter, appointments shall be for a term of 3 years. Five members of the Board shall constitute a quorum and the concurrence of not less than 5 members of the Board shall be necessary to a decision.

(e) **Review Procedure.** Reports of the Hearing Boards shall be reviewed by the Review Board in all cases where action by the Court has been recommended and in all other cases upon application by the Administrator made to the Review Board within 14 days after the date of service of the Hearing Board report. A copy of the Hearing Board report shall be furnished to each member of the Review Board.

In any case in which action by the Court has been recommended, the attorney respondent may file with the Review Board his exceptions to the report of the Hearing Board within 21 days after service of the report. In all other cases, the Administrator may file exceptions within the same time.

**110A § 753 SUPREME COURT RULES**  
S.Ct.Rule 753

The parties shall not be entitled to oral argument before the Review Board as of right, but the Board may, in its discretion, permit or require briefs or oral argument or both.

The Review Board may approve the findings of the Hearing Boards, may reject or modify such findings as it determines are not established by clear and convincing evidence, may make such additional findings as are established by clear and convincing evidence, may approve, reject or modify the recommendations, may remand the proceeding for further action or may dismiss the proceeding.

If the Review Board concludes that disciplinary action is required, the report of the Board shall be filed with the Court. If in such instance the Review Board affirms the findings and recommendations of the Hearing Board without change, the report of the Hearing Board may be transmitted to the Court by the Review Board with its order of affirmance and no separate report need be filed by the Review Board.

A copy of the report of the Review Board or of its order of affirmance, as the case may be, so filed with the Court shall be served on the attorney respondent. Within 21 days after service of the report on him, the attorney respondent may file exceptions with the Court or a motion that the exceptions filed with the Hearing Board or Review Board stand as exceptions to the report or order of affirmance of the Review Board. The parties shall not be entitled to oral argument before the Court as of right, but the Court may, in its discretion, permit or require briefs or oral argument or both.

Adopted eff. Feb. 1, 1973. Amended eff. May 17, 1973; April 1, 1974; May 21, 1975.

**Historical and Practice Notes**

*By Albert E. Jenner, Jr. and Arthur M. Martin*

Rule 753 sets up a four level procedure by which disciplinary cases are handled in Illinois. It also sets forth general principles concerning the way the first three levels, the Inquiry Board, the Hearing Board and the Review Board, are to be organized. In addition, it contains general directions on how those three levels, and to a limited extent the fourth level, the Supreme Court, are to conduct their disciplinary business.

**Summary of Procedures**

The system established by this rule is roughly equivalent to a grand jury-trial-appellate review-final review system, but with the difference that only the Supreme Court, the top level of the system, can actually impose discipline. While discipline proceedings may terminate at any earlier level in the system, determinations to impose discipline are simply recommendations to the Supreme Court.

The Commission acts on information supplied to it, either informally or formally. While it can initiate investigations, as a practical matter its procedures are almost always set in motion by complaints made by aggrieved persons. The Administrator's office provides complaint

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# Iowa Code

ATTORNEYS AND COUNSELORS, §610.4

## CHAPTER 610

### ATTORNEYS AND COUNSELORS

Referred to in §605.26, Court Rule 118

610.1	Admission to practice.	610.23	Revocation of license.
610.2	Qualifications for admission.	610.24	Grounds of revocation.
610.3	Board of law examiners.	610.25	Proceedings.
610.4	Examinations.	610.26	Costs.
610.5	Term of office.	610.27	Order for appearance—notice—service.
610.6	Oath—compensation.	610.28	Copy of accusation—duty of clerk.
610.7	Temporary appointments—expenses.	610.29	Notice to attorney general—duty.
610.8	Fees.	610.30	Trial court.
610.9	Repealed by 65GA, ch 1086, §198.	610.31	Time and place of hearing.
610.10	Practitioners from other states.	610.32	Determination of issues.
610.11	Oath.	610.33	Record and judgment.
610.12	Repealed by 65GA, ch 1086, §198.	610.34	Pleadings—evidence—preservation.
610.13	Nonresident attorney—appointment of local attorney.	610.35	Costs and expenses.
610.14	Duties of attorneys and counselors.	610.36	Plea of guilty or failure to plead.
610.15	Deceit or collusion.	610.37	Appeal.
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610.18	Attorney's lien—notice.	610.45	Renewals.
610.19	Release of lien by bond.	610.46	Client security fund not an insurance company.
610.20	Automatic release.	610.47	Officers.
610.21	Unlawful retention of money.	610.48	Public members.
610.22	Excuse for nonpayment.	610.49	Disclosure of confidential information.

610.1 Admission to practice. The power to admit persons to practice as attorneys and counselors in the courts of this state, or any of them, is vested exclusively in the supreme court which shall adopt and promulgate rules to carry out the intent and purpose of this chapter. [C97, §§309, 315; S13, §315; C24, 27, 31, 33, 39, §§10907, 10918; C46, 50, 54, 58, 62, 66, 71, 73, §§610.1, 610.12; C75, 77, §610.1]

610.2 Qualifications for admission. Every applicant for such admission shall be a person of honesty, integrity, trustworthiness, truthfulness and one who appreciates and will adhere to a code of conduct for lawyers as adopted by the supreme court. He shall be an inhabitant of this state, and shall have actually and in good faith pursued a regular course of study of the law and shall have graduated from some reputable law school. The application form shall not contain a recent photograph of the applicant. An applicant shall not be ineligible for registration because of age, citizenship, sex, race, religion, marital status or national origin although the application form may require citizenship information. The board may consider the past record of guilty pleas and convictions and public offenses of an applicant. Character references may be required; however, such references shall not be restricted to lawyers. [C51, §1610; C97, §2700; C73, §208; C97, §310; S13, §310; C24, 27, 31, 33, §§10908; C46, 50, 54, 58, 62, 66, 71, 73, 75, §610.2]

Referred to in §1684.23, 646.51, Court Rule 120

610.3 Board of law examiners. There is established a board of law examiners which shall consist of persons admitted to practice law in this state and persons not admitted to practice law in this state

who shall represent the general public. Members shall be appointed by the supreme court. A member admitted to practice law shall be actively engaged in the practice of law in this state. [S13, §311-a; C24, 27, 31, 35, 39, §10910; C46, 50, 54, 58, 62, 66, 71, 73, §610.4; C75, 77, §610.3]

610.4 Examinations. Every applicant shall be examined by the board concerning his learning and skill in the law. The sufficiency of the education of the applicant may be determined by written examination or in such other manner as the board shall prescribe. The board shall hold at least one meeting each year at the seat of government. Examinations shall be given as often as deemed necessary as determined by the court, but shall be conducted at least one time per year. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible.

An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the court. An applicant who has failed the examination may request in writing information from the court concerning his examination grade and subject areas or questions which he failed to answer correctly, except that if the court administers a uniform, standardized examination, the court shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the court. [C97, §311; S13, §311; C24,

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27, 31, 35, 39, §10909; C46, 50, 54, 58, 62, 66, 71, 73, §610.3; C75, 77, §610.4]

**610.5 Term of office.** Appointments shall be for three-year terms and shall commence on July 1 of the year in which the appointment is made. Vacancies shall be filled for the unexpired term by appointment of the supreme court. Members shall serve no more than three terms or nine years, whichever is less. [S13, §311-a; C24, 27, 31, 35, 39, §10911; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.5]

**610.6 Oath—compensation.** The members thus appointed shall take and subscribe an oath to be administered by one of the judges of the supreme court to faithfully and impartially discharge the duties of the office. The members shall, in addition to receiving actual and necessary expenses, set the per diem compensation for themselves and the temporary examiners appointed under section 610.7 at a rate not exceeding forty dollars per diem for each day actually engaged in the discharge of their duties. Such duties shall include the traveling to and from the place of examination, the preparation and conducting of examinations, and the reading of the examination papers. The per diem authorized under this section shall be reasonably apportioned in relation to the funds appropriated to the board. [S13, §311-a; C24, 27, 31, 35, 39, §10912; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.6]

Referred to in Court Rule 100

**610.7 Temporary appointments—expenses.** The supreme court may appoint from time to time, when necessary, temporary examiners to assist the board, who shall receive their actual and necessary expenses to be paid from funds appropriated to the board.

The members of the board authorized to grade examinations shall make the final decision on passage or failure of each applicant, subject to the rules of the supreme court. The board shall, also, recommend to the supreme court for admission to practice law in this state all applicants who pass the examination and who meet the requisite character requirements. The supreme court shall make the final decision in determining who shall be admitted. [S13, §311-a; C24, 27, 31, 35, 39, §10913; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.7]

Referred to in §610.6

**610.8 Fees.** The board shall set the fees for examination and for admission. The fees for examination shall be based upon the annual cost of administering the examinations. The fees for admission shall be based upon the costs of conducting an investigation of the applicant and the administrative costs of sustaining the board, which shall include but shall not be limited to:

1. Expenses and travel for board members and temporary examiners.
2. Office facilities, supplies, and equipment.
3. Clerical assistance.

Fees shall be collected by the board and transmitted to the treasurer of state who shall deposit the fees in the general fund of the state. [S13, §311-b; C24, 27, 31, 35, 39, §10914; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.8]

**610.9** Repealed by 65GA, ch 1086, §198.

**610.10 Practitioners from other states.** Any person who is a resident of this state, and has been admitted to the bar of any other state in the United States or the District of Columbia, may, in the discretion of the court, be admitted to practice in this state without examination or proof of a period of study. The person, in his application for admission to practice law in this state, in addition to all other requirements stated in this chapter, shall establish that he has practiced law for five full years under license in such jurisdiction within the seven years immediately preceding the date of his application and still holds a license to practice law. The teaching of law as a full-time instructor in a recognized law school in this state or some other state shall for the purpose of this section be deemed the practice of law. Any person who has discharged actual legal duties as a member of the armed services of the United States shall be deemed to have practiced law for the purposes of this section if certified to as such by the judge advocate general of the service. The court may charge an investigation fee based upon the cost of conducting the investigation as determined by the court. [C97, §313; S13, §312; C24, 27, 31, 35, 39, §10916; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.10]

**610.11 Oath.** All persons on being admitted to the bar shall take an oath or affirmation to support the Constitutions of the United States and of the state of Iowa, and to faithfully discharge the duties of an attorney and counselor of this state according to the best of their ability. [C51, §1613; R60, §2703; C73, §208; C97, §314; C24, 27, 31, 35, 39, §10917; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.11]

**610.12** Repealed by 65GA, ch 1086, §198.

**610.13 Nonresident attorney—appointment of local attorney.** Any member of the bar of another state, actually engaged in any cause or matter pending in any court of this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state, without being subject to the foregoing provisions of this chapter; provided that at the time he enters his appearance he files with the clerk of such court the written appointment of some attorney resident and admitted to practice in the state of Iowa, upon whom service may be had in all matters connected with said action, with the same effect as if personally made on such foreign attorney within this state. In case of failure to make such appointment, such attorney shall not be permitted to practice as aforesaid, and all papers filed by him shall be stricken from the files. [C51, §1612; R60, §2702; C73, §210; C97, §316; S13, §316; C24, 27, 31, 35, 39, §10919; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.13]

Referred to in court rule 116

**610.14 Duties of attorneys and counselors.** It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.
2. To counsel or maintain no other actions, proceedings, or defenses than those which appear to him

legal and just, except the defense of a person charged with a public offense.

3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law.

4. To maintain inviolate the confidence, and, at any peril to himself, to preserve the secret of his client.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.

7. Never to reject for any consideration personal to himself the cause of the defenseless or oppressed. [C51,§1614; R60,§2704; C73,§211; C97,§317; C24, 27, 31, 35, 39,§10920; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.14]

**610.15 Deceit or collusion.** An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages to be recovered in a civil action. [C51,§1615; R60,§2705; C73,§212; C97,§318; C24, 27, 31, 35, 39, 110921; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.15]

**610.16 Authority.** An attorney and counselor has power to:

1. Execute in the name of his client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced, or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein.

2. Bind his client to any agreement, in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. Receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and, upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. [C51,§1616; R60,§2706; C73,§213; C97,§319; C24, 27, 31, 35, 39,§10922; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.16]

Attorney as surety, §§621.7, 682.5

**610.17 Proof of authority.** The court may, on motion of either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by his own oath, or otherwise, the authority under which he appears, and, until he does so, may stay all proceedings by him on behalf of the parties for whom he assumes to appear. [C51,§1617; R60,§2707; C73,§214; C97,§320; C24, 27,

31, 35, 39,§10923; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.17]

**610.18 Attorney's lien—notice.** An attorney has a lien for a general balance of compensation upon:

1. Any papers belonging to his client which have come into his hands in the course of his professional employment.

2. Money in his hands belonging to his client.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given, and the lien made effective against the judgment debtor, by entering the same in the judgment or combination docket, opposite the entry of the judgment. [C51,§1618; R60,§2708; C73,§215; C97,§321; C24, 27, 31, 35, 39,§10924; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.18]

**610.19 Release of lien by bond.** Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by any district judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for his services, which amount may be ascertained by suit on the bond. [C51,§1619; R60,§2709; C73,§216; C97,§322; C24, 27, 31, 35, 39,§10925; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.19]

C97, §322, editorially divided

**610.20 Automatic release.** Such lien will be released, unless the attorney, within ten days after demand therefor, files with the clerk a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered. [C73,§216; C97,§322; C24, 27, 31, 35, 39,§10926; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.20]

**610.21 Unlawful retention of money.** An attorney who receives the money or property of his or her client in the course of his or her professional business, and refuses to pay or deliver it in a reasonable time, after demand, is guilty of a theft and punished accordingly. [C51,§1627; R60,§2717; C73,§224; C97,§330; C24, 27, 31, 35, 39,§10927; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.21; 66GA, ch 1246(4),§494]

Referred to in §610.22

**610.22 Excuse for nonpayment.** When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of section 610.21 until the person demanding the money proffers sufficient security for the payment of the amount of the attorney's claim, when it is legally ascertained. Nor is he in any case liable as aforesaid, provided he gives sufficient security that he will pay over the whole or any portion thereof to the claimant when he is found entitled thereto. [C51,§§1628, 1629; R60,§§2718, 2719; C73,§§225, 226; C97, §331; C24, 27,

## §610.22. ATTORNEYS AND COUNSELORS

31, 35, 39, §10928; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.22]

**610.23 Revocation of license.** The supreme court may revoke or suspend the license of an attorney to practice law in this state. [C51, §1620; R60, §2710; C73, §217; C97, §323; C24, 27, 31, 35, 39, §10929; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.23]

**610.24 Grounds of revocation.** The following are sufficient causes for revocation or suspension:

1. When he has been convicted of a felony. The record of conviction is conclusive evidence.

2. When he is guilty of a willful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with or in the course of his profession.

3. A willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. Doing any other act to which such a consequence is by law attached.

5. Soliciting legal business for himself or office, either by himself or representative. Nothing herein contained shall be construed to prevent or prohibit listing in legal or other directories, law lists and other similar publications, or the publication of professional cards in any such lists, directories, newspapers or other publication. [C51, §1621; R60, §2711; C73, §218; C97, §324; C24, 27, 31, 35, 39, §10930; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.24]

**610.25 Proceedings.** The proceedings to remove or suspend an attorney may be commenced by the direction of the court or on motion of any individual. In the former case, the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it. [C51, §1622; R60, §2712; C73, §219; C97, §325; S13, §325; C24, 27, 31, 35, 39, §10931; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.25]

S13, §325, editorially divided

**610.26 Costs.** If an action is commenced by direction of the court, the costs shall be taxed and disposed of as in criminal cases; provided that no allowance shall be made in such case for the payment of attorney fees. [S13, §325; C24, 27, 31, 35, 39, §10932; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.26]

**610.27 Order for appearance—notice—service.** If the court deem the accusation sufficient to justify further action, it shall cause an order to be entered requiring the accused to appear and answer in the court where the accusation or charge shall have been filed on the day therein fixed, and shall cause a copy of the accusation and order to be served upon him personally. [C51, §1623; R60, §2713; C73, §220; C97, §326; C24, §10933; C27, 31, 35, §10934-b1; C39, §10934.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.27]

C24, §10933, editorially divided

**610.28 Copy of accusation—duty of clerk.** The clerk of the district court shall immediately certify to the clerk of the supreme court a copy of the accusation. [C27, 31, 35, §10934-b2; C39, §10934.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.28]

**610.29 Notice to attorney general—duty.** Thereupon the chief justice of the supreme court shall no-

tify the attorney general of such accusation and cause a copy thereof to be delivered to him, and he shall thereupon become the duty of the attorney general to superintend either through his office, or through a special assistant to be designated by him, the prosecution of such charges. [C27, 31, 35, §10934-b3; C39, §10934.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.29]

**610.30 Trial court.** The supreme court shall designate three district judges to sit as a court to hear and decide such charges. [C27, 31, 35, §10934-b4; C39, §10934.4; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.30]

**610.31 Time and place of hearing.** The hearing shall be at such time as the chief justice of the supreme court may designate, and shall be held within the county where the accusation was originally filed. [C27, 31, 35, §10934-b5; C39, §10934.5; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.31]

**610.32 Determination of issues.** The determination of all issues shall be heard before the said judges selected by the supreme court as herein provided for. [C27, 31, 35, §10934-b6; C39, §10934.6; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.32]

**610.33 Record and judgment.** The records and judgment at each trial shall constitute a part of the records of the district court in the county in which the accusations are originally filed. [C27, 31, 35, §10934-b7; C39, §10934.7; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.33]

**610.34 Pleadings—evidence—preservation.** To the accusation, the accused may plead or demur and the issues joined thereon shall in all cases be tried by said judges so selected and all of the evidence at such trial shall be reduced to writing, filed and preserved. [C51, §1624; R60, §2714; C73, §221; C97, §327; C24, §10934; C27, 31, 35, §10934-b8; C39, §10934.8; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.34]

**610.35 Costs and expenses.** The court costs incident to such proceedings, and the reasonable expense of said judges in attending said hearing after being approved by the supreme court shall be paid as court costs by the executive council. [C27, 31, 35, §10934-b9; C39, §10934.9; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.35]

**610.36 Plea of guilty or failure to plead.** If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires. [C51, §1625; R60, §2715; C73, §222; C97, §328; C24, 27, 31, 35, 39, §10935; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.36]

**610.37 Appeal.** In case of a removal or suspension being ordered, an appeal therefrom lies to the supreme court, and all the original papers, together with a transcript of the record, shall thereupon be transferred to the supreme court, to be there considered and finally acted upon. A judgment of acquittal by a court of record is final. [C51, §1626; R60, §2716; C73, §223; C97, §329; C24, 27, 31, 35, 39, §10936; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §610.37]

**610.38 Certification of judgment.** When a judgment has been entered in any court of record in the state revoking or suspending the license of any attorney at law to practice in the said court, the clerk of the court in which the judgment is rendered shall immediately certify to the clerk of the supreme court the order or judgment of the court in said cause. [S13,§329-a; C24, 27, 31, 35, 39,§10937; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77,§610.38]

**610.39 to 610.44** Reserved.

**610.45 Renewals.** The right to practice law in this state shall be renewed annually by the supreme court upon such conditions as the court shall determine. Any moneys received from those persons admitted to practice law and which are designated for a client security fund or similar fund created by the supreme court shall be separately retained and administered by said court in accordance with rules promulgated by it. [C75, 77,§610.45]

**610.46 Client security fund not an insurance company.** A client security fund established by the supreme court is not an insurance company and the insurance laws of this state and the rules of the commissioner of insurance are not applicable to such a client security fund. [C75, 77,§610.46]

**610.47 Officers.** The board shall organize following its appointment and shall elect a chairman and vice chairman. [S13,§311-a; C24, 27, 31, 35, 39,§10910; C46, 50, 54, 58, 62, 66, 71, 73,§610.4; C75, 77,§610.47]

**610.48 Public members.** The public members of the board shall be allowed to participate in the administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers. The public members shall participate in the determination of whether or not each applicant meets the requisite character requirements. [C75, 77,§610.48; 67GA, ch 69,§12]

**610.49 Disclosure of confidential information.** A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor. [C75, 77,§610.49; 66GA, ch 1245(4),§495]

ATTORNEYS AND COUNSELORS, § 610.49

610.46 **Certification of judgment.** When a judgment has been entered in any court of record in the State of New York involving or suspending the license of any attorney to practice in the said court, the clerk of the court in which the judgment is rendered shall immediately certify to the clerk of the supreme court the order or judgment of the court in said cause. [§ 13, § 311-a; C24, 27, 31, 35, 39, § 10937; C46, 50, 54, 58, 62, 66, 71, 73, § 610.38]

610.47 **Reserved.**

610.48 **Renewals.** The right to practice law in this State shall be renewed annually by the supreme court under such conditions as the court shall determine. The moneys received from the persons admitted to practice law and which are designated for a client security fund or similar fund created by the supreme court shall be separately retained and administered by the court in accordance with rules promulgated by the court. [C75, 77, § 610.45]

610.49 **Client security fund not an insurance company.** A client security fund established by the supreme court is not an insurance company and the insurance laws of this state and the rules of the commissioner of insurance are not applicable to such a client security fund. [C75, 77, § 610.46]

610.47 **Officers.** The board shall organize following its appointment and shall elect a chairman and vice chairman. [§ 13, § 311-a; C24, 27, 31, 35, 39, § 10910; C46, 50, 54, 58, 62, 66, 71, 73, § 610.4; C75, 77, § 610.47]

610.48 **Public members.** The public members of the board shall be allowed to participate in the administrative, clerical, or ministerial functions incidental to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers. The public members shall participate in the determination of whether or not each applicant meets the requisite character requirements. [C75, 77, § 610.48; 67GA, ch 69, § 12]

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1. Criminal history or prior misconduct of the applicant.
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A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor. [C75, 77, § 610.49; 66GA, ch 1245(4), § 495]

## CHAPTER 481 ATTORNEYS AT LAW

<p>Sec. 481.01 Board of law examiners; examinations. 481.02 Unauthorized practice of law. 481.03 Attorneys shall not employ solicitors. 481.04 Soliciting of business by persons other than attorneys; prohibition. 481.05 Violations; penalties. 481.06 General duties. 481.07 Penalties for deceit or collusion. 481.071 Misconduct by attorneys. 481.08 Authority. 481.09 Proof of authority.</p>	<p>Sec. 481.10 Consultation with persons restrained. 481.11 Change of attorney. 481.12 Disability; substitution. 481.13 Lien for attorneys' fees. 481.14 Refusal to surrender property to clients. 481.15 Removal or suspension. 481.16 Certain attorneys not to defend certain prosecutions; penalty. 481.17 County, city, and school district attorneys.</p>
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**481.01 BOARD OF LAW EXAMINERS; EXAMINATIONS.** The supreme court shall, by rule from time to time, prescribe the qualifications of all applicants for admission to practice law in this state, and shall appoint a board of law examiners, which shall be charged with the administration of such rules and regulations and with the examination of all applicants for admission to practice law. The board shall consist of not less than three, nor more than seven, attorneys at law, who shall be appointed each for the term of three years and until his successor qualifies. The supreme court may fill any vacancy in the board for the unexpired term and in its discretion may remove any member thereof. The board shall have a seal and shall keep a record of its proceedings, of all applications for admission to practice, and of persons admitted to practice upon its recommendation. At least two times a year the board shall hold examinations and report the result thereof, with its recommendations, to the supreme court. Upon consideration of such report, the supreme court shall enter an order in the case of each person examined, directing the board to reject him or to issue to him a certificate of admission to practice. The board shall have such officers as may, from time to time, be prescribed and designated by the supreme court. The fee for examination shall be fixed, from time to time, by the supreme court, but shall not exceed \$50. Such fees, and any other fees which may be received pursuant to such rules as the supreme court may promulgate governing the practice of law shall be paid to the state treasurer and shall constitute a special fund in the state treasury. The moneys in such fund are appropriated annually to the supreme court for the payment of compensation and expenses of the members of the board of law examiners and for otherwise regulating the practice of law. The moneys in such fund shall never cancel. Payments therefrom shall be made by the state treasurer, upon warrants of the commissioner of finance issued upon vouchers signed by one of the justices of the supreme court. The members of the board shall have such compensation and such allowances for expenses as may, from time to time, be fixed by the supreme court.

[ *RI s 2278; 1921 c 161 s 1; 1953 c 167 s 1; 1959 c 384 s 1; 1963 c 718 s 1; 1973 c 492 s 14; 1976 c 149 s 57* ] (5685)

**481.02 UNAUTHORIZED PRACTICE OF LAW. Subdivision 1. Prohibitions.** It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court in this state to maintain, conduct, or defend the same, except in his own behalf as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out himself or themselves as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or, for or without a fee or any consideration, to prepare, directly or through another, for another person, firm, or corporation, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to prepare for another person, firm, or corporation, any other legal document, except as provided in subdivision 3.

**Subd. 2. Corporations.** No corporation, organized for pecuniary profit, except an attorney's professional corporation organized under chapter 319A, by or through its officers or employees or any one else, shall maintain, conduct, or defend, except in its own behalf when a party litigant, any action or proceeding in any court in this

state, or shall, to give legal action legal service any person to disposition or itself out as de or legal service attorney at lawyer or lawyers the business o pared any pers poses similar t or corporation, preparation or other, any such in subdivision .

Subd. 3. ing, without ct ployee he is or ployee he is, instrument of t person from d death leaves in a licensed atto parties or ager loan, from dra prers as may b insurance comj fended through by it, in accord censed attorne its subsidiaries hibit any bona ters arising ou ring or cooper; document, if st or of any pers hibit any licen: corporation, fr corporation is : pacity, except poses similar t with preparing received and re rectly, rebate t prohibit any pe leases, notes, n tions or any ct trust; and shall a corporation l principal stockl rectly or indire corporation enj over to an atto ing proof of cla entire compens farm journal or legal questions answer be acc answer, any dis of or reference service for such indirectly.

state, or shall, by or through its officers or employees or any one else, give or assume to give legal advice or counsel or perform for or furnish to another person or corporation legal services; or shall, by word, sign, letter, or advertisement, solicit the public or any person to permit it to prepare, or cause to be prepared, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or hold itself out as desiring or willing to prepare any such document, or to give legal advice or legal services relating thereto or to give general legal advice or counsel, or to act as attorney at law or as supplying, or being in a position to supply, the services of a lawyer or lawyers; or shall to any extent engage in, or hold itself out as being engaged in, the business of supplying services of a lawyer or lawyers; or shall cause to be prepared any person's will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or any other legal document, for another person, firm, or corporation, and receive, directly or indirectly, all or a part of the charges for such preparation or any benefits therefrom; or shall itself prepare, directly or through another, any such document for another person, firm, or corporation, except as provided in subdivision 3.

Subd. 3. **What permitted.** The foregoing shall not prohibit any one from drawing, without charge for so doing, any document to which he, or a person whose employee he is or a firm whereof he is a member or a corporation whose officer or employee he is, is a party, except another's will or testamentary disposition or instrument of trust serving purposes similar to those of a will; and shall not prohibit a person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law; and shall not prohibit any one, acting as broker for the parties or agent of one of the parties to a sale or trade or lease of property or to a loan, from drawing or assisting in drawing, with or without charge therefor, such papers as may be incident to such sale, trade, lease, or loan; and shall not prohibit any insurance company from causing to be defended, or from offering to cause to be defended through lawyers of its selection, the insureds in policies issued or to be issued by it, in accordance with the terms of such policies; and shall not prohibit one such licensed attorney at law from acting for several common-carrier corporations or any of its subsidiaries pursuant to arrangement between said corporations; and shall not prohibit any bona fide labor organization from giving legal advice to its members in matters arising out of their employment; and shall not prohibit any person from conferring or cooperating with a licensed attorney at law of another in preparing any legal document, if such attorney is not, directly or indirectly, in the employ of such person or of any person, firm, or corporation represented by such person; and shall not prohibit any licensed attorney at law of Minnesota, who is an officer or employee of a corporation, from drawing, for or without compensation, any document to which the corporation is a party or wherein it is interested personally or in a representative capacity, except wills or testamentary dispositions or instruments of trust serving purposes similar to those of a will, but any charge made for the legal work connected with preparing and drawing such document shall not exceed the amount paid to and received and retained by such attorney, and such attorney shall not, directly or indirectly, rebate the same to or divide the same with such corporations; and shall not prohibit any person or corporation from drawing, for or without a fee, farm or house leases, notes, mortgages, chattel mortgages, bills of sale, deeds, assignments, satisfactions or any other conveyances except testamentary dispositions and instruments of trust; and shall not prohibit a licensed attorney at law of Minnesota from rendering to a corporation legal services to itself at the expense of one or more of its bona fide principal stockholders by whom he is employed and by whom no compensation is, directly or indirectly, received for such services; and shall not prohibit any person or corporation engaged in the business of making collections from engaging or turning over to an attorney at law for the purpose of instituting and conducting suit or making proof of claim of a creditor in any case in which the attorney at law receives the entire compensation for such work; and shall not prohibit any regularly established farm journal or newspaper, devoted to general news, from publishing a department of legal questions and answers thereto, made by a licensed attorney at law, if no such answer be accompanied or at any time preceded or followed by any charge for such answer, any disclosure of any name of the maker of any answer, any recommendation of or reference to any one to furnish legal advice or services, or by any legal advice or service for such periodical or any one connected with it or suggested by it, directly or indirectly.



**481.03 ATTORNEYS SHALL NOT EMPLOY BROKERS.** No attorney at law shall, through any runner, agent or person not an attorney at law who is employed by him, solicit a person to employ such attorney to present such claim for damages for personal injuries or for death, or to prosecute an action to enforce such a claim, and no attorney at law shall, directly or indirectly, give a person any money, fee or commission in consideration of the employment of such attorney by a person having a claim for personal injuries or for death, or soliciting or procuring such person who has such claim to employ such attorney to present such claim or to prosecute an action for the enforcement thereof.

[ 1929 c 289 s 1 ] (5687-5)

**481.04 SOLICITING OF BUSINESS BY PERSONS OTHER THAN ATTORNEYS; PROHIBITION.** It shall be unlawful for any person not an attorney at law to solicit for money, fee or commission, in any manner whatsoever, any demand or claim for personal injuries or for death for the purpose of having an action brought thereon for the purpose of settling the same. Nothing in sections 481.03 to 481.05 shall be construed to prevent any bona fide labor organization or any member thereof from advising or securing advice for any member of such organization in regard to his rights.

[ 1929 c 289 s 2 ] (5687-6)

**481.05 VIOLATIONS; PENALTIES.** Subdivision 1. Any attorney at law who shall violate section 481.03 shall be guilty of a misdemeanor and punished by a fine of not less than \$50 nor more than \$100 or by imprisonment in the county jail for not more than 90 days.

Subd. 2. Any person who shall violate section 481.04 shall be guilty of a misdemeanor and punished by a fine of not less than \$50 nor more than \$100 or by imprisonment in the county jail for not to exceed 90 days.

[ 1929 c 289 s 3 ] (5687-7)

**481.06 GENERAL DUTIES.** Every attorney at law shall:

- (1) Observe and carry out the terms of his oath;
- (2) Maintain the respect due to courts of justice and judicial officers;
- (3) Counsel or maintain such causes only as appear to him legal and just; but he shall not refuse to defend any person accused of a public offense;
- (4) Employ, for the maintenance of causes confided to him, such means only as are consistent with truth, and never seek to mislead the judges by any artifice or false statement of fact or law;

(5) Keep inviolate the confidences of his client, abstain from offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness, unless the justice of his cause requires it,

(6) Encourage the commencement or continuation of no action or proceeding from motives of passion or interest; nor shall he, for any consideration personal to himself, reject the cause of the defenseless or oppressed.

[ RL s 2281 ] (5688)

**481.07 PENALTIES FOR DECEIT OR COLLUSION.** An attorney who, with intent to deceive a court or a party to an action or judicial proceeding, is guilty of or consents to any deceit or collusion, shall be guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, he shall be liable to the party injured in treble damages. If he permit any person not his general law partner to begin, prosecute, or defend an action or proceeding in his name, the attorney giving such permission, and every person so using his name, shall forfeit \$50 to the party against whom the action or proceeding is prosecuted or defended, recoverable in a civil action.

[ RL s 2282 ] (5689)

**481.071 MISCONDUCT BY ATTORNEYS.** Every attorney or counselor at law who shall be guilty of any deceit or collusion, or shall consent thereto, with intent to deceive the court or any party, or who shall delay his client's suit with a view to his own gain shall be guilty of a misdemeanor and, in addition to the punishment prescribed by law therefor, he shall forfeit to the party injured treble damages, to be recovered in a civil action.

[ RL s 4856 ] (10044)

**481.08 AUTHORITY.** An attorney may bind his client, at any stage of an action or proceeding, by agreement made in open court or in the presence of the clerk, and entered in the minutes by such clerk, or made in writing and signed by such attorney. During any proceeding or action the attorney may receive money claimed therein by his client, and within two years after judgment, upon payment thereof, may discharge the claim or acknowledge satisfaction of the judgment; but all such authority shall cease upon the substitution of another attorney.

[ RL s 2283 ] (5690)

**481.09 PROOF OF AUTHORITY.** A court, upon motion and hearing, and when reasonable grounds are shown, may require any attorney to prove his authority to appear and, until such proof is made, may stay all proceedings by him on behalf of the party he assumes to represent. At any stage of the proceedings the court may relieve a party from the consequences of the unauthorized acts of an attorney and, upon motion, may summarily compel such attorney to repair any injury resulting therefrom.

[ RL s 2284 ] (5691)

**481.10 CONSULTATION WITH PERSONS RESTRAINED.** All officers or persons having in their custody a person restrained of his liberty upon any charge or cause alleged, except in cases where imminent danger of escape exists, shall admit any resident attorney retained by or in behalf of the person restrained, or whom he may desire to consult, to a private interview at the place of custody. Such custodians, upon request of the person restrained, as soon as practicable, and before other proceedings shall be had, shall notify any attorney residing in the county of the request for a consultation with him. Every officer or person who shall violate any provision of this section shall be guilty of a misdemeanor and, in addition to the punishment prescribed therefor shall forfeit \$100 to the person aggrieved, to be recovered in a civil action.

[ RL s 2285 ] (5692)

**481.11 CHANGE OF ATTORNEY.** The attorney in a civil action or proceeding may be changed at any time. When such change is made, written notice of the substitution of a new attorney shall be given to adverse parties; until such notice, they shall recognize the former attorney.

[ RL s 2286; 1976 c 304 s 1 ] (5693)

**481.12 DISABILITY; SUBSTITUTION.** When the sole attorney of a party to any action or proceeding in any court of record dies, becomes insane, or is removed or suspended, the party for whom he appears shall appoint another attorney within ten days after the disability arises, and give immediate written notice of the substitution to the adverse party. If he fail to make substitution within such time, the adverse party, at least 20 days before taking further proceedings against him, shall give him written notice to appoint another attorney. When, for any reason, the attorney for a party ceases to act, and the party has no known residence within the state, such notice may be served upon the clerk of the court. In case such party fails either to comply with the notice or appear in person within 30 days, he shall not be entitled to notice of subsequent proceedings in the case.

[ RL s 2287 ] (5694)

**481.13 LIEN FOR ATTORNEYS' FEES.** An attorney has a lien for his compensation whether the agreement therefor be expressed or implied:

(1) Upon the cause of action from the time of the service of the summons therein, or the commencement of the proceeding, and upon the interest of his client in any money or property involved in or affected by any action or proceeding in which he may have been employed, from the commencement of the action or proceeding, and, as against third parties, from the time of filing the notice of such lien claim, as provided in this section.

(2) Upon a judgment, and whether there be a special agreement as to compensation, or whether a lien is claimed for the reasonable value of the services, the lien shall extend to the amount thereof from the time of giving notice of his claim to the judgment debtor, but this lien is subordinate to the rights existing between the parties to the action or proceeding;

(3) The lien thereof determines the priority of the lien to such lien, or to show cause therefor, terminated, by the

Judgment due.

(4) If the judgment shall be filed in the county within in personal property shall be filed in the county.

[ RL s 2288 ]

**481.14** Any attorney shall refuse to receive them in any case, upon petition which the attorney of the county shall make delivery for contempt, right, including any, due such deduction therefrom.

[ RL s 2289 ]

**481.15** Any law may be repealed or amended by causes arising therefrom.

(1) Upon any turpitude, (in the presence). This court;

(2) Upon any guilty of any crime;

(3) For any act connected with the law.

(4) For any law.

Subd. 2. Any court on its own motion may be executed, heard to time, by the person, and the procedure; and shall be evidence and designated by necessary expenses. Officers and the fees and compensation shall be paid by the court.

(3) The liens provided by clauses (1) and (2) may be established, and the amount thereof determined, by the court, summarily, in the action or proceeding, on the application of the lien claimant or of any person or party interested in the property subject to such lien, on such notice to all parties interested therein as the court may, by order to show cause, prescribe, or such liens may be enforced, and the amount thereof determined, by the court, in an action for equitable relief brought for that purpose.

Judgment shall be entered under the direction of the court, adjudging the amount due.

(4) If the lien is claimed on the client's interest in real estate involved in or affected by the action or proceeding, such notice of intention to claim a lien thereon shall be filed in the office of the county recorder or registrar of titles, where appropriate, and therein noted on the certificate or certificates of title affected, in and for the county within which the same is situated. If the lien is claimed on the client's interest in personal property involved in or affected by the action or proceeding, the notice shall be filed in the same manner as provided by law for the filing of a security interest.

[ *RL s 2288; 1917 c 98; 1939 c 394; 1976 c 181 s 2; 1976 c 304 s 2* ] (5695)

**481.14 REFUSAL TO SURRENDER PROPERTY TO CLIENTS.** When an attorney shall refuse to deliver money or papers to a person from or for whom he has received them in the course of his professional employment, he may be required to do so, upon petition, by an order of court. Such order may be granted by the court in which the action was prosecuted, or, if no action was prosecuted, by the district court of the county where he resides, or by the supreme court, and may require him to make delivery within a time specified, or show cause why he should not be punished for contempt. In the event an attorney shall retain money of a client under a claim of right, including a claim for fees and expenses, the court shall determine the amount, if any, due such attorney, and shall order that any surplus amount remaining after deduction thereof be surrendered to the client.

[ *RL s 2289; 1976 c 304 s 3* ] (5696)

**481.15 REMOVAL OR SUSPENSION.** Subdivision 1. **Causes.** An attorney at law may be removed or suspended by the supreme court for any one of the following causes arising after his admission to practice:

(1) Upon his being convicted of a felony, or of a misdemeanor involving moral turpitude, (in either of which cases the record of conviction shall be conclusive evidence). This clause shall not be construed to apply to a conviction for contempt of court;

(2) Upon a showing that he has knowingly signed a frivolous pleading, or been guilty of any deceit or wilful misconduct in his profession;

(3) For wilful disobedience of an order of court requiring him to do or forbear an act connected with or in the course of his profession;

(4) For a wilful violation of his oath, or of any duty imposed upon an attorney by law.

**Subd. 2. Proceedings.** Proceedings in such cases may be taken by the supreme court on its own motion, for matter within its knowledge, or upon accusation. Accusations may be made to the clerk of the supreme court and shall be investigated, prosecuted, heard and determined in accordance with rules which may be made, from time to time, by the supreme court. The supreme court may refer any accusation to any person, and such person shall have all the powers of a referee under the rules of civil procedure; objections to such referee may be filed within ten days of the appointment and shall be heard and determined by the supreme court. The referee shall report the evidence and, if directed by the supreme court, shall make findings thereon. Persons designated by the supreme court under the authority of this section shall be paid their necessary expenses and such compensation as shall be fixed by the supreme court. Officers and witnesses necessarily employed or called by the prosecution shall receive the fees and mileage allowed by law and the supreme court shall fix a reasonable compensation for the reporter. All expenses, fees and compensation herein authorized shall be paid upon itemized vouchers approved by one of the justices of the supreme court.

Subd. 3. Notice to attorney general. The administrative director of the state board of professional responsibility shall notify the attorney general of each complaint made to him directly or reported to him by a district ethics committee. The administrative director and each district ethics committee shall inform each complainant that if he is not satisfied with the disposition made by them, he may take his complaint to the attorney general. The attorney general may investigate accusations of dishonesty, fraud, or professional misconduct made against attorneys, and may petition the state board of professional responsibility for the disbarment, suspension, or reprimand of the attorney complained against whenever, in the opinion of the attorney general, the action is necessary to protect the public of this state. The attorney general may appeal the decision of the state board of professional responsibility to the supreme court. The accusation and all proceedings thereon shall remain private within the meaning of section 15.162, subdivision 5a, except as necessary to support a petition for disciplinary action.

[ RL s 229C: 1921 c 334 s 1; 1933 c 79; 1969 c 399 s 49; 1973 c 501 s 17; 1976 c 239 s 118; 1976 c 304 s 4; 1977 c 403 s 11 ] (5697)

**481.16 CERTAIN ATTORNEYS NOT TO DEFEND CERTAIN PROSECUTIONS; PENALTY.** Every attorney who shall, directly or indirectly, advise in relation to, or aid or promote the defense of, any action or proceeding in any court, the prosecution of which shall be carried on, aided, or promoted by any person as county attorney or other public prosecutor with whom such attorney shall be, directly or indirectly, connected as partner, or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as county attorney or other public prosecutor, shall afterwards, directly or indirectly, advise in relation to, or take any part in, the defense thereof, as attorney or otherwise, or who shall take or receive any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatsoever, expressed or implied, having relation to the defense thereof, shall be guilty of a misdemeanor.

[ RL s 5181 ] (10519)

**481.17 COUNTY, CITY, AND SCHOOL DISTRICT ATTORNEYS.** In all counties in this state having a population of not more than 12,000, the offices of county attorney, city attorney, and school district attorney shall not be deemed incompatible and may be held by the same person.

[ 1969 c 649 s 1; 1973 c 123 art 5 s 7 ]

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Title: Civil Practice Law + Rules

## ARTICLE 94

### Admission to Practice

- 9401. Committee
- 9402. Application for admission
- 9403. Referral to another judicial district
- 9404. Certificate of character and fitness
- 9405. Prior application
- 9406. Proof
- 9407. Filing

#### HISTORY:

Add, L 1962, ch 308, eff Sept 1, 1963.

#### ADVISORY COMMITTEE NOTES:

The rules in this article are virtually identical with RCP 1. It is retained without change because the advisory committee does not consider admission to practice within the scope of its authority to revise procedure. The provision is retained in rule form to facilitate its administration by the courts.

#### RESEARCH REFERENCES AND PRACTICE AIDS:

##### Annotations:

Licensing and regulation of attorneys as restricted by rights of free speech, expression, and association under First Amendment. 27 L Ed 2d 953.

#### Rule 9401. Committee

The appellate division in each judicial department shall appoint a committee of not less than three practicing lawyers for each judicial district within the department, for the purpose of investigating the character and fitness of every applicant for admission to practice as an attorney and counselor at law in the courts of this state. Each member of such committee shall serve until his death, resignation or the appointment of his successor. A lawyer who has been or who shall be appointed a member of the committee for one district may be appointed a member of the committee for another district within the same department.

#### HISTORY:

Add, L 1962, ch 308, eff Sept 1, 1963.

Earlier rules: RCP 1; Gen Rules Pr 1.

#### RESEARCH REFERENCES AND PRACTICE AIDS:

7 Am Jur 2d, Attorneys at Law §§ 8-11.

##### Annotations:

Procedural due process requirements in proceedings involving applications for admission to bar. 2 ALR3d 1266.

Practice by attorneys and physicians as corporate entities or associations under professional service corporation statutes. 4 ALR3d 383.

Court review of bar examiners' decision on applicant's examination. 39 ALR3d 719.

Frequency of appearance of out-of-state attorney as affecting right to admission for particular case. 61 ALR3d 264.

Licensing and regulation of attorneys as restricted by rights of free speech, expression, and association under First Amendment. 27 L Ed 2d 953.

## CASE NOTES

Ultimate responsibility for regulating admission to practice law is vested in the Court of Appeals, and the several Appellate Divisions do not have authority to deny an applicant admission to the bar on the basis of their independent determination that he has not demonstrated adequate general or

legal educational preparation or qualification; the authority delegated to the Appellate Divisions is limited to the area of moral character and individual integrity. *Shaikh v Appellate Div. of Supreme Court, Third Judicial Dept.* (1976) 39 NY2d 676, 385 NYS2d 514, 350 NE2d 902.

## CASE NOTES

## UNDER FORMER CIVIL PRACTICE LAWS

1. Generally
2. Character and fitness
3. Disbarment in foreign state

as used in Judiciary Law, § 90, to call upon the committee on character and fitness to examine into a candidate's academic or legal learning. *Re Brennan* (1930) 230 AD 218, 243 NYS 705.

## 1. Generally

As to appointment of a member of the committee on character and fitness of applicants for admission to the bar, see *Re Curtis* (1924) 207 AD 862, 203 NYS 926; *Re Wysong*, 219 AD 834; *Re Griffing* (1927) 219 AD 723, 220 NYS 860.

## 2. Character and fitness

It was not intended by the words "general fitness,"

## 3. Disbarment in foreign state

Although committee on character and fitness reported, without recommendation, applicant's general character good, aside from implication flowing from disbarment in another state, he was not entitled to admission as a matter of right under claim that disbarment was void. *Re Peters* (1929) 250 NY 595, 166 NE 337.

**Rule 9402. Application for admission**

Every application for admission to practice pursuant to the provisions of paragraph a of subdivision one of section ninety of the judiciary law by a person who has been certified by the state board of law examiners, in accordance with the provisions of section four hundred sixty-four of said law, shall be referred to the committee for the district in which such person actually resided at the time of his application to take the bar examination or to dispense with such examination, as the case may be. Every application for admission to practice, which is made on motion without the taking of such examination, pursuant to the provisions of paragraph b of subdivision one of section ninety of the judiciary law by a person already admitted to practice in another jurisdiction, shall be referred to the committee for the district in which such person actually resided at the time of such application.

**HISTORY:**

Add, L 1962, ch 308, eff Sept 1, 1963.  
Earlier rules: RCP 1; Gen Rules Pr 1.

**CROSS REFERENCES:**

This rule referred to in CPLR 9403.  
Examination and admission of attorneys, Jud Law § 460.  
Unauthorized practice of law; practice without admission, Jud Law §§ 476-a et seq., 478, 484.

**CODES, RULES AND REGULATIONS:**

Rules for admission of attorneys and counselors at law, Court of Appeals, 22 NYCRR §§ 520.1 et seq. (CLS Court of Appeals Rules §§ 520.1 et seq.)  
Rules on admission to practice, Appellate Division, First Department, 22 NYCRR

**Rule 9403. Referral to another judicial district**

Notwithstanding Rule 9402, any application for admission to practice pending before a committee, may be referred to the committee for another judicial district in the same or another department by order or direction of the presiding justice of the appellate division of the department embracing the district in which the application is pending. Such order or direction may be made only upon the written request of the chairman or acting chairman of the committee before which the application is pending and only upon his written certification either:

1. that the applicant, since he applied to take the bar examination or to dispense with such examination or since he applied on motion to be admitted to practice, has changed his actual residence to such other judicial district in the same or other department; or
2. that the majority of the members of such committee are not qualified to vote on the application or have disqualified themselves from voting or have refrained from voting thereon; or
3. that the members of such committee are equally divided in their opinion as the application.

**HISTORY:**

Add, L 1962, ch 308, and by Judicial Conference eff Sept 1, 1973.  
Earlier rules: RCP 1; Gen Rules Pr 1.

**NOTE:**

Prior to the 1973 amendment Rule 9403 only authorized transfers from one committee on character and fitness to another within a department. Due to the increased mobility of law students, applications to an inconvenient appellate division were common. The State Board of Law Examiners certified an applicant to the appellate division where he was residing at the time of his application to take the bar examination. Under then existing timetables, six months or more might elapse before admission. In that period of time an applicant might have moved across the state; yet he would be forced to return to the original department in which he resided.

This amendment permitted the presiding justice of the appellate division to transfer an application to a more appropriate committee on character and fitness in another department if the circumstances warrant it.

**Rule 9404. Certificate of character and fitness**

Unless otherwise ordered by the appellate division, no person shall be admitted to practice without a certificate from the proper committee that it has carefully investigated the character and fitness of the applicant and that, in such respects, he is entitled to admission. To enable the committee to make such investigation, the justices of the appellate division are authorized to prescribe and from time to time to amend a form of statement or questionnaire to be submitted by the applicant, including specifically his present and such past places of actual residence as may be required therein, listing the street and number, if any, and the period of time he resided at each place.

**HISTORY:**

Add, L 1962, ch 308, amd, L 1965, ch 675 and amd by Judicial Conference, eff Sept 1, 1973.  
Earlier rules: RCP 1; Gen Rules Pr 1.

**CODES, RULES AND REGULATIONS:**

Questionnaire and statement relating to admission to practice of attorneys in Appellate Division, Second Judicial Department. 22 NYCRR 690.1 (CLS App. Div. Rules—Second Judicial Dept. § 690.1).

**RESEARCH REFERENCES AND PRACTICE AIDS:**

1 Carmody-Wait 2d, Officers of Court § 3:46.

**Annotations:**

Validity and construction of rule or order requiring attorney to submit to physical or mental examination to determine capacity to continue in practice of law. 52 ALR3d 1326.

**Law Reviews:**

Concept of attorney-fitness in New York: new perspectives. 24 Buffalo L Rev 553.

**Forms:**

For affidavit of good moral character as part of application for admission to the bar, see forms following CPLR 9402.

**Rule 9405. Prior application**

In the event that any applicant has made a prior application for admission to practice in this state or in any other jurisdiction, then upon said statement or questionnaire or in an accompanying signed statement, he shall set forth in detail all the facts with respect to such prior application and its disposition. If such prior application had been filed in any appellate division of this state and if the applicant failed to obtain a certificate of good character and fitness from the appropriate character committee or if for any reason such prior application was disapproved or rejected either by said committee or said appellate division, he shall obtain and submit the written consent of said appellate division to the renewal of his application in that appellate division or in any other appellate division.

**HISTORY:**

Add, L 1962, ch 308, eff Sept 1, 1963.  
Earlier rules: RCP 1; Gen Rules Pr 1.

**Forms:**

For statement as to prior applications as part of application for admission to the bar, see forms following CPLR 9402.

**CASE NOTES**

Application for admission to Bar without examination was premature, where question of petitioner's fitness for admission to Bar without examination had been considered twice within the past two

months. Application of Shaikh (1975) 48 AD2d 738, 367 NYS2d 873, affd 39 NY2d 676, 385 NYS2d 514, 350 NE2d 902.

**Rule 9406. Proof**

No person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney and counselor at law in the courts of this state, unless he shall furnish satisfactory proof to the effect:

1. that he is loyal to the state;  
2. that he has not been suspended from practice for more than six months;  
3. that he has not been suspended from practice for more than six months on the basis of a finding of incompetency or disbarment;  
4. that he has not been suspended from practice for more than six months on the basis of a finding of unfitness to practice;  
5. that he has not been suspended from practice for more than six months on the basis of a finding of unfitness to practice;  
6. that he has not been suspended from practice for more than six months on the basis of a finding of unfitness to practice;  
7. that he has not been suspended from practice for more than six months on the basis of a finding of unfitness to practice;  
8. that he has not been suspended from practice for more than six months on the basis of a finding of unfitness to practice;  
9. that he has not been suspended from practice for more than six months on the basis of a finding of unfitness to practice;  
10. that he has not been suspended from practice for more than six months on the basis of a finding of unfitness to practice;

**HISTORY:**

Add, L 1962, ch 308, eff Sept 1, 1963.  
Sub 1, L 1962, ch 308, eff Sept 1, 1963.  
Sub 2, L 1962, ch 308, eff Sept 1, 1963.  
Form 1, L 1962, ch 308, eff Sept 1, 1963.  
Sub 3, L 1962, ch 308, eff Sept 1, 1963.  
Form 2, L 1962, ch 308, eff Sept 1, 1963.  
Sub 4, L 1962, ch 308, eff Sept 1, 1963.  
Earlier rules: RCP 1; Gen Rules Pr 1.

**NOTE:**

{1974} became effective December 1, 1974.

**CROSS REFERENCES:**

Certificate of Good Character and Fitness, L 1962, ch 308, eff Sept 1, 1963.

**RESEARCH REFERENCES:**

1 Carmody-Wait 2d, Officers of Court § 3:46.

**Annotations:**

Validity and construction of rule or order requiring attorney to submit to physical or mental examination to determine capacity to continue in practice of law. 52 ALR3d 1326.

**Law Reviews:**

Concept of attorney-fitness in New York: new perspectives. 24 Buffalo L Rev 553.

**Forms:**

For affidavit of good moral character as part of application for admission to the bar, see forms following CPLR 9402.

Provisions of this rule are not impermissible under the constitution of this state and whether they are validly enacted pursuant to the powers conferred upon the Legislature by the constitution of this state which had a bearing upon his character and reputation and portion of the public interest in organization.

1. that he believes in the form of the government of the United States and is loyal to such government;
2. that he has been an actual resident of the state of New York for six months immediately preceding the submission of his application for admission to practice and that such residence has continued until the final disposition of the application for admission to practice; and
3. that he has complied with all the requirements of this rule and with all the requirements of the applicable statutes of this state, the applicable rules of the court of appeals and the applicable rules of the appellate division in which his application is pending, relating to the admission to practice as an attorney and counselor at law.

**HISTORY:**

- Add, L 1962, ch 308, amd, L 1965, ch 675, eff Sept 1, 1965
- Sub 1, amd, L 1963, ch 532, eff Sept 1, 1963.
- Sub 2, formerly sub 3, renumbered by Judicial Conference, eff Sept 1, 1974.
- Former sub 2, repealed by Judicial Conference, eff Sept 1, 1974.
- Sub 3, formerly sub 4, renumbered 3 by Judicial Conference, eff Sept 1, 1974.
- Former sub 3, renumbered 2 by Judicial Conference, eff Sept 1, 1974.
- Sub 4, renumbered 3, by Judicial Conference, eff Sept 1, 1974.
- Earlier rules: RCP 1; Gen Rules Pr 1.

**NOTE:**

- [1974] The requirement that an attorney must be a citizen of the United States had become obsolete and unconstitutional in light of the United States Supreme Court decision in *In Re Griffiths*, 37 L Ed 2d 910 (1973).

**CROSS REFERENCES:**

- Certification of nonresident attorney who is employed full-time within the state, Jud Law § 464.

**RESEARCH REFERENCES AND PRACTICE AIDS:**

- 1 Carmody-Wait 2d, Officers of Court § 3:46.

**Annotations:**

- Validity and construction of statutes or rules conditioning right to practice law upon residence or citizenship. 53 ALR3d 1163.

**Forms:**

- For statements required by this rule included in application for admission to the bar, see forms following CPLR 9402.
- 5 Am Jur Pl and Pr Forms (Rev ed), Captions, Prayers, and Formal Parts, Forms 251-262.

**CASE NOTES**

Provisions of Judiciary Law § 90, subd 1(a), are not impermissibly vague, but portions of questionnaire used by two of New York Departments, pursuant to CPLR 9406, asking applicant for admission to bar whether he believed in principles underlying form of government of United States and whether there was any incident in his life which had a favorable or detrimental bearing on his character or fitness were impermissibly vague, and portion of questionnaire relative to membership in organizations advocating violent overthrow

of government, needed clarification. *Law Students Civil Rights Research Council, Inc. v Wadmond* (1969, DC NY) 299 F Supp 117, affd 401 US 154, 27 L Ed 2d 749, 91 S Ct 720.

New Jersey resident who rented hotel room in New York state in which he stayed from 2 to 4 nights per week for the purpose of establishing residence in New York to apply for admission to the bar was not an "actual resident" of the state as required by state. *Application of Tang* (1972) 39 AD2d 357, 333 NYS2d 964.

A state Connecticut court rule barring resident aliens from admission to the state bar violates the equal protection clause. *Re Griffiths* (1973) 413 US 717, 37 L Ed 2d 910, 93 S Ct 2851, on remand (Conn) 309 A2d 689.

Where application for admission to bar alleged that petitioner had been a resident of Hawaii and employed there as an associate with a law firm, but nothing in his moving papers showed that he had been an actual resident of New York for 6 months preceding submission of the application and that such residence has continued until the final disposition of the application, application would be denied without prejudice. Application of

*Lotsof* (1973) 42 AD2d 923, 349 NYS2d 62, affd 34 NY2d 952, 359 NYS2d 566, 316 NE2d 879.

The requirement that applicants for admission to the Bar be actual residents is reasonable and is designed to serve the compelling state interest of prevention of misconduct by itinerant or non-resident practitioners in their relations with clients or litigants in the New York courts. *Tang v Appellate Div. of New York Supreme Court, First Dept.* (1972, DC NY) 373 F Supp 800, affd (CA2 NY) 487 F2d 138, cert den 416, US 906, 40 L Ed 2d 111, 94 S Ct 1611 and (disagreed with *Getty v Reed* (CA6 Ky) 547 F2d 971).

### CASE NOTES

#### UNDER FORMER CIVIL PRACTICE LAWS

"Actual residence" means abode where one actually lives, and not mere naked legal residence. Application of *Horwitz* (1950) 276 AD 918, 94 NYS2d 430.

Application of Illinois attorney for admission to practice denied without prejudice to renewal upon completion of necessary period of residence in New York. Application of *Roth* (1942) 265 AD 828, 37 NYS2d 325.

Application for admission to Bar was denied for failure to prove actual residence in State of New York for not less than six months preceding making of application. Application of *McDonough* (1952) 280 AD 866, 113 NYS2d 780.

Application for admission to Bar was denied on ground that applicant failed to furnish satisfactory proof that he has been actual resident of New

York for not less than six months preceding his application. *Re Application of Kerno* (1956) 1 AD2d 972, 151 NYS2d 29.

Actual residence in New York for six months immediately preceding application for admission was not shown by fact that applicant had voted every year for eleven years since attaining his majority, by absentee ballot in County of Westchester, where he occupied no room anywhere in jurisdiction. *Re Lessey* (1955) 286 AD 1091, 148 NYS2d 918.

Application for admission to the bar was denied where the applicant failed to furnish satisfactory proof that he had been an actual resident of the state for not less than six months immediately preceding the making of such application. *Re Schiff* (1957) 3 AD2d 928, 163 NYS2d 382.

#### Rule 9407. Filing

Every application for admission to practice, together with all the papers submitted thereon, upon its final disposition by the appellate division shall be filed in the office of the clerk of such appellate division.

#### HISTORY:

Add, L 1962, ch 308, eff Sept 1, 1963.  
Earlier rules: RCP 1; Gen Rules Pr 1.

#### RESEARCH REFERENCES AND PRACTICE AIDS:

1 Carmody Wait 2d, *Officers of Court* § 3:45.

[CPLR 9408-9700 have been reserved for future use.  
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## § 8303. Additional allowance in the discretion of the court

**CROSS REFERENCES:**

This section referred to in CLS Educ Law § 213-b; CLS Gen Bus Law §§ 335-a, 396-k, 396-n, 399-a, 399-m, 716; CLS Pub Health Law § 4402; CLS NYC Civil Ct Act §§ 1901, 1904.

**ARTICLE 84****Taxation of Costs**

## § 8402. Taxation with notice

**CROSS REFERENCES:**

This section referred to in 8403.

**ARTICLE 85****Security for Costs****CROSS REFERENCES:**

This article referred to in CLS NYC Civil Ct Act § 1900; CLS UCCA § 1900; CLS UDCA § 1900; CLS UJCA § 1900.

## § 8503. Undertaking

**CROSS REFERENCES:**

This section referred to in CLS NYC Civil Ct Act § 1900; CLS UCCA § 1900; CLS UDCA § 1900; CLS UJCA § 1900.

**ARTICLE 94****Admission to Practice**

## Rule 9402. Application for admission

**CROSS REFERENCES:**

This rule referred to in 9403.

**Rule 9406. Proof**

No person shall receive said certificate from any committee and no person shall be admitted to practice as an attorney and counselor at law in the courts of this state, unless he shall furnish satisfactory proof to the effect:

[For sub 1, see parent volume]

2. that he has been an actual resident of the state of New York for six months immediately preceding the submission of his application for admission to practice; and

[For sub 3, see parent volume]

**HISTORY:**

Sub 2, amd. L 1978, ch 294, eff June 19, 1978, applicable to applications for admission to practice made after June 1, 1975.

The 1978 act deleted at fig 1 "and that such residence has continued until the final disposition of the application for admission to practice".

rather than an affidavit. Application of Phesay (1955) 285 AD 1097, 145 NYS2d 812.

Power of the Appellate Division to direct disposal of court records applies to justice courts. 1961 Ops Atty Gen Sept 18.

**§ 90. Admission to and removal from practice by appellate division; character committees.—**1. a. Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys.

b. Upon the application, pursuant to the rules of the court of appeals, of any person who has been admitted to practice law in another state or territory or the District of Columbia of the United States or in a foreign country, to be admitted to practice as an attorney and counsellor-at-law in the courts of this state without taking the regular bar examination, the appellate division of the supreme court in the department in which such person is an actual resident at the time of such application, if it shall be satisfied that such person possesses the character and general fitness requisite for an attorney and counsellor-at-law, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided, that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys.

c. The members of the committee appointed by the appellate division in each department to investigate the character and fitness of applicants for admission to the bar, shall be entitled to their necessary traveling, hotel and other expenses, incurred in the performance of their duties, payable by the state out of moneys appropriated therefor, upon certificate of the presiding justice of the appellate division by which such committee is appointed.

d. The committee on character and fitness appointed by the appellate division of the supreme court in the first judicial department and the committee on character and fitness appointed by the appellate division of the supreme court of the second judicial department, may each, with the written consent of the justices of each of such appellate divisions or a majority of such justices, acting for their respective appel-

late divisions, from time to time, appoint and remove a secretary, stenographers and assistants, and procure a suitable office for each committee, properly furnished and equipped and all books, stationery, blanks, postal cards, expressage and postage stamps as shall be required for the proper performance of the duties of each such committee.

e. The salaries of such secretary, stenographers and assistants shall be fixed for each department by the justices of the appellate division in each department or a majority of them in each department.

f. The salaries of such secretary, stenographers and assistants and the necessary expenses under the terms of this act in the first judicial department, shall, in the said first judicial department, be paid by the comptroller of the city of New York.

g. The salaries of such secretary, stenographers and assistants and the necessary expenses under the terms of this act in the second judicial department shall be certified by the presiding justice of such department to the state comptroller who shall audit the same. The state department of taxation and finance shall pay such salaries and expenses and shall apportion the same among the counties comprising the second judicial department. Such counties shall reimburse the state for such compensation. The time and method of such apportionment and the time and method of such reimbursement shall be as specified in section seventy-four of this chapter.

2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice; and the appellate division of the supreme court is hereby authorized to revoke such admission for any misrepresentation or suppression of any information in connection with the application for admission to practice.

It shall be the duty of the appellate division to insert in each order of suspension or removal hereafter rendered a provision which shall command the attorney and counsellor-at-law thereafter to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another. In addition it shall forbid the performance of any of the following acts, to wit:

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b. The giving to another of an opinion as to the law or its application, or of any advice in relation thereto.

In case of suspension only, the order may limit the command to the period of time within which such suspension shall continue, and if justice so requires may further limit the scope thereof.

If an attorney and counsellor-at-law has been heretofore removed from office, the appellate division shall upon application of any attorney and counsellor-at-law, or of any incorporated bar association, and upon such notice to the respondent as may be required, amend the order of removal by adding thereto as a part thereof, provisions similar to those required to be inserted in orders hereafter made.

If a certified copy of such order or of such amended order, be served upon the attorney and counsellor-at-law suspended or removed from office, a violation thereof may be punished as a contempt of court.

3. The suspension or removal of an attorney or counsellor-at-law, by the appellate division of the supreme court, operates as a suspension or removal in every court of the state.

4. Any person being an attorney and counsellor-at-law, who shall be convicted of a felony, shall, upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

Whenever any attorney and counsellor-at-law shall be convicted of a felony, the same may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be struck from the roll of attorneys.

5. Upon a reversal of the conviction for felony of an attorney and counsellor-at-law, or pardon by the president of the United States or governor of this or another state of the United States, the appellate division shall have power to vacate or modify such order or debarment. However, if such attorney or counsellor-at-law has been removed from practice in another jurisdiction, a pardon in said jurisdiction shall not be a basis for application for re-admission in this jurisdiction unless he shall have been re-admitted in the jurisdiction where pardoned.

6. Before an attorney or counsellor-at-law is suspended or removed as prescribed by this section, a copy of the charges against him must be delivered to him personally within or without the state or, in case it is established to the satisfaction of the presiding justice of the appellate division of the supreme court to which the

charges have been presented, that he cannot with due diligence be served personally, the same may be served upon him by mail, publication or otherwise as the said presiding justice may direct, and he must be allowed an opportunity of being heard in his defense. In all cases where the charges are served in any manner other than personally, and the attorney and counsellor-at-law so served does not appear, an application may be made by such attorney or in his behalf to the presiding justice of the appellate division of the supreme court to whom the charges were presented at any time within one year after the rendition of the judgment, or final order of suspension or removal, and upon good cause shown and upon such terms as may be deemed just by such presiding justice, such attorney and counsellor-at-law must be allowed to defend himself against such charges.

The justices of the appellate division in any judicial department, or a majority of them, may make an order directing the expenses of any disciplinary proceedings, and the necessary costs and disbursements of the petitioner in prosecuting such charges, including the expense of any preliminary investigation in relation to professional conduct of an attorney and counsellor-at-law, to be paid by the county treasurer of a county within the judicial department, which expenses shall be a charge upon such county.

7. In addition to the duties prescribed by section seven hundred of the county law, it shall be the duty of any district attorney within a department, when so designated by the justices of the appellate division of the supreme court in such department, or a majority of them, to prosecute all proceedings for the removal or suspension of attorneys and counsellors-at-law or the said justices, or a majority of them may appoint any attorney and counsellor-at-law to conduct a preliminary investigation and to prosecute any disciplinary proceedings and, during or upon the termination of the investigation or proceedings, may fix the compensation to be paid to such attorney and counsellor-at-law for the services rendered which compensation shall be a charge against the county specified in his certificate and shall be paid thereon.

8. Any petitioner or respondent in a disciplinary proceeding against an attorney or counsellor-at-law under this section, including a bar association or any other corporation or association, shall have the right to appeal to the court of appeals from a final order of any appellate division in such proceeding upon questions of law involved therein, subject to the limitations prescribed by article six, section seven, of the constitution of this state.

9. No objection shall be taken to the appointment of any member of the bar to act as referee or judge in a disciplinary proceeding under this

section on the ground that he is a member of a bar association or other corporation or association which is the petitioner therein.

10. Any statute or rule to the contrary notwithstanding, all papers, records and documents upon the application or examination of any person for admission as an attorney and counsellor at law and upon any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney or attorneys, shall be sealed and be deemed private and confidential. However, upon good cause being shown, the justices of the appellate division having jurisdiction are empowered, in their discretion, by written order, to permit to be divulged all or any part of such papers, records and documents. In the discretion of the presiding or acting presiding justice of said appellate division, such order may be made either without notice to the persons or attorneys to be affected thereby or upon such notice to them as he may direct. In furtherance of the purpose of this subdivision, said justices are also empowered, in their discretion, from time to time to make such rules as they may deem necessary. Without regard to the foregoing, in the event that charges are sustained by the justices of the appellate division having jurisdiction in any complaint, investigation or proceeding relating to the conduct or discipline of any attorney, the records and documents in relation thereto shall be deemed public records.

**HISTORY:**

Formerly § 88, renumbered and amd, L. 1945, ch 649, eff Apr 9, 1945, with which is merged §§ 476-478  
 Former § 90, add, L. 1909, ch 35, repealed, L. 1938, ch 494  
 Section heading amd, L. 1949, ch 701, eff Apr 20, 1949  
 Sub 1, amd, L. 1949, ch 701, eff Apr 20, 1949  
 Sub 1, par c, amd, L. 1962, ch 310, § 205, eff Sept 1, 1963  
 Sub 1, par d, amd, L. 1962, ch 310, § 206, eff Sept 1, 1963  
 See 1962 note under § 2-a  
 Sub 1, par g, amd, L. 1958, ch 960, eff Oct. 1, 1959  
 Sub 5, amd, L. 1969, ch 743, eff Sept 1, 1969  
 Sub 6, amd, L. 1961, ch 733, eff Apr 22, 1961  
 Sub 7, amd, L. 1961, ch 733, eff Apr 22, 1961  
 Sub 10, formerly § 88, sub 8, renumbered, L. 1946, ch 241  
 Laws 1958, ch 960, eff Oct 1, 1959, also provides as follows:

§ 31. Reference in any general, special or local law, county, city or village charter or other special form of government, ordinance, resolution, rule, regulation or document to any provision of law amended or repealed by this act, in force at the time this shall take effect, shall be deemed and construed to refer to the corresponding provision of law, as re-enacted or amended by this act.

§ 32. Pending actions and proceedings. No action or proceeding pending at the time when this act shall take effect shall be affected by any provision of this act, but the same may be prosecuted, defended or enforced as if this act had not been enacted.

§ 33. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost,

impaired or affected by reason of this act, nor shall the validity of any action taken by any public official under the law in force immediately prior to the time this act shall take effect be affected by the enactment of this act.

**NOTE:**

[1958] It was the purpose of this act to amend the several laws set out therein so as to reflect either the repeal of various portions of the Tax Law and the Village Law by the Real Property Tax Law or the incorporation in the Real Property Tax Law of provisions relating to the assessment and taxation of real property.

**CROSS REFERENCES:**

- This section referred to in § 53, CPLR 9402.
- Practice of law by attorney who has been disbarred, suspended, or convicted of a felony, § 496.
- Practicing or appearing as attorney at law without being admitted and registered, § 478.
- Notice of attorney's conviction of felony, § 486-a.

**RESEARCH REFERENCES AND PRACTICE AIDS:**

- 1 Carmody-Wait 2d, Courts and Their Jurisdiction § 2:168
- 1 Carmody-Wait 2d, Officers of Court §§ 3:44, 3:45, 3:51, 3:58, 3:61, 3:70, 3:126, 3:184, 3:202-3:208, 3:212, 3:216, 3:217, 22 Carmody-Wait 2d, Contempt Proceedings § 140:38
- 7 Am Jur 2d, Attorneys at Law § 1 et seq

**Annotations:**

- Pardon as defense to disbarment of attorney, 69 ALR3d 466
- Federal income tax conviction as involving moral turpitude warranting disciplinary action against attorney, 63 ALR3d 476
- Federal income tax conviction as constituting nonprofessional misconduct warranting disciplinary action against attorney, 63 ALR3d 512
- Use in disbarment proceeding of testimony given by attorney in criminal proceeding under grant of immunity, 62 ALR3d 1145
- Frequency of appearance of out-of-state attorney as affecting right to admission for particular case, 61 ALR3d 264
- Entrapment as a defense in proceedings to revoke or suspend license to practice law or medicine, 61 ALR3d 357
- Pardon as restoring license to practice law or eligibility therefor, 58 ALR3d 1200
- Executor, disciplinary proceedings based upon attorney's naming of himself or associate as executor or attorney for executor in will drafted by him, 57 ALR3d 703
- Misconduct in capacity as judge as basis for disciplinary action against attorney, 57 ALR3d 1150
- Attorney's liability for malpractice in connection with defense of criminal case, 53 ALR3d 731
- Validity and construction of statutes or rules conditioning right to practice law upon residence or citizenship, 53 ALR3d 1163
- Attorney's liability, to one other than his immediate client, for consequences of negligence in carrying out legal duties, 45 ALR3d 1181
- Sexual misconduct as ground for disciplinary action against attorney, 36 ALR3d 735
- Attorney and client: Disciplinary proceeding based upon attorney's direct or indirect purchase of client's property, 35 ALR3d 674

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CHAPTER 4705: ATTORNEYS

Section  
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 4705.02 Suspension or removal of an attorney.  
 4705.03 Proceedings against attorney.  
 4705.04 Review of proceedings.  
 4705.05 Expenses and costs.  
 4705.06 Liability of attorneys; prosecution.  
 4705.07 False representation as attorney.  
 4705.08 Compensation for procurement of legal services prohibited.  
 4705.99 Penalty.

§ 4705.01 Practice of law; prohibitions.

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. Admission to the bar shall entitle such person to practice before any court or administrative tribunal without further qualification or license.

No sheriff, deputy sheriff, or coroner shall practice as an attorney at law in any court of this state, and no clerk of the supreme court or court of common pleas, or the deputy of either, shall practice in the particular court of which he is clerk or deputy.

No judge of any court of record in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in section 1901.11 of the Revised Code.

A judge may complete any business undertaken by him in the United States district court, the United States circuit court of appeals, or the supreme court of the United States prior to his election as judge.

**HISTORY:** Bureau of Code Revision, 125 v 253. EB 10-2-55.

**Ed. Note**

This section is derived from CC §§ 1698 and 1706.

**Cross-References to Related Sections**

Allidavits by, RC §§ 2309.53, 2319.13, 2331.03, 2713.02, 2715.03, 2715.11, 2715.51, 2737.02.  
 Arrest, privilege from, RC § 2331.11 et seq.  
 Examiner of titles cannot act as attorney in any proceedings to register land title, RC § 5309.04.  
 Incorporation of professional association, RC § 1785.01 et seq.  
 Municipal court judge, RC § 1901.11.  
 Privileged communications, RC § 2317.02.  
 Probate judge not to practice, RC § 2101.41.

Prosecuting attorney must be an attorney at law, RC § 309.02.

**Comparative Legislation**

**Attorneys:**

Cal.—Deering, Bus & P, § 6000  
 Ill.—Rev Stat, 1965, ch 13, § 1  
 Ind.—Code § 33-2-3-1  
 Ky.—KRS 30.020  
 Mass.—Ann Laws, ch 221, § 35  
 Mich.—Stats Ann, Compiled, § 600.901  
 N.Y.—Consol Laws, CPLR 9401  
 Pa.—Purdon's Stat, Tit. 17, § 1602  
 Tenn.—Code Ann, 29-102  
 W. Va.—Code 1966, 30-2-1

**Ohio Rules**

Admission to the practice of law. Gov. R. I.  
 Legal professional associations authorized to practice law. Gov. R. III.  
 Limited practice of law by legal interns. Gov. R. II.  
 Registration of attorneys. Gov. R. VII.  
 Unauthorized practice of law. Gov. R. VIII.

**Research Aids**

**Attorney-client relation**

6 O-Jur2d: Attorneys § 80  
 7 Am-Jur2d: Attorneys § 91 et seq  
 Termination of  
 6 O-Jur2d: Attorneys § 81 et seq  
 7 Am-Jur2d: Attorneys § 138 et seq

**Compensation**

6 O-Jur2d: Attorneys § 110 et seq  
 7 Am-Jur2d: Attorneys § 203 et seq

**Liens**

6 O-Jur2d: Attorneys § 135 et seq  
 7 Am-Jur2d: Attorneys §§ 218, 272 et seq

**Nature and duties of office**

6 O-Jur2d: Attorneys § 4  
 7 Am-Jur2d: Attorneys §§ 3, 4

**Partnerships, corporations**

6 O-Jur2d: Attorneys §§ 7, 73  
 7 Am-Jur2d: Attorneys § 83

**Right to practice**

6 O-Jur2d: Attorneys § 6  
 7 Am-Jur2d: Attorneys § 8

**ALR**

Court review of bar examiners' decision on applicant's examination. 39 ALR3d 719.  
 Drafting of will or other estate-planning activities as illegal practice of law. 22 ALR3d 1112.  
 Effect of removal of member of bar from state. 160 ALR 1372.  
 Good moral character as requisite for admission to bar. 64 ALR2d 301.  
 Integration of bar. 151 ALR 617.  
 Making collections as practice of law. 157 ALR 522.  
 Misconduct as judicial officer as basis for disciplinary action against attorney. 53 ALR2d 305.  
 Representation of conflicting interests as disqualifying attorney from acting in a civil case. 31 ALR3d 715.  
 Right of corporation to perform or to hold itself out as ready to perform functions in the nature of legal services. 157 ALR 282.  
 Practice of law through radio broadcasting station. 114 ALR 1506.  
 Procedural due process requirements in proceedings involving applications for admission to bar. 2 ALR3d 1266.  
 Services in connection with tax matters as practice of law. 9 ALR2d 797.

of corporation or appointed agent not admitted to the practice of law: *Union Savings Assn. v. Home Owners Aid*, 23 OS2d 60, 52 OO2d 329, 262 NE2d 558.

49. The statutes of this state recognizing title guarantee and trust companies were enacted for the purpose of enabling such companies to guarantee titles to real estate, but not for the purpose of performing acts which constitute the practice of law; GC § 9850 (RC § 1735.01), authorizing title guarantee and trust companies to prepare and furnish abstracts and certificates of title to real estate, does not permit such companies to issue a certificate containing an opinion as to the condition or validity of titles which are not guaranteed by such companies: *Land Title Abstract &c. Co. v. Dworken*, 129 OS 23, 1 OO 313, 193 NE 650.

50. Title guarantee companies are precluded from the preparation of or advising in the drafting of escrow agreements and instructions, other than the clerical service of recording the stated agreement of the parties to the transaction, and except as to provisions necessary for the protection of any such company as escrow agent: *Land Title Abstract &c. Co. v. Dworken*, 129 OS 23, 1 OO 313, 193 NE 650.

51. Furnishing opinions in proceedings in court, as to necessary parties thereto, and preparing and advising in relation to conveyances and other papers pertaining to real estate transactions, for the benefit of others, are acts falling within the practice of law and may not be performed by guarantee companies except wherein they have a direct or primary interest: *Land Title Abstract &c. Co. v. Dworken*, 129 OS 23, 1 OO 313, 193 NE 650.

52. An exhaustive discussion of the illegal practice of law by title companies and real estate brokers and a decree limiting their activities: *State Bar of Arizona v. Arizona Land Title and Trust Co.*, 87 OLA 418, 366 P2d 1 (SCT, Ariz.).

53. (1964) A bank which, as a regular program through its trust department, gives individual estate analysis in the light of legal considerations and particular circumstances, thereby engages in the practice of law unauthorizedly: *Green v. The Huntington National Bank*, 3 OApp2d 62, 30 OO2d 124, 209 NE2d 228.

54. (1965) Held: operations of collection agency were illegal practice of law even though accounts receivable were ostensibly purchased by it. In re *Incorporated Consultants*, 35 OO2d 280, 6 OMisc 143, 216 NE2d 912 (CP).

55. A contract by which a title company contracts to furnish the Ohio turnpike commission with a statement of title defects and encumbrances and the actions which the company will require prior to issuing a title policy or title guaranty is invalid as constituting the practice of law by a corporation: *Steer v. Land Title Guarantee and Trust Co.*, 65 OLA 33, 115 NE2d 763 (CP).

56. (1963) Held: unsolicited action by "heir hunting" organization held to be unauthorized practice of law, and hence assignments by heirs to it would not be recognized: In re *Estate of Rice*, 92 OLA 449, 24 OO2d 379, 193 NE2d 566 (PC).

#### Practice of law by judges

61. An attorney appointed by the court to represent the accused who is only a part-time judge who would serve only in the absence of the regular municipal court judges is disqualified from the practice of law as to matters pending or originating in the court in which he serves during his term of office: *Thomas v. Maxwell*, 175 OS 233, 24 OO2d 344, 193 NE2d 150.

62. (1973) Ohio Const, Art IV, § 6(B), prohibits an assistant county prosecuting attorney from also serving as a part-time municipal court judge: OAG

No.73-082.

63. (1972) A county judge or a part-time judge of a municipal court may engage in the defense of individuals accused of a crime so long as the matter is not related to matters pending or originating in the court on which the judge sits during the judge's term of office: OAG No.72-019.

64. (1967) While a county court judge may not represent defendants wherein the state of Ohio is plaintiff in criminal actions instituted in the county court to which that judge is elected, he may, however, represent such defendants in criminal actions which originated in courts of the county other than the one to which he was elected to serve as judge, or in criminal actions in counties other than the one for which he was elected to serve as judge: OAG No. 67-119.

65. (1967) A probate judge may finish business commenced by him prior to his election provided it is not connected with his official duty: OAG No.67-034.

66. (1965) A mayor's court created by RC § 1905.01 is not a court of record within the meaning of this section: OAG No.65-21.

67. (1962) The provisions of RC § 1907.08.1, a special statute pertaining to the practice of law by judges of county courts, constitute an exception to the provisions of this section, a general statute barring judges of courts of record from practicing law during their terms of office, even though, under RC § 1907.01.2, county courts will become courts of record for all purposes as of January 1, 1963: OAG No.3291.

68. (1962) Under RC § 1907.08.1, a judge of a county court, who is an attorney, is authorized to practice law so long as such practice is not related to matters pending or originating in the county court during his term of office; and such authority will not be affected by the fact that county courts become courts of record on January 1, 1962: OAG No.3291.

#### § 4705.02 Suspension or removal of an attorney. (GC § 1707)

The supreme court, court of appeals, or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. Such suspension or removal shall operate as a suspension or removal in all the courts of the state. The clerk of court upon such suspension or removal shall send a copy thereof to the supreme court, the court of appeals, and to the federal court of the district in which said attorney resided at the time of trial for such action as is warranted. Judges of such state courts are required to cause proceedings to be instituted against an attorney, when it comes to the knowledge of any judge or when brought to his knowledge by the bar association of the county in which such attorney practices that he may be guilty of any of the causes for suspension, removal, or reprimand.

HISTORY: GC § 1707; RS § 563; S&C 92; 29 v 411, § 4; 82 v 16, 26; 91 v 65; 94 v 390; 103 v 405 (418); 111 v 411. Eff 10-1-55.

criminal indictment therefor did not preclude a subsequent disciplinary proceeding arising out of the same conduct: *Ohio State Bar Ass'n. v. Weaver*, 41 OS2d 97, 70 OO2d 175, 322 NE2d 665.

146. (1974) Prohibition would issue to prevent judge from barring assistant prosecuting attorney from practicing criminal law in the common pleas court: *State ex rel Cooper v. Ater*, 38 OS2d 229, 67 OO2d 294, 313 NE2d 7.

147. (1972) Where board of commissioners recommended that common pleas judge be indefinitely suspended from practice, the judge will be suspended from the performance of judicial duties while the disciplinary proceedings are pending: *Cincinnati Bar Ass'n. v. Heitzler*, 31 OS2d 187, 60 OO2d 371, 287 NE2d 632.

148. Rule XXVII of the Supreme Court, as amended effective January 1, 1957, as it applies to procedure in reference to the exercise of original jurisdiction by the Supreme Court in the disciplining of attorneys, is constitutional: *Cleveland Bar Ass'n. v. Pleasant*, 167 OS 325, 4 OO2d 433, 148 NE2d 493.

149. A proceeding to suspend or remove an attorney at law in the court of common pleas of any county, though a special statutory proceeding, may be heard by such court constituted as in other cases: *State ex rel Hawke v. LeBlond*, 108 OS 126, 140 NE 510.

150. A committee appointed to investigate charges against an attorney at law, is not limited to the particular charges to which their attention was directed by the judge: *In re Abrams*, 36 App 364, 173 NE 312, 33 OLR 264.

151. Action of a court in suspending an attorney from practice in connection with his sentence to the penitentiary under a plea of guilty was without authority of law; and said order could not be treated as res judicata in a later proceeding under the statute for disbarment: *In re Linthicum*, 32 OLR 254 (App).

152. If the prosecuting attorney has not been appointed to prosecute a disbarment proceeding, a waiver of summons in error, and an entry of appearance by him in a proceeding in error brought to reverse an order in disbarment is insufficient; and no jurisdiction is conferred thereby upon the court of appeals: *Schwartz v. State*, 22 OLR 152 (App).

153. Where a practicing attorney, a resident of Cuyahoga County, represented clients having numerous cases pending in Champaign County and the actions of misconduct of which he is accused occurred in Champaign County, proceedings in disbarment were properly brought in Champaign County: *In re Crow*, 73 OLA 421, 135 NE2d 903 (App).

154. The failure of a trial court to refer charges against an attorney to the grievance committee of the local bar association as is the custom, is not an abuse of discretion: *In re Prentice*, 71 OLA 337, 132 NE2d 634 (App).

155. (1973) Complaints to the state bar regarding an attorney's conduct are absolutely privileged if relevant to investigations and proceedings in respect thereto: *Baggot v. Hughes*, 34 OMisc 63, 63 OO2d 252, 296 NE2d 696 (CP, Clinton).

156. The statutory order of procedure in disbarment proceedings is (1) knowledge coming to the judge of the probable guilt of an attorney; (2) the causing by the judge of proceedings to be instituted against the attorney by the appointment of a person or persons to file and prosecute charges; (3) the filing of written charges: *Preusser v. Faulhaber*, 15 CC(NS) 110, 22 CC(NS) 222, 23 CD 312 [affirmed, without opinion, 82 OS 466, for former opinion, see 16 CC(NS) 308, 26 CD 568].

157. While the more delicate method of bringing

charges against an attorney to the attention of a judge, preliminary to a proceeding for disbarment, is to seal the charges before depositing them with the clerk, failure to seal such charges does not render the party filing them liable for damages in publishing said charges to the clerk: *Preusser v. Faulhaber*, 15 CC(NS) 110, 22 CC(NS) 222, 23 CD 312 [affirmed without opinion, 82 OS 466; for former opinion, see 16 CC(NS) 308, 26 CD 568].

**Order of removal**

162. In determining the corrective to be applied for professional misconduct, the court should attempt a judgment commensurate with the character of the respondent as suggested by the several instances in their aggregate effect: *In re Thatcher*, 190 Fed 659, 16 OFD 645, 9 OLR 437, 56 Bull 381 [petition in error dismissed, 216 US 625].

163. Where the offenses charged and established by the evidence are matters engaging the defendant-attorney's attention at various times and upon different subjects, whereby variant phases of disregard for professional obligations are exhibited, they demand nothing less than an order of permanent disbarment: *In re Thatcher*, 190 Fed 659, 16 OFD 645, 9 OLR 437, 56 Bull 381 [petition in error dismissed, 216 US 625].

164. If, in a disbarment proceeding, the court enters judgment that the attorney be "suspended from his said office as attorney at law in all the courts of the state of Ohio until such time as he shall be reinstated in accordance with law," such judgment is not null and void on the ground that the period of suspension is not definitely fixed. The judgment is in form a suspension, but in substance a removal, and therefore within the power and authority of the court to enter: *State ex rel Hawke v. LeBlond*, 108 OS 126, 140 NE 510.

**Effect of removal**

169. "Removal" does not effect a complete revocation of the title of the attorney to his office: *State ex rel Hawke v. LeBlond*, 108 OS 126, 140 NE 510.

170. General Code § 1707 (this section), providing for the removal of an attorney from the practice of law, does not prescribe that such disbarment shall result in the forfeiture of any public office: *State ex rel Bateman v. Cleveland*, 19 OO 333 (CP).

171. (1973) A disbarred attorney cannot hold the position of attorney examiner or any other position with the board of tax appeals in which he would perform duties similar to the duties of an attorney examiner. OAG No.73-007.

**§ 4705.03 Proceedings against attorney. (GC § 1708)**

Before an attorney at law is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, such attorney shall be allowed a reasonable time to collect and present testimony in his own defense, and he shall be heard by himself or counsel.

HISTORY: GC § 1708; RS § 563; S&C 92; 29 v 411, § 4; 82 v 16, 26, 91 v 63; 94 v 390; 111 v 412. Eff 10-1-53.

**Cross-References to Related Sections**

See RC § 4705.05 which refers to this section.

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## Research Aids

## Procedure

- 6 O-Jur2d: Attorneys § 49 et seq  
7 Am-Jur2d: Attorneys § 80 et seq

## ALR

Malicious prosecution or similar tort action predicated upon disciplinary proceedings against attorney. 52 ALR2d 1217.

## CASE NOTES AND OAG

1. (1969) Action of federal court in disbaring attorneys on basis of record in state proceedings where attorneys could have presented additional evidence and where federal court made independent determination of the facts was proper: *In re Fleck*, 53 OO2d 239, 419 F2d 1040, 26 OMisc 255.

2. The requirements of disbarment statutes are to be strictly construed in favor of one against whom charges are filed, but the fact that the court may reprimand, suspend or disbar an attorney does not convert a disbarment proceeding into a criminal prosecution to be tried pursuant to the criminal code of this state: *State ex rel Joseph v. Crossland*, 152 OS 199, 40 OO 174, 86 NE2d 289.

3. Where a practicing attorney, a resident of Cuyahoga County, represented clients in Champaign County and the actions of misconduct of which he is accused occurred in Champaign County, proceedings in disbarment were properly brought in Champaign County: *In re Crow*, 73 OLA 421, 135 NE2d 903 (App).

4. A committee appointed to investigate charges against an attorney at law, is not limited to the particular charges to which their attention was directed by the judge: *In re Abrams*, 36 App 384, 173 NE 512, 33 OLR 264.

5. While the more delicate method of bringing charges against an attorney to the attention of a judge, preliminary to a proceeding for disbarment, is to seal the charges before depositing them with the clerk, failure to seal such charges does not render the party filing them liable for damages in publishing said charges to the clerk: *Preusser v. Faulhaber*, 15 CC(NS) 110, 22 CC(NS) 222, 23 CD 312 [affirmed, without opinion, 82 OS 466; for former opinion, see 16 CC(NS) 308, 26 CD 568].

6. The statutory order or procedure in disbarment proceedings is (1) knowledge coming to the judge of the probable guilt of an attorney; (2) the causing by the judge of proceedings to be instituted against the attorney by the appointment of a person or persons to file and prosecute charges; (3) the filing of written charges: *Preusser v. Faulhaber*, 15 CC(NS) 110, 22 CC(NS) 222, 23 CD 312 [affirmed, without opinion, 82 OS 466, for former opinion, see 16 CC(NS) 308, 26 CD 568].

7. Action of a court in suspending an attorney from practice in connection with his sentence to a penitentiary under a plea of guilty, was without authority of law, and said order could not be treated as res judicata in a later proceeding under the statute for disbarment: *In re Linthicum*, 32 OLR 253.

8. Inherent right of courts to disbar or suspend attorneys from the practice of law has been removed by statute; the courts must follow the statute: *In re Linthicum*, 32 OLR 253.

9. A committee of a bar association in a disbarment proceeding is not entitled to call the defendant as on cross-examination: *In re Donibey*, 68 OLA 36.

§ 4705.04 Review of proceedings. (GC § 1709)

In case of suspension or removal of an attorney

at law by the court of common pleas, an appeal on questions of law may be had to the court of appeals, and the sentence of either the court of common pleas or the court of appeals, may be reviewed on appeal on questions of law in the supreme court. If such suspended or removed attorney shall desire a modification of the decree of suspension or removal, he shall file a written motion therefor in the court which entered such decree.

HISTORY: GC § 1709; S&C 92; 29 v 411, § 4; 82 v 16, 26; 91 v 63; 94 v 390; 103 v 405 (418); 116 v 104 (127), § 2. Eff 10-1-53.

## Cross-References to Related Sections

See RC § 4705.05 which refers to this section.

## Law Review

Reinstatement of disbarred or indefinitely suspended attorneys. *Andrew Pangrace and Wendell A. Falsgraf*, 27 ClevBJ (No.11) 187 (1955-56).

## CASE NOTES AND OAG

1. (1963) The provisions of rule XXVII of the Supreme Court, effective Jan. 1, 1957, relating to the reinstatement of attorneys at law to the practice of the law apply to removals from practice which occurred prior as well as subsequent to the adoption of the rule, and provide the exclusive manner in which reinstatement may be sought, superseding in all respects the procedure under 4705.04: *In re Nevius*, 174 OS 560, 23 OO2d 239, 191 NE2d 166.

2. A proceeding to suspend or remove an attorney at law from office is strictly statutory and constitutes an action at law only, and the only appeal provided in such proceedings is one on questions of law: *In re I eberman*, 163 OS 35, 56 OO 23, 125 NE2d 358.

3. Under Art. IV, § 6 of the Ohio constitution, a disbarment proceeding is not a "chancery case" and cannot be appealed to the court of appeals: *In re Hawke*, 107 OS 341, 140 NE 583.

4. While this section gives the suspended or removed attorney certain rights of appeal, it does not deny to a committee of the bar association the same right: *In re Chappell*, 12 OO 499 (App).

5. The court of appeals, under Art. IV, § 6 of the constitution, has jurisdiction to review, affirm, modify or reverse the judgments of the common pleas court, regardless of the statutory provisions as to the conduct of disbarment proceedings: *In re Chappell*, 12 OO 99 (App).

6. The sentence in this section that "If such suspended or removed attorney shall desire a modification of the decree of suspension or removal, he shall file a written motion therefor in the court which entered such decree," has application only where, and if, it has been determined that there is a valid, subsisting judgment and may be invoked by motion at any time during the period of the disbarment order, directed to the court which made the order: *In re Crow*, 72 OLA 406, 135 NE2d 281 (App).

7. The last sentence in this section that "If such suspended or removed attorney shall desire a modification of the decree of suspension or removal, he shall file a written motion therefor in the court which entered such decree," has no application whatever to proceedings on appeal which are specifically authorized by the first sentence of such section: *In re Crow*, 72 OLA 406, 135 NE2d 281 (App).

8. A disbarred attorney desiring to be readmitted to practice may apply for a modification of the decree of removal under favor of GC § 1709. He

need not make a new application for admission under GC § 1698 (RC § 4705.01): *In re Rothenberg*, 31 OLR 370.

**§ 4705.05 Expenses and costs.** (GC § 1710)

The court in which charges or written motion is filed in accordance with sections 4705.03 and 4705.04 of the Revised Code, shall allow to the persons appointed to file and prosecute the charges, or to resist the modification of any decrees, for their services in either case, a reasonable sum, not exceeding one hundred dollars, to each person, together with the costs and expenses incurred by him in such proceedings. The amounts allowed shall be paid from the county treasury of the county wherein such proceedings are had, upon the warrant of the county auditor. If such charges or motion is filed in the supreme court, such allowances shall be paid from the state treasury.

**HISTORY:** GC § 1710; RS § 563; S&C 92; 29 v 411, § 4; 82 v 16, 26; 91 v 63; 94 v 390. EF 10-1-53.

**CASE NOTES AND OAG**

1. This section should be followed in payment of fees out of treasury to counsel: *In re Attorney Fees*, 3 OLA 109.

2. Persons appointed under this section to contest the modification of a decree and the same is contested in court of appeals and supreme court, may not receive more than a hundred dollars fee for entire service: 1924 OAG p.688.

**§ 4705.06 Liability of attorneys; prosecution.** (GC § 1711)

If a suit is dismissed for the nonattendance of an attorney at law practicing in any court of record, it shall be at his costs, if he has not a just and reasonable excuse. He shall be liable for all damages his client sustains by such dismissal, or any other neglect of his duty, to be recovered in any court of record. Such attorney receiving money for his client, and refusing or neglecting to pay it when demanded, shall be proceeded against in a summary way, on motion, before any court of record, either in the county in which the judgment on which such money has been collected was rendered, or in the county in which such attorney resides, in the same manner and be liable to the same penalties as sheriffs and coroners are for money received on execution.

**HISTORY:** GC § 1711; RS § 564; S&C 93; 29 v 411, n.d. EF 10-1-53.

**Cross-References to Related Sections**

Amercement, RC § 2707.01 et seq.

**Comparative Legislation**

Liability of attorneys:

Ind.—Code § 34-1-60-9

Ky.—KRS 30.180

Mich.—Stats Ann, Compiled § 600.5805

W. Va.—Code 1966, 30-2-11

**Research Aids**

**Liability**

6 O-Jur2d: Attorneys § 102 et seq

7 Am-Jur2d: Attorneys § 167 et seq

**Recovery**

6 O-Jur2d: Attorneys § 107

7 Am-Jur2d: Attorneys § 182 et seq

**Law Review**

Attorneys' malpractice. William K. Gardner. 6 ClevMLRev 264 (1957).

**CASE NOTES AND OAG**

1. An attorney is liable to his client in damages for neglect of duty, only if such neglect causes a loss to his client: *Harter v. Morris*, 18 OS 492.

2. Where attorneys in good faith claimed funds produced by their services and received from third party, for services rendered client, client's receiver is not entitled to summary order against attorneys: *Newcomb v. Krueger*, 36 App 469, 173 NE 246.

3. At common law, a summary proceeding, by motion, may be brought against an attorney who refuses or neglects to turn over papers and documents to his client: *Mulholland v. Groot*, 24 CC(NS) 582, 35 CD 16 [following *Cotton v. Ashley*, 11 CC 47].

4. A motion filed under this section, in a summary proceeding against an attorney, or a motion filed at common law in a similar proceeding, is not required by any express provisions of statute to be sworn to absolutely; and GC § 11354 (RC § 2309.49) applies: *Mulholland v. Groot*, 24 CC(NS) 582, 35 CD 16.

5. The vacation of a judgment during term is within the discretion of the court and it is not an abuse of such discretion to refuse to vacate a judgment where the only ground for vacation is that counsel were negligent in attending to the trial of the case: *White Sewing Mach. Co. v. Brede*, 17 CC(NS) 122, 32 CD 62.

**§ 4705.07 False representation as attorney.** (GC § 1698-1)

No person who is not regularly licensed to practice law in this state shall hold himself out in any manner as an attorney at law, or shall represent himself either orally or in writing, directly or indirectly, as authorized to practice law.

The use of "lawyer," "attorney at law," "counselor at law," "law," "law office," or other equivalent words by any person not licensed to practice law, in connection with his own name, or any sign, advertisement, card, letterhead, circular, or other writing, document, or design, the evident purpose of which is to induce others to believe such person to be an attorney, constitutes holding out within the meaning of this section.

**HISTORY:** GC § 1698-1; 1 v 344; 125 v 903. EF 10-1-53.

**Cross-References to Related Sections**

Penalty, RC § 4705.99(A)

**ALR**

Drafting, or filling in blanks in forms, of instru-

ments relating to land by real-estate agents, brokers, or managers, as practice of law. 53 ALR 2d 788.

#### CASE NOTES AND OAG

1. That illegal practice of law by corporation is punishable criminally does not constitute adequate remedy barring equitable relief against corporation: *Dworken v. Apartment House Owners Assn.*, 38 App 265, 176 NE 577.

2. This section does not afford such an adequate remedy at law for the protection of an attorney from lay competition as will prevent the exercise of equitable jurisdiction: *Goodman v. Western Bank & Co.*, 28 NP(NS) 272.

3. A person who, for several years, has been advising clients on legal questions concerning collection of accounts, preparing pleadings before justice of peace courts for procurement of attachments, obtaining judgments, and carrying through proceedings in aid of execution on behalf of his clients, is engaged in the practice of law, and such practice will be enjoined until such person is admitted to the bar as required by GC § 1638 (RC § 4705). *Erskine v. Smith*, 31 OLA 488 (CPI).

#### § 4705.08 Compensation for procurement of legal services prohibited.

No attorney or other person shall pay or receive any compensation or other consideration, or divide with or receive any portion of a fee, as an inducement or payment for solicitation or procurement of legal services consisting of prosecuting or defending a claim, cause of action, or

criminal charge, whether such services are to be performed or such claim or cause of action is to be prosecuted or defended in this state or elsewhere. This section does not prohibit the division of fees between attorneys for services performed by them.

Any agreement made or contract of employment obtained in violation of this section is void and unenforceable.

HISTORY: 129 v 1295, § 1 (ER 9-18-61); 130 v 1121, § 1. ER 1-23-63.

#### Cross-References to Related Sections

Penalty, RC § 4705.99(B)

#### Law Review

Solicitation of legal services—a crime. E. Terry Warren. 22 OSLJ 631.

#### § 4705.99 Penalties.

(A) Whoever violates section 4705.07 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars.

(B) Whoever violates section 4705.08 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned not more than thirty days, or both.

HISTORY: Bureau of Code Revision (ER 10-1-53); 129 v 1295. ER 9-18-61.

#### Law Review

Solicitation of legal services—a crime. E. Terry Warren. 22 OSLJ 691.

# General Laws of Rhode Island

8-1-1

COURTS AND CIVIL PROCEDURE—COURTS

2

**8-1-1. Composition.**—The supreme court shall consist of a chief justice and four (4) associate justices.

#### History of Section.

C. P. A. 1905, § 1; G. L. 1909, ch. 272, § 1; G. L. 1923, ch. 322, § 1; G. L. 1938, ch. 495, § 1; G. L. 1956, § 8-1-1.

#### Cross-References.

Attorney-general, attendance by, § 42-9-3.

Clerk of court, §§ 8-4-1 to 8-4-3.

Compensation of judges, R. I. Const., Art. X, § 6.

Election and removal of judges, R. I. Const., Art. X, §§ 4, 5.

Establishment of supreme court, R. I. Const., Art. X, § 1.

Exemption of judges from jury service, § 9-9-3.

Exemption of judges from militia duty, § 30-1-7.

Impersonation of judge, penalty, § 11-14-1.

Justices of court, §§ 8-3-1 to 8-3-7.

Law library, §§ 29-3-1 to 29-3-4.

Secretary and attendants, § 8-5-1.

Sheriff's attendance, § 42-29-19.

Unclassified service, judges in, § 36-4-2.

#### Comparative Legislation.

Appellate court of last resort:

Conn. Gen. Stat. 1958, §§ 51-198—51-216.

Mass. Laws Ann., ch. 211.

**8-1-2. Jurisdiction and powers of court.**—The supreme court shall have general supervision of all courts of inferior jurisdiction to correct and prevent errors and abuses therein when no other remedy is expressly provided; it may issue writs of habeas corpus, of error, certiorari, mandamus, prohibition, quo warranto and all other extraordinary and prerogative writs and processes necessary for the furtherance of justice and the due administration of the law; it may entertain informations in the nature of quo warranto and petitions in equity to determine title to any office; it shall have jurisdiction of petitions for trials and new trials, as provided by law, of bills of exceptions, appeals and certifications to the supreme court, and special cases in which parties having adversary interests concur in stating questions for the opinion of the court as provided by law, and shall by general or special rules regulate the admission of attorneys to practice in all the courts of the state.

#### History of Section.

C. P. A. 1905, § 2; G. L. 1909, ch. 272, § 2; G. L. 1923, ch. 322, § 2; G. L. 1938, ch. 495, § 2; G. L. 1956, § 8-1-2.

#### Rules of Court.

For rule providing for judicial conference, see Supreme Court Rule 24.

For rule providing procedure for application for writ other than habeas corpus, see Provisional Order No. 3.

For rules governing attorneys and counsellors, see Supreme Court Rules 1 to 10.

For rules governing practice and procedure, see Supreme Court Rules 12 to 23.

#### Cross-References.

Appeals in criminal cases, §§ 12-22-10 to 12-22-13.

Constitutional jurisdiction and powers, R. I. Const., Amend. XII.

Contempt of court, § 8-6-1.

Election officers, mandamus to compel performance of duties, §§ 17-24-1 to 17-24-3.

General power over proceedings, § 8-6-1.

Habeas corpus, §§ 10-9-1 to 10-9-32.

Motions in supreme court, §§ 8-11-3 to 8-11-7.

Powers of justice in vacation of superior court, § 8-2-25.

# Vermont Statutes Annotated

## Chapter 23. Attorneys

### SECTION

- 901. Rules for admission of attorneys.
- 902. Board of bar examiners.
- 903. Disbarment complaints.
- 904. Appointment of investigation committee in vacation.
- 905. Attorney acting when not employed.
- 906. Conflicting appointments, excuse from attending by superior judge.

### HISTORY

Tables of renumbered sections and chapters. For tables showing disposition of renumbered sections of this chapter, see tables set out following Title 7.

### § 901. Rules for admission of attorneys

Justices of the supreme court shall make, adopt and publish and may alter or amend rules regulating the admission of attorneys to the practice of law before the courts of this state.

### HISTORY

Source. V.S. 1947, § 1385. P.L. § 1351. 1933, No. 157, § 1206. G.L. § 1591. 1915, No. 1, § 3. P.S. §§ 1330, 1337. 1906, No. 63, §§ 6, 12, 22. V.S. § 1003. 1892, No. 28, § 6. R.L. § 793. G.S. 30, § 21. R.S. 25, § 12. R. 1797, p. 82, §§ 21, 22. 1826, No. 6. 1791, p. 34. 1789, p. 18. R. 1787, p. 23.

Revision note. This section was formerly set out as § 241.

Former § 901, relating to jury commission, is set out as § 951 of this title.

Cross references. Disqualification of attorneys in particular cases, see § 61 of Title 12.

Incorporation of professional persons, see § 901 et seq. of Title 11.

Supreme court rules, see Appendix to Title 12.

### ANNOTATIONS

Admission, 3  
Contempt, 2

Practice of law, 1

1. Practice of law. Practice of law is not confined to performing services in an action or proceeding pending in courts of justice, but in a larger sense includes legal advice and counsel and preparation of legal instruments and contracts of which legal rights are secured, although such matter may or may not be pending in a court. *In re Pilini* (1961) 122 Vt. 366, 173 A.2d 828; *In re Flint* (1938) 110 Vt. 38, 1 A.2d 718, same case 110 Vt. 471, 8 A.2d 653, 125 A.L.R. 1174, 53 A.L.R.2d 790.

Rules of the supreme court, made pursuant to the statute requiring that court to make all rules necessary for orderly practice therein, have the force of law; and although that court can alter or abrogate such rules, yet while they stand they must be enforced as to all cases within their scope. *Taft v. Taft* (1909) 82 Vt. 64, 71 Atl. 831, same case 80 Vt. 256, 72 Atl. 987.

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### § 902.

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Source  
§ 1338.

This section relates to the power of supreme court to make rules regulating admission of attorneys and not to one who pretends to act as an attorney without being qualified. In re Carney (1900) 71 Vt. 501.

Practicing as an attorney or counselor at law, according to the laws and customs of our courts, is the giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such service requires the use of any degree of legal knowledge or skill. In re Pilini (1961) 122 Vt. 385, 173 A.2d 828.

Practice of law includes all advice to clients and all actions taken for them in matters connected with the law. Id.

Where layman, acting as agent for another, becomes involved with financial difficulties of his principal concerning matters which require the use of legal skill or knowledge, he may be found guilty of unauthorized practice of law. Id.

Drafting of deeds or other instruments by a town clerk and the giving of certificates of title on opinions in regard to the land records by a town clerk who is not a member of the bar constitute unauthorized practice of law. 1962-64 Op. Atty. Gen. 478.

Acts of layman charged with contracting with creditor for fee to enforce, secure, settle, adjust and compromise claim against debtor, writing to debtor and threatening suit, causing suit to be brought and debtor's wages to be attached by trustee process, collecting claim by suit, and using letterhead "State Protective Bureau, organized for protection of delinquent accounts," constituted unauthorized practice of law and criminal contempt of supreme court. In re Ripley (1937) 109 Vt. 83, 191 Atl. 918, 11 A.L.R. 39, 157 A.L.R. 527.

2. Contempt. Court has implied power to punish for contempt persons pretending to the office of attorney, and practicing as such in courts of this state without authority. In re Morse, 1924, 98 Vt. 85, 126 Atl. 550, 36 A.L.R. 527, 15 B.U.L. Rev. 842, 18 B.U.L. Rev. 302, 56 Yale L.J. 1439.

Power of supreme court to punish one for contempt for pretending to practice law as an attorney is unaffected by fact that such unlawful practice was confined to justice courts. Id.

Supreme court has full authority to punish for contempt one who wrongfully undertakes or pretends to practice law as an attorney in this state. In re Ripley (1937) 109 Vt. 83, 191 Atl. 918.

3. Admission. Admission to bar in Vermont is regulated by rules made, adopted, and published by supreme court, under statutory authority. In re Huddad (1934) 106 Vt. 322, 173 Atl. 103, 54 A.L.R.2d 1220.

See also annotations under Supreme Court Rule 25 in Title 12, Appendix I.

### § 902. Board of bar examiners

The board of bar examiners shall consist of six persons whose term of office shall be for three years. Two members shall be appointed annually by the supreme court at the October general term. Vacancies in the board may be filled by the court. The commissioner of finance shall issue his warrant for the expenses of each member of the board, when approved by the chief justice of the supreme court—Amended 1959, No. 328 (Adj. Sess.), § 8(c).

#### HISTORY

Source. V.S. 1947, § 1386. P.L. § 1362. G.L. § 1592. 1915, No. 1, § 3. P.S. § 1338. 1898, No. 157, §§ 1, 2.

Revision note. This section was formerly set out as § 842.

Former § 902, relating to jury commission, is set out as § 952 of this title.

Reference to "finance director" was changed to "commissioner of finance" to conform reference to new title and reorganization of state government. See § 2201 et seq. of Title 3.

Amendments—1959 (Adj. Sess.). Substituted "finance director" for "auditor of accounts."

Effective date, transitory provisions, see note under § 241 of Title 3.

#### ANNOTATIONS

1. Examining and grading applicants. In the matter of examining and grading applicants for admission to the Bar, both orally and in writing, members of the board of bar examiners are exclusive judges, and the supreme court would not investigate to ascertain probity of results certified to it in the absence of clear and unequivocal allegations of probative facts to establish imposition, discrimination and manifest unfairness. In re Monaghan (1967) 126 Vt. 193, 225 A.2d 387.

#### § 903. Disbarment complaints

Complaints to the supreme court for the disbarment of attorneys, when the court is not in session, may be presented to a justice thereof who may make such complaint returnable to any term of the court. Such justice may make such orders for notice to the respondent of the complaint and for making and filing answer thereto as the supreme court might make when in session.

#### HISTORY

Source. V.S. 1947, § 1387. P.L. § 1353. 1919, No. 63, § 1.

Revision note. This section was formerly set out as § 843.

Former § 903, relating to jury commission, is set out as § 953 of this title.

#### ANNOTATIONS

Cause for disbarment, 2

Cause for suspension, 3

Scope of proceedings, 1

1. Scope of proceedings. In disbarment proceedings court is not confined to answering question whether or not respondent should be disbarred, but is at liberty to do, and should do, whatever behooves it in exercise of its jurisdiction over attorneys as officers of the court. In re Paddock (1945) 114 Vt. 207, 42 A.2d 342.

Objective of disciplinary proceeding is to protect public from persons unfit to serve as attorneys and to maintain public confidence in bar as a whole. In re Calhoun (1968) 127 Vt. 220, 245 A.2d 560.

It is responsibility of court in professional misconduct cases to fulfill its obligation to take action to inspire and maintain public confidence in bar admitted to practice before it as well as to protect public from persons unfit to serve as attorneys. In re Knapp (1968) 127 Vt. 222, 245 A.2d 561.

Where no answer in defense is filed, allegations of disbarment complaint are to be taken as confessed; they establish that defendant has violated his office as an attorney. In re Reiter (1968) 127 Vt. 98, 241 A.2d 60.

2. Cause for disbarment. It was cause for disbarment where an attorney who as an executor was a co-plaintiff in a suit, represented to the opposing

attorney that defense to the of money, alth a settlement of case 69 Vt. 317

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Failure of an barment in the (1961) 122 Vt.

Forging of diverting client 126 Vt. 69, 222

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Professional and solicitor in Vt. 222, 245 A.

Plea of guilt professional n occurrence. Id.

#### § 904. Appo

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Source. V.S. Revision not Former § 90

attorney that he had knowledge of certain facts, which would be an absolute defense to the suit, and which he offered to impart for the payment of a sum of money, although such representations were false and were made to induce a settlement of the suit. In re Enright (1895) 67 Vt. 351, 31 Atl. 786, same case 69 Vt. 317, 37 Atl. 1046.

Where committee of two, appointed to report facts upon proceedings for disbarment, agreed as to the facts but disagreed as to conclusion to be drawn from those facts, that aspect of the report most favorable to the attorney on trial would be adopted. Id.

Failure of an attorney to make an income tax return is not a ground for disbarment in the absence of a showing of bad faith or evil intent. In re McShane (1961) 122 Vt. 442, 175 A.2d 508.

Forging of names of clients and others on various legal documents and diverting client funds to own use would justify disbarment. In re Milne (1966) 126 Vt. 69, 222 A.2d 360.

Conviction, or plea of guilty, for embezzlement warrants disbarment. In re Reiter (1968) 127 Vt. 98, 241 A.2d 60.

When misconduct is established, Supreme Court is not confined to remedy of disbarment but may adjust penalty to what it finds to be measure of culpability of attorney in accordance with its jurisdiction over attorneys as officers of Supreme Court. In re Calhoun (1968) 127 Vt. 220, 245 A.2d 560.

Overzealousness in pursuit of a client's interests leading an attorney into criminal conduct is an excess indicating unfitness to practice law and warrants disbarment. In re Harrington (1970) 128 Vt. 445, 266 A.2d 433.

**3. Cause for suspension.** Professional misconduct warranted suspension of attorney from office of attorney at law and solicitor in chancery for a period of four months. In re Calhoun (1968) 127 Vt. 220, 245 A.2d 560.

Offense of failing to file income tax returns constitutes professional misconduct and is proper basis for disciplinary action although it may not necessarily require disbarment. Id.

Professional misconduct warranted suspension from office of attorney at law and solicitor in chancery for a period of four months. In re Knapp (1968) 127 Vt. 222, 245 A.2d 561.

Plea of guilty to failure to file federal income tax returns is evidence of professional misconduct by an attorney, and plea of guilty acknowledges its occurrence. Id.

#### § 904. Appointment of investigation committee in vacation

Upon complaint for the disbarment of an attorney, filed in vacation, the justices of the supreme court, or a majority of them, during vacation and after the time given the respondent to file his answer has expired, may appoint a committee to investigate the charges and report thereon, with the same effect as they may do when in session.

#### HISTORY

Source. V.S. 1947, § 1388. P.L. § 1354. 1919, No. 63, § 2.

Revision note. This section was formerly set out as § 844.

Former § 904, relating to jury commission, is set out as § 954 of this title.

§ 905. Attorney acting when not employed

An attorney who causes his name to be entered on the docket of a court as the attorney of either party in a pending cause, not being employed by such party or, without being so employed, demands and receives, or attempts to collect, under a false pretense of being employed, money or fees, shall have his name erased from the list of attorneys of such court and shall thereafter be incapable of practicing in any court until restored by order of the supreme court.

HISTORY

Source. V.S. 1947, § 1389. P.L. § 1355. G.L. § 593. P.S. § 1339. V.S. § 1004. R.L. § 794. G.S. 125, § 9. R.S. 106, § 8. 1807, p. 176, § 2.

Revision note. This section was formerly set out as § 845.

Former § 905, relating to jury commission, is set out as § 955 of this title.

§ 906. Conflicting appointments, excuse from attending by superior judge

When an attorney is required to attend more than one trial, hearing or other proceeding before a court or commission having judicial or quasi-judicial functions, or both, at times which conflict so that he cannot reasonably attend each appointment, he may request the chief superior judge to designate which appointment he shall attend. The chief superior judge shall designate the appointment the attorney shall attend and shall notify the presiding magistrate of each court and commission of his decision. The attorney shall be excused from attending at that time any proceedings other than the one designated by the chief superior judge, and the other proceedings shall be rescheduled.—1959, No. 169.

HISTORY

Revision note. This section was formerly set out as § 846.

Former § 906, relating to jury commission, is set out as § 956 of this title.

ANNOTATIONS

1. Request for continuance. Alleged fact that defendant's counsel was engaged in court elsewhere did not compel granting of motion to strike defaults where no request for a continuance appeared to have been made. Fairview Garage v. Terjelian (1968) 127 Vt. 239, 240 A.2d 830.

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same. If more than one copy is ordered, he shall receive fifty cents per folio for the first copy and twenty-five cents per folio for each manifold copy, and in cases passing to the supreme court, the appealing party shall have the first copy. Whenever such transcript is ordered by any party, the reporter shall notify the other parties thereof before he makes such transcripts and give them a reasonable time to order copies thereof.—Amended 1973, No. 266 (Adj. Sess.), § 8, eff. July 1, 1974.

1973 (Adj. Sess.) amendment. Rephrased and increased fees.

½. Generally. Although the legislature may not deny constitutional rights, instead of the judicial branch requiring, on constitutional grounds, that the legislature provide funds necessary to enable timely access to trial transcripts, it is responsibility of the judiciary, as a separate branch, to first make the most effective use of resources available to it and having done that, the next step is to make the appropriate addresses to the legislature, the branch charged with responsibility of financing the operations of government, for such additional funding as adequate judicial operations may require. *State v. Lawrence* (1977) 135 Vt. 75, 369 A.2d 1368.

### Chapter 23. Attorneys

Repeal of chapter. 1977, No. 183 (Adj. Sess.), § 1, eff. July 1, 1978, added chapter 57, Review of Licensing Statutes, Boards and Commissions, to Title 26, providing for legislative review of programs and functions of professional and occupational licensing boards and provided in § 3102(b) of Title 26 for repeal of this chapter on July 1, 1981.

For the provisions directing the legislative review and a listing of all statutes affected by Act 1977, No. 183 (Adj. Sess.) see § 3101 et seq. of Title 26 and notes thereunder.

§ 903. Repealed. 1977, No. 235 (Adj. Sess.), § 10.

#### ANNOTATIONS UNDER FORMER § 903

½. Lawyer's duty. A lawyer has a burden of responsibility that is not common to the ordinary citizen, and his duty does not begin or end with the attorney-client relationship, but rather, embraces duties as a fiduciary as well. *In re Wright* (1973) 131 Vt. 473, 310 A.2d 1.

1. Scope of proceedings. Disciplinary proceedings against an attorney are not criminal in nature; thus committee hearing complaint was governed by rule that a preponderance of the evidence was sufficient as long as the case was clear and free from doubt. *In re Wright* (1973) 131 Vt. 473, 310 A.2d 1.

3. Cause for suspension. Newly admitted attorney who was present when his employer made plan to entrap divorce libellee in compromising situation with young woman hired for such purpose, and who participated, at employer's direction, in photographing and recording the meeting, after being berated such that he was fearful of losing his job, should have withdrawn from the scheme in the planning stage, and his conduct and inaction were unethical and unprofessional and he would be suspended from practice with leave to apply for reinstatement after three months. *In re William J. Knight* (1971) 129 Vt. 428, 281 A.2d 46.

4. Defense. That statute of limitations may have barred actions at law in connection with attorney's handling of estates was not a defense in disciplinary proceedings against the attorney. *In re Wright* (1973) 131 Vt. 473, 310 A.2d 1.

5. Hearing on appeal. Hearing on appeal by the trier of fact and the evidence, and additional findings.

§ 904. Repealed.

1. Open hearing. Open hearing to decide, in the hearing to matters in issue at any point when closed to the public.

§ 905. Repealed.

§ 952. Rules of

1. Jurors. When a district court sat in session, it was not a Vermont constituent which he was the residents of all the residents of all the 353 A.2d 346.

5. Hearing committee. Committee appointed by supreme court to hold hearing on alleged unethical and unprofessional conduct of attorney was the trier of fact and it was for it to determine the persuasive effect and weight of the evidence, and supreme court could not review de novo or make other or additional findings. In re Wright (1973) 131 Vt. 473, 310 A.2d 1.

§ 904. Repealed. 1977, No. 235 (Adj. Sess.), § 10.

ANNOTATIONS UNDER FORMER § 904

1. Open hearings. It is for the committee investigating attorney's conduct to decide, in the light of any legal and due process considerations relating to matters improper, scandalous or impertinent, whether such proceedings, at any point when the issue is raised, shall, in whole or in part, be open or closed to the public. In re Wright (1972) 130 Vt. 111, 287 A.2d 553.

§ 905. Repealed. 1977, No. 235 (Adj. Sess.), § 10.

Chapter 25. Jury Commission

§ 952. Rules of court administration

1. Jurors. Where judicial district was comprised of three counties and district court sat in each of the three counties, called circuits, at different times, it was not a violation of rights of accused under the federal or Vermont constitution to draw his jury from the residents of the county in which he was tried, and the jury did not have to be drawn from the residents of all three counties combined. State v. Murphy (1976) 134 Vt. 106, 353 A.2d 346.

shall receive fifty cents per folio for each supreme court, the ap- whenever such transcript notify the other parties and give them a rea- ended 1973, No. 266

ased fees. deny constitutional rights, tional grounds, that the ccess to trial transcripts, ranch, to first make the aving done that, the next a legislature, the ranch s of government, for such s may require. State v.

18 l, eff. July 1, 1978, added Commissions, to Title 26, tions of professional and (b) of Title 26 for repeal ew and a listing of all ec § 3101 et seq. of Title

§ 10. 903 nsibility that is not com- begin or end with the es as a fiduciary as well. against an at ney are plaint was governed by ent as long as the case 31 Vt. 473, 310 A.2d 1. who was present when compromising situation participated, at employ- ing, after being berated ive withdrawn from the tion were unethical and practice with leave to liam J. Knight (1971) barred actions at law ot a defense in discipli- (1973) 131 Vt. 473, 310

## 13 § 1 ATTORNEYS AND COUNSELORS

Taxing districts, see Revenue, ch. 120, §§ 589, 602.

Unemployment Compensation Act, representation by claimant, see Employment, ch. 48, § 530.

Waiver by accused of right to counsel, Supreme Court Rule, see Practice, ch. 110, § 101.26.

Water board, employment by, see Cities and Villages, ch. 24, § 11-129-8.

## § 1. License to practice

No person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State.

And no person shall receive any compensation directly or indirectly for any legal services other than a regularly licensed attorney.

A license, as provided for herein, shall constitute the person receiving the same, an attorney and counselor at law, according to the law and customs thereof, for and during his good behavior in the practice and to demand and receive fees for any services which he may render as an attorney and counselor at law in this State. No person shall be refused a license under this Act on account of sex.

Any person whomsoever, practicing, charging or receiving fees for legal services within this State, either directly or indirectly, without being licensed to practice as herein required, shall be guilty of contempt of court and shall be punished accordingly, upon information being filed in any Circuit Court of this State, and the Superior Court of Cook County, Illinois. Such proceedings shall be conducted in the Courts of the respective counties where the alleged contempt has been committed in the same manner as in cases of indirect contempt and with the right of review by the parties thereto.

The provisions of this Act shall be in addition to other remedies permitted by law and shall not be construed to deprive courts of this State of their inherent right to punish for contempt or to restrain the unauthorized practice of law. 1874, March 28, R.S.1874, p. 169, § 1; 1899, Feb. 21, Laws 1899, p. 81, § 1; 1917, June 11, Laws 1917, p. 205, § 1; 1959, July 23, Laws 1959, p. 2100, § 1.

## Historical Note

See R.L.1833, p. 99, § 1; R.S.1845, p. 73, § 1.

This section, as set out in the Revised Statutes of 1874, provided as follows: "Be it enacted by the People of the State of Illinois, represented in the General Assembly, That no person shall be permitted to practice as an attorney or counselor at law, or to commence, conduct or defend any action, suit or plaint, in which he is not a party con-

cerned, in any court of record within this state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose from some two of the justices of the Supreme Court, which license shall constitute the person receiving the same an attorney and counselor at law, and shall authorize him to appear in all the courts within this state, and there to

## ATTORNEYS

practice as an attorney and at law, according to the laws toms thereof, for and during behavior in said practice, at mand and receive fees for an which he may render as ar and counselor at law in this person shall be refused a lic this act on account of sex."

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"And no person shall r ay or compensation for a y i.e. for making settlements, final, filing petitions or other in any estate, other than licensed attorney; and no Pr shall allow or permit any for any such services to any taxed in any estate, other regularly licensed attorney rectly or indirectly, for ar nor shall any administrator, or guardian employ, for the of legal work for any estate, person for performing legal than a regularly licensed at "A license, as provided shall constitute the person r

Attorney not to be surety Corporations, practice of Registrar of land titles no Rule governing admission § 101.5S.

Sheriff not to practice law. Surety, attorney not to ne

A Supreme Court justice legal ethics. Orrin N. Co Ill.L.Rev. 297, 377, 483.

1045-16 Ill.Stats.Anno.—12

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Rose v. Frailey, 1957, N.E.2d 711.

attorney to show that on or conveyance, executed to attorney during existing-client relationship, was entered into by client with knowledge, and not result of fraud or overreaching by

relationship of attorney and client should be highly honored attorney id.

assault was made on attorney's personal reputation and integrity as attorney for client, attorney was liable for damages and charges. Paintner v. Bank of Milwaukie, 197 Ill.App. 205.

attorney who acts for client with knowledge of each, in matters needed to effectuate purpose, and gives to each party for their protection, is

negligence governing liability of attorney for negligence and lack of skill and diligence in practice of medicine and surgery. Olson v. North, 197 Ill.

attorney for damages resulting from negligent management of client's litigation, it must be shown that attorney's treatment was negligent, not merely that it was not that his treatment was negligent to client. Id.

attorney on client's malpractice against attorney saw it as duty to reduce amount of damages to seventy-five per cent of verdict was largely due to prejudice of jury.

attorney held to employ in a reasonable degree of care and skill, if injury results to client of such degree of care and skill, attorney must respond in damages for injuries sustained.

attorney to bring to client's business ordinary care and skill common to

members of the legal profession, to act toward his client with the most scrupulous good faith and fidelity and to exercise in course of his employment that reasonable care and diligence which is usually exercised by lawyers. Id.

27. Fees

In action on alleged oral contract to share attorney fee, evidence sustained finding for defendant. Waters v. Middleton, App.1962, 183 N.E.2d 178.

One who was registered to practice before the United States Patent Office, but who was not licensed as an attorney, was not entitled to collect fees for legal services, even though rendered in the Patent Office. Chicago Bar Ass'n v. Kellogg, 1950, 338 Ill.App. 618, 88 N.E.2d 519.

The county court of Cook county had jurisdiction of a proceeding to establish and enforce a statutory attorney's lien for \$7,000 on the proceeds of a judgment of condemnation entered by the court in favor of the city of Chicago. City of Chicago v. Goebel, 1939, 301 Ill. App. 73, 21 N.E.2d 844.

28. Review

In action praying for mechanics' lien, claims of error in refusing to conduct various hearings in accordance with court rules and normal procedure, in allowing opposing counsel to flout rules of court and the Civil Practice Act, in consolidating two cases without motion, in making new law and not permitting plaintiff to argue his motions, in refusing to entertain motion for change of venue until part of plaintiff's action was dismissed, in waiving rule, in abusing plaintiff and misinterpreting this section et seq., in assuming that judge had appellate powers, in permitting opposing counsel to abuse plaintiff and using extraneous matters as basis for decision, and in assuming that court could overrule Ch. 121 1/2, §§ 220-221 (repealed), disclosed no question that would give Supreme Court direct appellate jurisdiction. Biggs v. Plebanek, 1951, 407 Ill. 562, 95 N.E.2d 370, appeal transferred 343 Ill.App. 466, 99 N.E.2d 862, certiorari denied 72 S.Ct. 547, 343 U.S. 912, 96 L. Ed. 1328.

§ 2. Certificate of character—Citizenship

No person shall be entitled to receive a license as aforesaid unless he is a citizen of the United States or unless he has made a declaration of intention to become a citizen or unless, having made such declaration of intention, he has filed a petition for naturalization within thirty days after becoming eligible to do so and until he shall have obtained a certificate of his good moral character from a court of record of some county. 1874, March 28, R.S.1874, p. 169, § 2; 1939, July 11, Laws 1939, p. 289, § 1.

Historical Note

See R.S. 1845, p. 73, § 2.

The provisions concerning citizenship were inserted by the Act of 1939.

Cross References

Evidence of character and fitness, Supreme Court Rule, see Practice, ch. 110, § 101.05.

Law Review Commentaries

Concealment at time of seeking admission to bar of prior conviction for crime. 1955, 32 Chicago-Kent L.Rev. 157.

though he has been pardoned by the Governor, for the pardon cannot restore the "good moral character" required. *People v. George*, 1900, 186 Ill. 122, 67 N.E. 804.

3. Review

Under rule, requiring certificate of character from committee on character and fitness, court would not review refusal of certificate after hearing on evidence produced. In *re Frank*, 1920, 293 Ill. 263, 127 N.E. 640.

§ 3. Repealed. 1939, July 13, Laws 1939, p. 1167, § 1

Historical Note

The repealed section was derived from Act 1874, March 28, R.S.1874, p. 169, § 3, and related to the admission without examination of persons admitted by courts of record within the United States. The subject matter is now covered by the Supreme Court Rule relating to admission to the Bar, Practice, ch. 110, § 101.58.

Prior laws, see R.L.1833, p. 101, § 8; R.S.1845, p. 74, § 10.

Saving clause. Section 2 of the repealing Act of 1939 contained a saving clause as follows: "The repeal of the acts mentioned in Section 1 hereof shall not affect suits pending or rights existing at the time this Act takes effect;

nor shall such repeal impair, avoid or affect any grant or conveyance made or right acquired or cause of action now existing under any such act or amendment thereto; nor shall this Act affect or impair the validity of any bonds or other obligations issued or sold and constituting the valid obligations of the issuing authority at the time this Act take effect; nor shall any repeal of any validating act hereunder be construed as avoiding the effect of such validation; nor shall any act herein repealed be construed to repeal any act or part thereof embracing the same or similar subject matter as the Act repealed."

§ 4. Oath

Every person admitted to practice as an attorney and counsellor at law shall, before his name is entered upon the roll to be kept as hereinafter provided, take and subscribe an oath, substantially in the following form:

I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of attorney and counsellor at law to the best of my ability. 1874, March 28, R.S.1874, p. 169, § 4.

Historical Note

See R.L.1833 p. 101, § 7; R.S.1845, p. 74, § 9.

Law Review Commentaries

Early proposal for integration of bar. *The Illinois bar and individual freedom*. 1955, 50 N.W.L.Rev. 94.

Loyalty tests for admission to the bar. *Ralph S. Brown and John D. Fassett*, 1953, 20 U. Chicago L.Rev. 460.

## Notes of Decisions

## Library references

Attorney and client ¶ 8.  
C.J.S. Attorney and Client § 12.  
I.L.P. Attorneys and Counselors § 12.

## 1. Construction and application

Oath to support the Constitution of the United States and the Constitution of the State of Illinois, imposed as condition precedent to admission to practice law, requires loyalty to the govern-

ment, and inquiry aimed at determining loyalty of an applicant for admission to the bar is, therefore, relevant to determination of conditions for admittance fixed by statute and rules. In re Anastaplo, 1954, 3 Ill.2d 471, 121 N.E.2d 826, certiorari denied and appeal dismissed 75 S.Ct. 439, 348 U.S. 946, 99 L.Ed. 740, rehearing denied 75 S.Ct. 579, 349 U.S. 908, 99 L.Ed. 1240, 1243.

## § 5. Record of attorneys

It shall be the duty of the clerk of the supreme court, in each grand division, to make and keep a record, stating at the head thereof that the persons whose names are therein written have been regularly licensed and admitted to practice as attorneys and counselors at law within this state, and that they have duly taken the oath of office as prescribed by law, which shall be certified and indorsed on the said license. 1874, March 28, R.S.1874, p. 169, § 5.

## Historical Note

See R.L.1833, p. 100, § 3; R.S.1845, p. 73, § 3.

## Law Review Commentaries

Admission to bar in Illinois. 1937, 2 John Marshall L.Q. 630.

## Notes of Decisions

In general 1  
Entry nunc pro tunc 2

## Library references

Attorney and Client ¶ 2.  
C.J.S. Attorney and Client § 5.  
I.L.P. Attorneys and Counselors § 13.

## 1. In general

Under this section, enrollment of name of attorney on roll of attorneys is required as proof of right to engage in practice of law. People ex rel. Chicago Bar Ass'n v. Novotny, 1944, 386 Ill. 536, 54 N.E.2d 636, certiorari denied 65 S.Ct. 71, 323 U.S. 734, 89 L.Ed. 588.

Objection taken on appeal that attorney who entered appearance for defendant without authority was not an attorney at law for want of enrollment in Supreme Court could not avail any-

thing where it did not appear of record in the case that such was the fact, since party could not be allowed to treat roll of attorneys in Supreme Court as part of record without incorporating it by his bill of exceptions. Lyon v. Dolvin, 1845, 7 Ill. 629.

## 2. Entry nunc pro tunc

Where attorney obtained license in September, 1835, and was sworn as an attorney, March 20, 1837, but name was omitted to be enrolled by clerk until October 6, 1840, if attorney had incurred any liability by practicing as attorney and receiving fees before his name was enrolled, or if he sought to recover for services performed as attorney before his name was entered on the roll, Supreme Court could not aid him by permitting clerk to make entry nunc pro tunc. In re Fellows, 1840, 3 Ill. 369, 2 Scam. 369.

## § 6. Name

No person, when the same practice as an in this state, a have power at counselor at la judge of a Ci shall, for like at law from p time as he may aside by the S p. 169, § 6.

See R.L.1833, p.

Barratry, see see Maintenance, see Proceeding to s Practice, ch Soliciting of leg

Attorney dis 1861 Law Forum

Complaints agt L. Fogle, 1928, 12 John L. Fogle, Rec. 21.

Disbarment 1912, 7 Ill.L.Rev.

Disbarment of Chicago L.Rev. 2

Ethics of furn information to L.Rev. 398.

Illinois disbar 26 Ill.L.Rev. 457.

Malicious prose plaint against at

Abstraction or tal papers, ground suspension 17

Admissibility of Amicus curiae 41

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104-16 Ill.Stat

§ 6. Name enrolled—Striking from roll—Suspension

No person, whose name is not on the said roll, with the day and year when the same was written thereon, shall be suffered or admitted to practice as an attorney or counselor at law in any court of record within this state, and the justices of the supreme court, in open court, shall have power at their discretion to strike the name of any attorney or counselor at law from the roll for mal-conduct in his office; and any judge of a Circuit Court, or of the Superior Court of Cook county, shall, for like cause, have power to suspend any attorney or counselor at law from practice in the court over which he presides, during such time as he may deem proper, subject to the right to have such order set aside by the Supreme Court upon appeal. 1874, March 28, R.S.1874, p. 169, § 6.

Historical Note

See R.L.1833, p. 100, § 4; R.S.1845, p. 73, § 4.

Cross References

Barratry, see section 21 of this chapter.  
 Maintenance, see section 22 of this chapter.  
 Proceeding to strike attorney's name from roll, Supreme Court Rule, see Practice, ch. 110, § 101.59.  
 Soliciting of legal business, prohibition, see section 15 of this chapter.

Law Review Commentaries

Attorney disciplinary proceedings. 1961 Law Forum 307.	committee. 1956, 34 Chicago-Kent L. Rev. 324.
Complaints against attorneys. John L. Fogle, 1928, 12 Chicago Bar Rec. 124; John L. Fogle, 1931, 16 Chicago Bar Rec. 21.	Power to discipline judges for misconduct in office. 1937, 32 Ill.L.Rev. 116.
Disbarment for excessive charges. 1912, 7 Ill.L.Rev. 321.	Problems of a committee on grievances. Stephen Love, 1933, 28 Ill.L.Rev. 63.
Disbarment of a Judge. 1943, 10 U. Chicago L.Rev. 354.	Professional discipline in Chicago. Charles P. Megan, 1935, 17 Chicago Bar Rec. 5.
Ethics of furnishing statements and information to the press. 1908, 2 Ill. L.Rev. 398.	Propriety of disclosure of attorney's name in client's publicity. 1953, 34 N. W.L.Rev. 111.
Illinois disbarment proceeding. 1931, 26 Ill.L.Rev. 467.	Survey of Illinois law 1955-1956 with reference to civil practice and procedure. 1956, 35 Chicago-Kent L.Rev. 16.
Malicious prosecution in filing complaint against attorney with grievance	

Notes of Decisions

Abstraction or falsification of records or papers, grounds for disbarment or suspension 17	Appearance as attorney and witness, grounds for disbarment or suspension 21
Admissibility of evidence 52	Attacking or criticizing court, grounds for disbarment or suspension 28
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quiry aimed at determining applicant for admission to therefore, relevant to determine conditions for admittance and rules. In re Anas, 111.2d 471, 121 N.E.2d 826, and appeal dismissed 348 U.S. 946, 99 L.Ed. 740, 75 S.Ct. 579, 349 U.S. 1240, 1243.

ne court, in each grand the head thereof that have been regularly li- and counselors at law ne oath of office as pre- dorsed on the said li-

did not appear of record at such was the fact, since it be allowed to treat roll in Supreme Court as part out incorporating it by his ns. Lyon v. Bolvin, 1845,

pro tunc they obtained license in 5, and was sworn as an h 20, 1837, but name was enrolled by clerk until if attorney had incurred y practicing as attorney fees before his name was he sought to recover for med as attorney before entered on the roll, Sould not aid him by per- to make entry nunc pro fellows, 1840, 3 Ill. 369.

Note 1

## § 7. Refusal to pay over money collected—Striking from roll

In all cases when an attorney of any court in this state, or solicitor in chancery, shall have received, or may hereafter receive, in his said office of attorney or solicitor, in the course of collection or settlement of any claim left with him for collection or settlement, any money or other property belonging to any client, and shall, upon demand made, and a tender of his reasonable fees and expenses, refuse or neglect to pay over or deliver the same to the said client, or to any person duly authorized to receive the same, it shall be lawful for any person interested, to apply to the supreme court of this state for a rule upon the said attorney or solicitor, to show cause, at a time to be fixed by the said court, why the name of the said attorney or solicitor should not be stricken from the roll, a copy of which rule shall be duly served upon said attorney or solicitor at least two days previous to the day upon which said rule shall be made returnable; and if, upon the return of said rule, it shall be made to appear to the said court that such attorney or solicitor has improperly refused or neglected to pay over or deliver said money or property so demanded as aforesaid, it shall be the duty of the said court to direct that the name of the said attorney or solicitor be stricken from the roll of attorneys in said court. 1874, March 28, R.S.1874, p. 169, § 7.

## Historical Note

See R.L.1833, p. 100, § 7; R.S.1845, p. 73, § 5.

## Cross References

Proceeding to strike attorney's name from roll, Supreme Court Rule, see Practice, ch. 110, § 101.50.

## Notes of Decisions

Complaint 8  
Construction and application 1  
Evidence 10  
Excuse for failure to remit 4  
Exorbitant charges 6  
Information 9  
Limitations 7  
Retention or misappropriation of funds 3  
Settlement with client 5  
Trust relationship 2

## 1. Construction and application

Attorney's fraudulent conversion of his clients' funds involves moral turpitude and warrants disbarment. In re Ashbach, Sup.1955, 150 N.E.2d 110.

Relator in disbarment proceedings need not concern himself about attorney's alleged retention of client's moneys where client himself was not complaining and it did not appear but that money had been theretofore paid. People v. Allison, 1873, 68 Ill. 151.

In the case of People v. Palmer, 1871, 61 Ill. 255, the court construed the words "any person interested" appearing in this section to include not only creditors of the attorney but members of the legal profession and other persons who

## Library references

Attorney and Client §44(2).  
C.J.S. Attorney and Client § 23.  
I.L.P. Attorneys and Counselors § 36.

have an interest in the purity of who sustain such important relations to the public.

## 2. Trust relationships

Attorney receiving money for should pay it over immediately prevented, should regard money fund, and under no circumstance he appropriate it. People v. S. 1930, 341 Ill. 340, 173 N.E. 398.

Funds collected or received by attorney for his clients are trust and it is attorney's duty immediately to pay funds over to client, unless some legal reason for not doing so. People v. Tracey, 1925, 314 Ill. N.E. 665.

## 3. Retention or misappropriation of funds

An attorney who receives which belongs to a client should over to him immediately. If or condition prevents its immediate, the attorney should the money as a trust fund. no circumstances appropriate own use. People v. Kwast, 295 Ill. 542, 130 N.E. 344; People v. Chicago Bar Ass'n v. Simmon, Ill. 340, 173 N.E. 398.

Attorney's diversion of to his own use warranted disbarment. In re Ahern, 1962, 26 Ill.2d 172, 2d 869.

An attorney guilty of wrong conversion of a client's funds warrants disciplinary action. In re 1962, 182 N.E.2d 740.

Wrongful conversion of attorney's hands for specific involves moral turpitude and warrants disciplinary action. In re Sup.1962, 182 N.E.2d 651.

The conversion by an attorney of clients' money amounts to "moral turpitude" sufficient to merit disbarment. In re Koptik, 1959, 92 Ill.2d 462.

The wrongful conversion of attorney of funds placed in a client is a violation of his duty sufficient to warrant disbarment. Roth, 1947, 398 Ill. 131, 75 Ill.2d 311.

An attorney should have client and accounted to him for money collected on behalf of client but failure to do so did not constitute "moral turpitude" warranting disciplinary action, such failure is one of omission" rather than

Note 10

did not justify suspension of attorney from practice. In re Brumund, 1942, 361 Ill. 139, 44 N.E.2d 833.

Evidence showed that attorney converted to his own use money intrusted to him by client who had employed attorney to represent him in purchasing a first and second mortgage on certain realty, and attorney was disbarred. In re Lenox, 1939, 371 Ill. 505, 21 N.E.2d 721.

In disbarment proceeding based on charge that attorney converted to his own use money received from a client, it was not necessary to prove definitely what attorney did with money, and when it was shown that attorney disappeared from city without notifying client and without leaving any forwarding address and returned without money and without communicating with client, it was incumbent on attorney to offer evidence that he had not converted money to his own use. Id.

Attorney was disbarred under evidence showing concealment of collection of client's money. In re Casey, 1935, 359 Ill. 496, 195 N.E. 39.

In disbarment proceedings based on misappropriation of clients' money, attorney's failure to take receipts for payments could not be presumed where in other matters attorney took and gave receipts as matter of course. People ex rel. Chicago Bar Ass'n v. Pace, 1934, 354 Ill. 111, 188 N.E. 169.

Evidence of attorney's conversion of moneys of clients was sufficient to warrant disbarment. Id.

Evidence was sufficient to require disbarment of attorney for unprofessional conduct in misappropriating money, and otherwise deceiving clients. People v. Simmons, 1930, 341 Ill. 340, 173 N.E. 398.

If testimony is directly contradictory as to whether or not money collected by an attorney was turned over to his client, the decision must rest on the credibility and not upon the number of witnesses. People v. Mosely, 1917, 278 Ill. 377, 116 N.E. 122.

Evidence sustained finding that attorney had violated this section, by failing to pay over money collected for client. People v. Allen, 1879, 244 Ill. 393, 91 N.E. 463.

§ 8. Notice—Defense—Effect of striking from roll

Every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall, after such notice, be heard in his defense, and allowed reasonable time to collect and prepare testimony for his justification. And every attorney whose name shall, at any time, be stricken from the roll by order of the court in manner aforesaid, shall be considered as though his name had never been written thereon, until such time as the said justices, in open court, shall authorize him to sign or subscribe the same. 1874, March 28, R.S.1874, p. 169, § 8.

Historical Note

See R.S.1815, p. 73, § 6.

Notes of Decisions

- Defenses 3
- Hearing 4
- Information 1
- Service of notice 2

Library references

- Attorney and Client ¶ 46, 48, 60.
- C.J.S. Attorney and Client ¶ 25, 27, 40.
- I.L.P. Attorneys and Counselors ¶ 152, 154, 161.

1. Information

Attorney could only be tried in disbarment proceeding on charges con-

tained in In: Noyes v. Allie v. Mattie N.E. 444; People Ill. 149, 156 N

Under this time and pl misconduct v and proof of justify disbar are not prove v. Matthews, 444.

Const.1870. a all prosecution in the name people of the clude "against of the same" mary proceed from the roll. 162 Ill. 194, 44

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3. Defenses

See, also, Not sections 6 and Attorney's acc matically bar d

§ 9. Arre

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tained in information. People ex rel. Noyes v. Allison, 1873, 68 Ill. 151; People v. Matthews, 1905, 217 Ill. 94, 75 N.E. 444; People v. McCaskrin, 1927, 325 Ill. 149, 156 N.E. 328.

Under this section charge must give time and place and allege acts of misconduct with reasonable certainty, and proof of acts not charged will not justify disbarment where those alleged are not proven. People ex rel. Deneen v. Matthews, 1905, 217 Ill. 94, 75 N.E. 444.

Const. 1870, art. 6, § 33, providing that all prosecutions should be carried on in the name and by authority of the people of the state of Illinois, and concludes "against the peace and dignity of the same" did not apply to summary proceedings to strike an attorney from the roll. Moutray v. People, 1896, 162 Ill. 194, 44 N.E. 496.

Specification in information that attorney took legal papers belonging to files of circuit court of certain county held too indefinite since no time was stated and even title of case was not given. People ex rel. Noyes v. Allison, 1873, 68 Ill. 151.

#### 2. Service of notice

Service of notice of complaint in disbarment proceedings on counsel of respondent attorney instead of on respondent attorney held not to deprive committee on grievances of Chicago Bar Association as commissioners of Supreme Court of jurisdiction where counsel on whom notice was served represented respondent attorney in other complaints filed in same proceedings and was of record in instant proceedings in Supreme Court. In re Mack, 1925, 360 Ill. 342, 196 N.E. 197.

#### 3. Defenses

See, also, Notes of Decisions under sections 6 and 7 of this chapter.

Attorney's acquittal does not automatically bar disciplinary proceeding:

overruling People ex rel. Deneen v. John, 1905, 212 Ill. 615, 72 N.E. 789. In re Browning, 1962, 23 Ill.2d 483, 1.9 N.E.2d 14.

In disbarment proceeding, respondent could not invoke technicalities to combat charge against his professional integrity, where facts showed that notwithstanding a technical defense his conduct was ethically or morally without support. In re Lenox, 1939, 371 Ill. 505, 21 N.E.2d 721.

Satisfactory settlement with clients did not preclude inquiry into attorney's acts in connection therewith and was no defense to disbarment proceeding. People v. Chamberlin, 1909, 242 Ill. 260, 89 N.E. 994.

Youth and inexperience of attorney was no defense to proceeding for disbarment for fraudulent conspiracy to extort money. People v. Macauley, 1907, 230 Ill. 268, 82 N.E. 612, 120 Am.St.Rep. 297.

Unless circumstances would otherwise cause injustice, court will not establish limitation of disbarment proceeding by analogy to statute. People v. Hooper, 1906, 218 Ill. 313, 75 N.E. 896.

Acquittal of attorney indicted for crime bars disbarment proceedings based on crime charged. People v. John, 1905, 212 Ill. 615, 72 N.E. 789. Overruled: see In re Browning, 1962, 23 Ill.2d 483, 179 N.E.2d 14.

#### 4. Hearing

Hearing in disbarment suit, being judicial, must be governed by the same rules which govern other trials of questions of fact, and the evidence on either side must be such as is legally competent to maintain the issue, and the evidence must be taken according to the rules of the common law. People ex rel. Chicago Bar Ass'n v. Amos, 1910, 246 Ill. 299, 92 N.E. 857, 138 Am.St.Rep. 239.

### § 9. Arrest—Privilege

All attorneys and counselors at law, judges, clerks and sheriffs, and all other officers of the several courts within this state, shall be liable to be arrested and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against in the same courts and in the same manner as other persons are, any law, usage or custom to the contrary notwithstanding: Provided, nev-

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ertheless, said judges, counselors or attorneys, clerks, sheriffs and other officers of said courts, shall be privileged from arrest while attending courts, and whilst going to and returning from court. 1874, March 28, R.S.1874, p. 169, § 9.

#### Historical Note

See R.L.1833, p. 100, § 5; R.S.1845, p. 74, § 7.

#### Law Review Commentaries

Arrest to arraignment. Warren J. Carey, 1958, 47 Ill.Bar J. 211.

#### Notes of Decisions

False imprisonment 3  
Plea of privilege 2  
Privilege in general 1  
Waiver of privilege 4

not immune from service of civil process. Jones v. Jones, 1963, 40 Ill.App.2d 217, 189 N.E.2d 33.

#### 2. Plea of privilege

A plea of privilege is dilatory and will come too late unless interposed at first opportunity. Wilson v. Nettleton, 1850, 12 Ill. 61.

#### 3. False imprisonment

That person arrested was exempt from arrest as attorney returning from court did not render arresting officers, who acted pursuant to valid warrant, liable for false imprisonment, notwithstanding claim that officers acted maliciously. Bennett v. Ahrens, C.C.A.1932, 37 F.2d 948.

#### 4. Waiver of privilege

Attorney's privilege of exemption from arrest while returning from court may be waived, and arrest under such circumstances is voidable only. Bennett v. Ahrens, C.C.A.1932, 37 F.2d 948.

#### Library references

Arrest 59, 60.  
C.J.S. Arrest § 2 et seq.  
I.L.P. Arrest § 3.

#### 1. Privilege in general

Attorney's only remedy where he was arrested while returning from court was to apply to court for his discharge from arrest. Bennett v. Ahrens, 1932, C.C.A.1932, 37 F.2d 948.

Resident attorney may be served with summons in civil action or suit while in attendance upon courts, and attorney from another state has no greater privilege. Robbins v. Lincoln, C.C.1886, 27 F. 342.

Attorneys are privileged from arrest while attending court and while going to and returning from court but they are

### § 10. Persons prohibited to practice as attorney

No person who holds a commission as a justice of the Supreme Court of the State of Illinois or as a judge of any court of record in this State shall be permitted to practice as an attorney or counsellor at law in the court in which he is commissioned or appointed, nor shall any judge of any county or probate court be permitted to practice in the court of which he is commissioned or appointed, and it shall be unlawful for any county judge, probate judge, county or probate clerk, or deputy county or probate clerk to make accounts current or reports for any executor, administrator, guardian or conservator, in which said court shall have to act on judicially, nor shall any coroner, sheriff or deputy sheriff be permitted to practice as aforesaid in the county in which he

is commissioned or appointed to practice as a judge of any court of record be permitted to practice as an attorney or counsellor at law in the court in which he is commissioned or appointed, nor shall any judge of any county or probate court be permitted to practice in the court of which he is commissioned or appointed, and it shall be unlawful for any county judge, probate judge, county or probate clerk, or deputy county or probate clerk to make accounts current or reports for any executor, administrator, guardian or conservator, in which said court shall have to act on judicially, nor shall any coroner, sheriff or deputy sheriff be permitted to practice as aforesaid in the county in which he is commissioned or appointed.

See R.L.1833, p. 101, § 5; R.S.1845, p. 74, § 7.

Prior to its amendment in 1896, this section provided: "No person who holds a commission as a justice of the supreme court or as a judge of any court of record shall be permitted to practice as an attorney or counsellor at law in the court in which he presides; nor shall any sheriff, deputy sheriff, county clerk, deputy county clerk, probate clerk or deputy probate clerk be permitted to practice as an attorney or counsellor at law in the court of which he is clerk or deputy clerk."

Corporation, practice as  
County or probate judge,  
Registrar of land titles,  
Sheriffs and deputies, and

Disbarment for practicing as a judge. 1931, 25 Ill.L.R. 100.

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is commissioned or appointed, nor shall any clerk or deputy clerk of a court of record be permitted to practice as an attorney or counsellor at law in the court in which he is such clerk or deputy clerk, and no person shall be permitted or suffered to enter his name on the roll or record, to be kept as aforesaid, by the clerk of the Supreme Court, or do any official act appertaining to the office of an attorney or counsellor at law, until he hath taken the oath hereinbefore required; and the person administering such oath shall certify the same on the license, which certificate shall be a sufficient voucher to the clerk of the Supreme Court to enter or insert, or permit to be entered or inserted, on the roll of attorneys or counsellors at law, the name of the person of whom such certificate is made. 1874, March 28, R.S.1874, p. 169, § 10; 1895, June 17, Laws 1895, p. 79, § 1.

**Historical Note**

See R.L.1833, p. 101, § 6; R.S.1845, p. 74, § 8.

Prior to its amendment by the Act of 1895, this section provided as follows: "No person who holds a commission as a Justice of the supreme court, or as judge of any court of record, shall be permitted to practice as an attorney or counselor at law in the court in which he presides; nor shall any coroner, sheriff, deputy sheriff, jailer or constable be permitted to practice as aforesaid in the county in which he is commissioned or appointed; nor shall any clerk or deputy clerk of [a court of] record be permitted to practice as an attorney or counselor at law in the court of which he is clerk or deputy clerk;

and no person shall be permitted or suffered to enter his name on the roll or record, to be kept as aforesaid, by the clerk of the supreme court, or do any official act appertaining to the office of any attorney or counselor at law, until he hath taken the oath hereinbefore required; and the person administering such oath shall certify the same on the license; which certificate shall be a sufficient voucher to the clerk of the supreme court to enter or insert, or permit to be entered or inserted, on the roll of attorneys and counselors at law, the name of the person of whom such certificate is made."

**Cross References**

Corporation, practice as attorney, see Corporations, ch. 32, §§ 411-415.  
 County or probate judge, practice of law, see Courts, ch. 37, §§ 326, 327.  
 Registrar of land titles, practice of law, see Conveyances, ch. 30, § 48.  
 Sheriffs and deputies, appearance as attorneys, see Sheriffs, ch. 125, § 21.

**Law Review Commentaries**

Disbarment for practicing law while a judge. 1931, 25 Ill.L.Rev, 569. Tax accountant enjoined from practicing law. 1942, 23 Chicago Bar Rec. 119.

**Notes of Decisions**

Judges as practitioners 1  
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1. Judges as practitioners

**Library references**

Attorney and Client § 4.  
 C.J.S. Attorney and Client §§ 7, 8.  
 I.L.P. Attorneys and Counselors § 12.

Practice of law by attorneys during tenure as county judges, in or out of court, directly or indirectly, was incompatible with judicial responsibilities and duties, and was contrary to public policy, but prohibition against such practice would not become effective until

December 3, 1962, the commencement of terms of office of county judges elected at next election, and attorney was not disqualified from representing plaintiffs in pending action, although he was also a county judge. *Bassi v. Langlois*, 1961, 22 Ill.2d 190, 174 N.E.2d 682, affirmed as to costs on remand 23 Ill.App.2d 148, 177 N.E.2d 10.

It is matter of common knowledge that county judges, particularly those in smaller counties, have long practiced in courts other than those in which they preside. *Id.*

Under this section, prohibiting judge of any court of record from practicing as an attorney in the court in which he is commissioned or appointed, prohibition, as applied to circuit judge, is not restricted to circuit from which judge was elected, and judge of the circuit court of Cook County was disqualified from acting as attorney in tax matter prosecuted in circuit court of Sangamon County. *Schnackenberg v. Towle*, 1955, 4 Ill.2d 561, 123 N.E.2d 817, certiorari denied 75 S.Ct. 785, 349 U.S. 939, 99 L.Ed. 1267.

Under this section a probate judge could not act as counsel in a suit in the Circuit Court to set aside a will which had been probated before him. *Evans v. Funk*, 1894, 151 Ill. 650, 38 N.E. 230.

A county judge was not necessarily disqualified from practicing as an attorney in the County Court of another county, even though he had presided in that court in particular cases at the request of the judge of such other coun-

ty. *O'Hare v. Chicago, M. & N. R. Co.*, 1891, 139 Ill. 151, 28 N.E. 923.

Supreme Court judges may act as attorneys in U. S. Courts. *Town of Bruce v. Dickey*, 1886, 116 Ill. 527, 6 N.E. 435.

Prohibition of statute against judges practicing law applied only to cases actually pending and tried in the court over which he presided, insofar as relating to county and probate judges when the causes they tried in other courts had no connection with the business or causes pending in their own courts. *Evans v. Funk*, 1891, 38 Ill.App. 441, affirmed 151 Ill. 650, 38 N.E. 230; however, it was held that a probate judge could not, while an estate was pending in his court and when settlement was temporarily suspended by the contest of will, lay aside his character as a judge in the cause and follow the case to another court and there become a partisan attorney for some interest against some other interest involved in the common estate, and after that contest was ended, and the case went back to his own court for final administration, again assume the impartial and high duties of a judge and settle conflicting interest in the case where he served some of the parties as an attorney, as against the interest of the others.

2. Recovery of fee

Where judge serves as attorney, in violation of this section his client may recover amount paid him. *Evans v. Funk*, 1894, 151 Ill. 650, 38 N.E. 230.

§ 11. Prosecution or defense of party's own suits—Practicing attorneys

Plaintiffs shall have the liberty of prosecuting, and defendants of defending in their proper persons, and nothing herein contained shall be so construed as to affect any person or persons heretofore admitted to the degree of an attorney or counselor at law, by the laws of this state, so as to subject him to further examination, or make it necessary for him to renew his license. 1874, March 28, R.S.1874, p. 169, § 11.

Historical Note

See R.L.1833, p. 102, § 10; R.S.1846, p. 75, § 12.

Notes of Decisions

Library references

Attorney and Client ¶11.  
C.J.S. Attorney and Client § 16.  
I.L.P. Attorneys and Counselors § 15.

1. Construction and application

Appearance pro se, practice of law, see Notes of Decisions under section 1 of this chapter.

A Circuit Court rule providing dismissal of appeal where name of attorney for party was not entered on judge's docket was held to violate statute in the case of *Gregson v. 1877*, 83 Ill. 478, wherein the court said: "Although defendant was in ready for trial, and demanding court permitted to try his own cause court denied him that privilege, and missed his appeal. That was error. Under our statute, either plaintiff or defendant in any suit has the right guaranteed to him to prosecute or defend for himself, in his proper person. It is a statutory right, of which

§ 12. Attorneys residing

When any counselor or attorney residing in any territory, may desire to practice law in this state upon the same terms as attorneys at law, he may be admitted to practice law. March 28, R.S.1874, p. 169, § 12.

See R.L.1833, p. 108, § 11; R.S.1846, p. 75, § 12.

Admission of attorney licensed in other state, R.S.1874, p. 169, § 11, 10.

Library references

Attorney and Client ¶4.  
C.J.S. Attorney and Client ¶ 7.  
I.L.P. Attorneys and Counselors ¶ 15.

1. Construction and application  
Agreement between attorney and client for rendition of legal services, R.S.1874, p. 169, § 11.

§ 13. Attorney' fees

Whenever a mechanic, artist or tradesman shall have cause to bring suit or action against any attorney or counselor at law, or she has brought suit is judgment has been made in writing at least to the effect that the amount so recovered shall not exceed the amount so recovered by the duty of the court before which

A Circuit Court rule providing for dismissal of appeal where name of attorney for party was not entered on judge's docket was held to violate this statute in the case of *Gregson v. Allen*, 1877, 85 Ill. 478, wherein the court said: "Although defendant was in court, ready for trial, and demanding to be permitted to try his own cause the court denied him that privilege, and dismissed his appeal. That was error. Under our statute, either plaintiff or defendant in any suit has the liberty guaranteed to him to prosecute or defend for himself, in his proper person. It is a statutory right, of which the court cannot arbitrarily debar him. No doubt, courts may make all such rules for the orderly disposition of business before them as may be deemed expedient, consistent with law; but, as this court has had occasion, before, to declare, all such rules must be reasonable. The rule under which defendant's appeal was dismissed, was in contravention with the statute. The effect was to deprive him of the right, secured by law, to defend any action against him, in his proper person, and in that respect the rule was inconsistent with law."

§ 12. Attorneys residing in other states

When any counselor or attorney at law, residing in any other state or territory, may desire to practice law in this state, such counselor or attorney shall be allowed to practice in the several courts of law and equity in this state upon the same terms and in the same manner that counselors and attorneys at law residing in this state now are or hereafter may be admitted to practice law in such other state or territory. 1874, March 28, R.S.1874, p. 169, § 12.

Historical Note

See R.L.1832, p. 108, § 11; R.S.1845, p. 75, § 13.

Cross References

Admission of attorney licensed in another state or country, see Practice, ch. 110, § 101.58.

Notes of Decisions

Library references

Attorney and Client 4.  
C.J.S. Attorney and Client §§ 7, 8.  
I.L.P. Attorneys and Counselors § 12.

Illinois was not illegal and void because one of the attorneys was a Missouri attorney and was not admitted to practice law in Illinois, since Missouri lawyers can practice in Illinois under this section. *Mock v. Higgins*, 1954, 3 Ill.2d 281, 121 N.E.2d 866.

- 1. Constructive and application Agreement between attorneys and client for rendition of legal services in

§ 13. Attorney's fees in suits for wages

Whenever a mechanic, artisan, miner, laborer, or servant, or employee, shall have cause to bring suit for his or her wages earned and due, and owing according to the terms of the employment, and he or she shall establish by the decision of the court or jury that the amount for which he or she has brought suit is justly due and owing, and that a demand has been made in writing at least three days before suit is brought, for a sum not exceeding the amount so found due and owing, then it shall be the duty of the court before which the case shall be tried to allow to the plain-

tiff, when the foregoing facts appear, a reasonable attorney fee, in addition to the amount found due and owing for wages, and in justice court such attorney's fee shall not be less than \$5.00, and in the County or Circuit Court, not less than \$10.00, to be taxed as costs of suit. 1889, June 1, Laws 1889, p. 362, § 1.

**Historical Note**

Title of Act: **borer or servant sues for wages. Approved June 1, 1889. In force July 1, 1889.**  
 An Act providing for attorney's fees when mechanic, artisan, miner, laborer or servant sues for wages. Approved June 1, 1889. In force July 1, 1889. Laws 1889, p. 362.

**Cross References**

Attorney's fees in suits for wages brought in justices' courts, see Justices and Constables, ch. 70, § 58.

**Notes of Decisions**

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v. Epps, 1886, 17 Ill.App. 196; Epstein v. Webb, 1893, 44 Ill.App. 341.

Coal miner paid by the ton for coal mined, instead of by the day or hour for the time he worked, was nevertheless entitled to rights accorded by this section to wage earners. Walker v. O'Gara Coal Co., 1908, 140 Ill.App. 279; Hopkins v. O'Gara Coal Co., 1908, 140 Ill.App. 282.

This statute applies only to wage earners but it applies to all wage earners without discrimination, Manowsky v. Stephan, 1908, 223 Ill. 409, 84 N.E. 265.

All persons who bring actions for wages fall within the provisions of this section. Vogel v. Pekoc, 1896, 157 Ill. 339, 42 N.E. 286, 36 L.R.A. 491.

The word "employee" within this section must be held to comprehend and include all persons employed to render to another regular, continuous and exclusive services of the same general degree, kind and nature that are due from a "mechanic, artisan, miner, laborer or servant." Euren v. Mercury Press, Inc., 1935, 280 Ill.App. 217.

The word "employee" in this section was not used in its broadest sense in view of the fact that the word "employee" is preceded by the words "mechanic, artisan, miner, laborer, or servant." The use of those words in the statute preceding the word "employee" indicates that the word "employee" was used in a limited and restricted sense and was not intended to include all persons who were in the service or employment of other persons irrespective of the degree or nature of their service or employment. The word "employee"

**Library references**

Master and Servant § 60(18);  
 C.J.S. Master and Servant § 136.  
 I.L.P. Employment § 60.

**1. Validity**

This section, providing for taxing attorney's fees as costs in actions brought by servants for wages which they have previously demanded in writing, was not invalid as class legislation. Vogel v. Pekoc, 1896, 157 Ill. 339, 42 N.E. 286, 36 L.R.A. 491. In this case the court on additional opinion on denial of rehearing said: "The statute here in question interferes with no one's right to contract. It embraces a well defined class of cases and persons, not singled out, as is contended, wholly without reason, and arbitrarily; but upon grounds which may, we think, properly serve as a basis for valid legislative action . . . If this law were to be held unconstitutional for the reason assigned, then many other acts long in force in this state, hitherto deemed to be salutary, and against which no constitutional objection has been heard, would certainly fall with it."

**2. Construction and application**

Traveling salesman is not a laborer or servant so as to come within the provisions of this section. Standard Fashion Co. v. Blake, 1894, 51 Ill.App. 233; Epps

is a word of larger import than the words "mechanic, artisan, laborer or servant," which precede it. When a general word follows a particular one, the rule is to construe the general word as applicable to persons ejusdem generis. Id.

Where plaintiff in suit to recover balance of salary due from defendant, was employed by the defendant pursuant to a written agreement providing plaintiff to solicit printing for defendant, plaintiff held entitled to recover attorney's fees under this section as "mechanic, artisan, laborer, or servant," or employee withstanding employment on a salary basis. Id.

Statute must be complied with in every particular to entitle plaintiff to recover attorney's fees. Terhune, 1912, 161 Ill.App. 152.

Person employed as a transit topographer was an employee within this section and compensation payable under his contract of employment was wages, although payable in installments. Goodridge v. Alton, 1908, 140 Ill. 373, wherein the court in its opinion stated that, "The word 'employee' in the statute, we think, must be construed to comprehend and include all persons employed to render to another regular, continuous and exclusive services of the same general degree, kind and nature that are due from a 'mechanic, artisan, laborer or servant.'"

This section and Laws 1891, providing that it should be lawful to make deduction from wages, for advances of lawful money, checks or drafts advanced without discount, and such sums as may be deducted from a sick or relief fund for sick employees, are not irreconcilable in pari materia and must be construed together, and in construing the two sections, they must allow such reasonable attorney's fees as it may deem proper, but not more than \$5 can be allowed in justice court, and not less than \$10 in County or Circuit Court, the amount being a reasonable discretion exercised by the justice of the peace or by the court, as the case may be. Latschke v. Miller, 1902, 100 Ill. 117.

This section does not apply to actions brought to recover damages

13 § 14 ATTORNEYS AND COUNSELORS

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§ 14. Attorney's lien for fees—Enforcement

Attorneys at law shall have a lien upon all claims, demands and causes of action, including all claims for unliquidated damages, which may be placed in their hands by their clients for suit or collection, or upon which suit or action has been instituted, for the amount of any fee which may have been agreed upon by and between such attorneys and their clients, or, in the absence of such agreement, for a reasonable fee, for the services of such attorneys rendered or to be rendered for their clients on account of such suits, claims, demands or causes of action. To enforce such lien, such attorneys shall serve notice in writing, which service may be made by registered or certified mail, upon the party against whom their clients may have such suits, claims or causes of action, claiming such lien and stating therein the interest they have in such suits, claims, demands or causes of action, and such lien shall attach to any verdict, judgment or decree entered and to any money or property which may be recovered, on account of such suits, claims, demands or causes of action, from and after the time of service of the notice. On petition filed by such attorneys or their clients any court of competent jurisdiction shall, on not less than 5 days' notice to the adverse party, adjudicate the rights of the parties and enforce such lien in term time or vacation. 1909, June 16, Laws 1909, p. 97, § 1; 1927, June 30, Laws 1927, p. 186, § 1; 1957, July 6, Laws 1957, p. 1291, § 1.

Historical Note

The amendatory act of 1927, provided for service of notice by registered mail.

The 1957 amendment authorized service of notice by certified mail.

Title of Act:

An Act creating attorney's lien and for enforcement of same. Filed June 16, 1909. In force July 1, Laws 1909, p. 97.

Law Review Commentaries

Ambulance chasing in the Chicago area. 1953, 47 N.W.L.Rev. 896, 897.

Attorney's lien. 1912, 7 Ill.L.Rev. 252; 1956, 34 Chicago-Kent L.Rev. 191.

Attorney's lien for services to beneficiary barred by spendthrift clause. 1942, 9 U.Chicago L.Rev. 360.

Constitutional and other limitations on Illinois administrative agencies. Samuel Micon, 1946, 24 Chicago-Kent L.Rev. 137.

Contingent fee contract as partial assignment of claim. 1936, 2 U.Chicago L.Rev. 327.

Contract in consideration of services in recovering property wrongfully withheld. 1914, 9 Ill.L.Rev. 361.

Factors determining proper fee. Paul B. Sargent, 1955, 44 Ill.Bar J. 244.

Foreclosure of mortgage to cover attorney's fees after satisfaction of secured note. 1939, 17 Chicago-Kent L.Rev. 197.

Lawyers' fees. Frank E. Trubaugh, 1965, 43 Ill.Bar J. 410.

Low cost legal service. 1940, 21 Chicago Bar Rec. 274.

Personal service necessary to perfect attorney's lien. 1914, 9 Ill.L.Rev. 203.

Principal and agent, survey of Illinois law for the year 1948-1949. 1949, 25 Chicago-Kent L.Rev. 9.

Professional fees and charges. S. O. Smith, Jr., 1946, 35 Ill.Bar J. 73.

Security transactions, survey of Illinois law for the year 1943-1944. 1944, 23 Chicago-Kent L.Rev. 57.

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ally. 79 C. 46. Source of court's authority for its rules. 88 C. 45b. Power of court to remove, and proper causes therefor. 66 C. 585; 80 C. 140; 84 C. 602; 88 C. 447; 90 C. 440; 112 C. 269. Right to practice not a property right. 79 C. 55. Disbarment of attorney who is also judge of probate does not disqualify him as to latter office. 88 C. 447. Order for indefinite suspension is valid. 90 C. 441. Proper to vest in bar examining committee power to make decisions under rules of judges, including power to determine approved law schools. 116 C. 417. History of law with respect to admission of attorneys. 129 C. 52. Applicant may be admitted only when qualified in accordance with rules established by the judges; rules have force of statute. 132 C. 241. Legislative recognition of the inherent right of the superior court to promulgate rules for admission of attorneys. 145 C. 222. History of section reviewed. *Id.* Cited. 146 C. 556; 154 C. 129, 150. Can be construed only as a legislative recognition of the inherent power of the superior court. 148 C. 177. Questions of law arising upon proceedings for admission to the bar are properly presented in a petition to the court. *Id.* See note to section 51-88. Applicant, member of Maryland bar, admitted without examination although practice in Connecticut would be confined to one corporate client. 155 C. 186.

Cited. 20 CS 268. Terms of injunction in accordance with supreme court decision re practice of law by trust departments of banks. 21 CS 42. If an applicant seeks admittance to the bar without examination, he is not the victim of discrimination if strict compliance with the rule is insisted on. 22 CS 214. New York attorney not a member of Connecticut bar held not entitled to recover for legal services rendered in Connecticut. 23 CS 225. Cited. 34 CS 674, 677.

Legislature, by insertion of exception clause in section 1-19, presumed to intend to exclude from operation of "right to know" statutes exclusive power over admission to bar vested in superior court by this section. 4 Conn. Cir. Ct. 313, 321.

**Sec. 51-81. Investigation of qualifications of applicants for admission to the bar.** (a) For the purpose of investigating the moral qualifications or general fitness of any applicant for admission to the bar of the state, either upon motion or examination, each chairman of any standing committee on recommendations for admission to the bar, in any county, shall have power to compel the attendance and testimony before it, or any member thereof, by subpoena and *capias* issued by him or other competent authority, of any person who such chairman reasonably believes may have information useful to his committee in such investigation, at such time and place in the town wherein such investigation is being made as may be designated in such subpoena, and for such purpose any such chairman may compel the production before such committee, or any member thereof, by subpoena *duces tecum*, of any books, records or papers which such chairman reasonably believes may contain information useful to such committee in such investigation.

(b) No such person shall be excused from testifying or producing books, records or papers on the ground that such testimony or the production of such books, records or papers will tend to incriminate him, but such evidence shall not be used in any criminal proceedings against him.

(c) If any person disobeys any such subpoena or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by such committee or any member thereof, such committee or such member may complain to the state's attorney of such county, who, upon being furnished with the necessary information, shall forthwith apply to the superior court, or to a judge thereof if said court is not in session, setting forth such disobedience to process or refusal to answer, and said court or such judge shall cite such person to appear before him and shall inquire as to the truth of the allegations contained in such application and, if he finds them to be true, shall commit such person to a community correctional center until he testifies, but not for a longer period than sixty days.

(d) Any such process may be directed to any proper officer and such officer shall serve the same as commanded therein.

(1949 Rev., S. 7639.)

**Sec. 51-81a. Certificate of registration. Fee. Renewal.** Section 51-81a is repealed.

(June, 1971, P.A. 8, S. 37; 1972, P.A. 223, S. 31.) \*

**Sec. 51-81b. Occupational tax on attorneys.** Any person who has been admitted as an attorney by the judges of the superior court, and who was engaged in the practice of law, including the performance of judicial duties, in the year preceding the year in which an occupational tax is due hereunder, shall annually on or before January fifteenth pay to the commissioner of revenue services a tax in the amount of one hundred fifty dollars. Upon failure of any such person to pay any sum due hereunder within thirty days of the due date thereof, the provisions of section 12-35 shall apply with respect to the enforcement of this section and the collection of such sum. The commissioner of revenue services shall notify the chief court administrator of the failure of any person to comply with the provisions of this section and the chief court administrator shall notify the judges of the superior court of such failure. Any individual required by the provisions of this section to file a return or to pay a tax hereunder who shall fail to file such return or to pay such tax when due shall be liable for a penalty of twenty-five dollars, which penalty shall be payable to, and recoverable by, the commissioner in the same manner as the tax imposed under this section. If any tax is not paid when due as provided in this section, there shall be added to the amount of the tax, in addition to any penalty hereunder, interest at the rate of one per cent per month or any fraction thereof from the date the tax became due until the same is paid. If the commissioner is satisfied beyond a reasonable doubt that the failure to file a return or to pay the tax was due to reasonable cause and was not intentional or due to neglect, he may abate or remit the whole or any part of any penalty under this section. This section shall not apply to any attorney whose name has been removed from the roll of attorneys maintained by the clerk of the superior court for the judicial district of Hartford-New Britain, or to any attorney who has retired from the practice of law, provided such attorney shall file written notice of such retirement with the clerk of the superior court for the judicial district of Hartford-New Britain, or, with respect to the tax due in any calendar year, to any attorney serving on active duty with the armed forces of the United States for more than six months in such year.

(1972, P.A. 223, S. 30, P.A. 76-436, S. 10a, 78, 681; P.A. 77-614, S. 139, 610, P.A. 78-280, S. 4, 5, 127.)  
Cited 168 C. 212.

**Sec. 51-82. Admission to examination of attorneys admitted in other states.** Section 51-82 is repealed.

(1957, P.A. 528, 1963, P.A. 642, S. 43.)

Held unconstitutional as an attempt by legislature to interfere in a judicial function 148 C. 177.

**Sec. 51-83. Examination of veterans for admission.** Any person whose moral qualifications have been approved by the bar of the county in which he has made application for admission to the bar and has served in the armed forces of the United States and who graduated from an approved law school after January 1, 1937, may, at the discretion of the bar of the county in which the applicant resides, apply for two additional examinations for entrance to the bar in excess of the number otherwise permissible.

(1949, S. 3119d; 1957, P.A. 597.)

**Sec. 51-84. Attorneys subject to rules.** Attorneys admitted by the superior court shall be attorneys of all courts and shall be subject to the rules and orders of the courts before which they act, which may fine them for transgressing such rules and orders, not exceeding one hundred dollars for any offense, and may suspend or displace them for just cause.

(1949 Rev., S. 7642.)

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Attorney cannot be compelled in one case to produce in evidence a paper left with him by a client in another case. 3 D. 499. Superior court alone has power to admit and to suspend or displace attorneys at law. 60 C. 12; 66 C. 587. Disregard of rulings and suggestions of judge justifies displacement or suspension. 88 C. 150. Discretion of court as to displacing or suspending attorney. 84 C. 602. Should not practice in court where he may act as judge. 72 C. 437, or try case in which he is material witness. 68 C. 201; 72 C. 437; 80 C. 531; 81 C. 350; unless case is his own: 85 C. 209; but adversary's counsel may call him as witness. 81 C. 344. Agreement to bear expense of action and receive one-half proceeds is against public policy. 77 C. 457; 84 C. 594; 107 C. 386. May try case before his brother as judge. 83 C. 130. To deceive court to secure admission of evidence is a contempt. 84 C. 60. May purchase judgment and sue thereon. 85 C. 260. Cited. 129 C. 53. When counsel may withdraw from case which is before court. 147 C. 337.

**Sec. 51-85. Authority and powers of commissioners of the superior court.** Each attorney-at-law admitted to practice within the state, while in good standing, shall be a commissioner of the superior court and, in such capacity, may, within the state, sign writs and subpoenas, take recognizances, administer oaths and take depositions and acknowledgments of deeds. Each such attorney may also issue subpoenas to compel the attendance of witnesses and subpoenas duces tecum in administrative proceedings. If, in any administrative proceeding, any person disobeys such subpoena or, having appeared in obedience thereto, refuses to answer any proper and pertinent question or refuses to produce any books, papers or documents pursuant thereto, application may be made to the superior court or any judge thereof for an order compelling obedience.

(1949 Rev., S. 764B; P.A. 77-386, S. 1, 2, P.A. 78-280, S. 80, 127.)

A woman may be appointed. 50 C. 136. The signing of a writ by a lawyer as a commissioner of the superior court is not a mere ministerial act. A writ of mandamus to compel the signing will not be granted. 142 C. 411. Cited. 162 C. 255. Cited. 171 C. 705, 723.

**Sec. 51-86. Soliciting persons to institute actions for damages.** No person who has not been admitted as an attorney in this state under the provisions of section 51-80 shall solicit, advise, request or induce any person to cause an action for damages to be instituted, from which action or from which person the person soliciting, advising, requesting or inducing the institution of such action may, by agreement or otherwise, directly or indirectly, receive any compensation from the person solicited to institute or prosecute such action or from his attorney, or in which action the compensation of any attorney for instituting or prosecuting the same, directly or indirectly, depends upon the amount of the recovery therein. Any person who violates any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than six months or both.

(1949 Rev., S. 764D.)

What constitutes "ambulance chasing." 4 CS 90. A lawyer who abets the commission of the offense by knowingly accepting a case solicited is equally as guilty. Id., 233.

**Sec. 51-87. Solicitation of cases for attorneys.** (a) Any person who (1) pays, remunerates or rewards any other person with something of value to solicit or obtain a cause of action or client for an attorney-at-law or (2) employs an agent, runner or other person to solicit or obtain a cause of action or a client for an attorney-at-law or (3) pays, remunerates or rewards any other person with something of value for soliciting or bringing a cause of action or a client to an attorney-at-law or (4) pays, remunerates or rewards with something of value a police officer, court officer, correctional institution officer or employee, a physician, any hospital attache or employee, an automobile repairman, tower or wrecker, funeral director or any other person who induces any person to seek the services of an attorney or (5) pays, remunerates or rewards any other person with something of value to induce him to bring a cause of action to, or to come to, an attorney or to seek his professional services shall be fined not more than one thousand dollars or imprisoned not more than three years or both. This subsection shall not apply to an attorney's engaging other or additional attorneys for professional assistance or to an attorney's referring a case to another attorney.

(b) Any person who knowingly receives or accepts any payment, remuneration or reward of value for referring or bringing a cause of action or prospective client to an attorney-at-law, or for inducing or influencing any other person to seek the professional advice or services of an attorney, shall be fined not more than one thousand dollars or imprisoned not more than three years or both. This subsection shall not apply to the referral by an attorney-at-law of causes of action or clients or other persons to another attorney-at-law.

(1957, P.A. 606, S. 1, 2.)

**Sec. 51-88. Practice of law by persons not attorneys.** No person who has not been admitted as an attorney under the provisions of section 51-80 shall practice law or appear as an attorney-at-law or as attorney and counselor-at-law for another, in any court of record in this state, or make it a business to practice law, or appear as an attorney and counselor-at-law for another in any such court, or make it a business to solicit employment for a lawyer, or hold himself out to the public as being entitled to practice law, or assume to be an attorney or counselor-at-law, or assume, use or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law, or counselor-at-law, or attorney or counselor or attorney and counselor or equivalent terms, in such manner as to convey the impression that he is a legal practitioner of law or in any manner advertise that he, either alone or together with any other person or persons, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law. Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. Any person who violates any provision of this section shall be deemed in contempt of court, and the superior court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation. Nothing herein contained shall be construed as prohibiting a town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which such town clerk resides or as prohibiting any person from practicing law or pleading at the bar of any court of this state in his own cause.

(1949 Rev., S. 763b, 7641.)

See note to Sec. 51-80.

Giving of certificates as to validity of land titles is practice of law. 128 C. 325. To "practice law" means to perform either in or out of court any acts commonly understood to be the practice of law. 145 C. 222. History of section reviewed. *Id.* Practice of law by trust departments of banks. 146 C. 556. Appearances at probate court hearings constitute the practice of law. *Id.* History discussed. 154 C. 129, 137-140. Section forbids one who has not passed the bar from practicing law in or out of court. *Id.*, 140. Defendant was not giving "general information" but, rather, information directed toward a particular person and to a particular instrument. Consequently he was practicing law. *Id.*, 144. While it may be difficult to define "practice of law" and those who engage in border area activity might claim it is unconstitutionally ambiguous as to them, defendant could not so claim because his activity was well within area of "practice of law." *Id.*, 148.

Drafting of wills is practice of law. 4 CS 438. Cited, 9 CS 94; 20 CS 256; *id.*, 268. Town clerks are not allowed to render opinions with respect to validity of real estate titles. 9 CS 253. Terms of injunction in accordance with supreme court decision re practice of law by trust departments of banks. 31 CS 42. New York attorney not a member of Connecticut bar held not entitled to recover for legal services rendered in Connecticut. 23 CS 225. Cited, 34 CS 674, 677.

Not error to deny motion for new trial even if witness' testimony was false but it appears that result reached on new trial would not be different. 2 Conn. Cir. Ct. 257. Improper for defendant corporation to appear pro se through its president who was not an attorney. *Id.*, 284.

**Sec. 51-89. Sheriff or constable not to act as attorney in court.** No sheriff, deputy sheriff or constable shall appear in court as attorney.

(1949 Rev., S. 796B.)

**Sec. 51-89a. Complaint and hearing required for suspension or disbarment.** The superior court shall not suspend or disbar any attorney-at-law admitted to practice

in this state as is provided by attorney, not suspension or

(P.A. 77-194, S.

**Sec. 51-90** superior court committees of such judges are in litigation and present 1 51-88. If a court sufficiently see discretion, re the court either deem proper. filed in the same committee the presiding was appointed same judicial district.

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**Sec. 51-91.** compelled, by  
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(1949 Rev., S. 764  
Cited, 112 C. 265.  
Cited, 4 CS 302.

**Sec. 51-92.** committee sha

in this state unless a written complaint has been made and a hearing held thereon as is provided by rule of court unless such complaint or hearing is waived by such attorney, notwithstanding that the alleged misconduct or alleged cause for such suspension or disbarment occurred in the presence of the court.

(P.A. 77-194, S. 1, 2.)

**Sec. 51-90. Grievance committees; appointment and duties.** The judges of the superior court at their annual meeting in June shall appoint one or more grievance committees for each judicial district, each consisting of three members of the bar of such judicial district, engaged in practice, to remain in office until their successors are in like manner appointed, whose duty it shall be to inquire into, investigate and present to said court offenses not occurring in the actual presence of the court involving the character, integrity, professional standing and conduct of members of the bar residing or practicing in such judicial district, and to investigate and present to said court any person deemed in contempt of court under section 51-88. If a committee does not deem the offense under investigation by it to be sufficiently serious to present such person to the court, such committee may, in its discretion, reprimand such person or cause him to be reprimanded by a judge of the court either in open court or in chambers as such committee and such judge deem proper. Any vacancy in the membership of a grievance committee may be filled in the same manner as the original appointment. If any member of a grievance committee is disqualified or for any other reason unable to act in any matter, the presiding judge of the superior court in the county for which such committee was appointed may designate to act in such matter a member of the bar in the same judicial district or a member of a grievance committee from another judicial district.

(1949 Rev., S. 7643; February, 1965, P.A. 120; 1969, P.A. 33, P.A. 78-280, S. 81, 127.)

Of the functions of the grievance committee: right to present for offenses not exclusive. 84 C. 603, RR C. 456. Grievance committee is an independent public body charged with performance of public duty, may appeal from dismissal of complaint against attorney. 112 C. 263.

Legislature contemplated impartial investigation. 4 CS 502. Cited. 7 CS 468. Action of grievance committee in reprimanding an attorney does not prevent the superior court from taking jurisdiction of the same complaint. 21 CS 363. Mailing of 9250 Christmas cards found obvious device to "drum up business" and conduct unbecoming lawyers. 22 CS 86.

**Sec. 51-91. Grievance committees; witnesses; stenographer.** Any person may be compelled, by subpoena signed by competent authority, to appear before a grievance committee to testify in relation to any matter deemed by the committee to be relevant to any inquiry or investigation by such committee, and also to produce before such committee, for examination, any books or papers which, in its judgment, may be relevant to such inquiry or investigation. Such committee, while engaged in the discharge of its duties, shall have the same authority over witnesses as is provided in section 51-35 and may commit for contempt for a period no longer than thirty days. Such committee may employ assistants, including an attorney-at-law, and employ a competent stenographer to make a report of the testimony of any witness, and may cause the same to be transcribed and furnished to the state's attorney for the judicial district. Such assistants, attorney and stenographer shall be allowed such compensation as such committee deems reasonable and such compensation shall be paid in the manner provided in section 51-92.

(1949 Rev., S. 7644; 1961, P.A. 517, S. 109, P.A. 78-280, S. 3, 127.)

Cited. 112 C. 265.

Cited. 4 CS 502.

**Sec. 51-92. Grievance committees; fees and expenses.** Each such grievance committee shall return to the clerk of the superior court for the judicial district

an account of all expenses incurred by it in the discharge of its duties, including fees of witnesses and officers, the reasonable charges of any person employed by it and the personal expenses of the committee or any member thereof, which account, if taxed and allowed by the court, shall be paid as are other court costs.

(1949 Rev., S. 7645; P.A. 78-280, S. 2, 127.)

Cited. 112 C. 265.

Cited. 7 CS 466.

**Sec. 51-93. Reinstatement of attorneys.** The superior court for any judicial district may, upon hearing, after written application and such notice as the court may prescribe, reinstate as an attorney-at-law any person resident in such judicial district who has been suspended or displaced or who has resigned.

(1949 Rev., S. 7640; P.A. 78-280, S. 2, 127.)

Discretion of court as to reinstatement. 90 C. 440.

**Sec. 51-94. Evidence in proceedings to suspend or displace attorney-at-law.** In any proceeding for the suspension, displacement or removal of an attorney-at-law or to investigate the character, integrity or professional standing of such attorney, evidence tending to show the general character, reputation and professional standing of such attorney shall be admissible.

(1949 Rev., S. 7647.)

## CHAPTER 877

### JUSTICES OF THE PEACE

**Sec. 51-95. Qualifications and certification of justices of the peace.** Each person nominated a justice of the peace shall take the official oath at any time on or before the first Monday of January succeeding his nomination or, if nominated to fill a vacancy, within ten days thereafter; provided, if such first Monday of January falls on a legal holiday, such oath shall be taken at any time on or before the first Tuesday of such January. Unless the official oath has been administered by the town clerk, the officer who administered it shall transmit a certificate of such fact to the clerk of the town wherein such justice was nominated. Each justice, after taking the official oath, shall furnish, in triplicate, upon forms prescribed and provided by the secretary of the state, furnished to such clerk by said secretary and delivered or sent by such clerk to each nominated justice of the peace within the town, his signature to such town clerk. Such town clerk shall transmit one of such completed forms forthwith to the clerk of the superior court for the county and one to the secretary of the state. Any justice so nominated in the judicial district of Waterbury shall so furnish his signature in triplicate to the town clerk of the town within which he was nominated who shall transmit one such completed form to the clerk of the superior court at New Haven or at Waterbury if he resides in New Haven county or to such clerk at Litchfield or Waterbury if he resides in Litchfield county and one to the secretary of the state. If any person fails to take such oath or to so furnish his signature in triplicate to the town clerk on or before the first Monday in January succeeding his nomination or the first Tuesday in January if the first Monday in January succeeding such nomination is a legal holiday, such office shall be deemed vacant. The town clerk of each town shall keep a record of the names of qualified justices of the peace. On or before the fifteenth day of January succeeding their nomination or,



Official Business

# Alaska State Legislature

## House of Representatives

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

MEMORANDUM

February 21, 1980

TO: Members of the House Judiciary Committee

FROM: Charles H. Parr, Chairman

SUBJECT: Options for Bar Association Sunset Review

It appears to me that there are a number of options for the Committee in dealing with the Sunset Review of the Bar Association. I have listed these very sketchily and hope that they may serve as a framework for our discussions.

- 1 - Continue the existing situation in which the Supreme Court has final authority and delegates to the Bar Association the responsibility for admissions, discipline, and rule proposal.
- 2 - Same as No. 1 above except that no State funds will be made available to the Bar Association and it would be made clear to the Supreme Court that such funds should not be included in its budget.
- 3 - De-integrate the Bar Association, which would then become purely a private organization. Make the Supreme Court directly responsible for admissions and discipline.
- 4 - Establish a Board of Legal Practice similar to the existing boards for other professions. Make this board responsible for admissions and discipline. Under this option the Bar Association would be a private organization and would carry out any other functions it might choose.
- 5 - Do away with mandatory membership in the Bar Association, leaving other things as they are.

*Fred. 6 - Extension for short time*

CHP:vc



Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-6611

March 4, 1980

Representative Charles H. Parr  
Pouch V  
Juneau, Alaska 99811

Dear Representative Parr:

You have asked that I comment on behalf of the Court System concerning the sunset legislation of the Alaska Bar Association currently pending before your committee.

I have conferred with the Supreme Court with regard to your request and they asked me to comment as follows.

The Court strongly supports continued existence of the Alaska Bar Association as an integrated bar. The Court further suggests that the Bar Association and the Legislative Audit Committee reach a reasonable accommodation of the current dispute.

The Court has not given me brief to comment further on the subject. I hope these comments will help the committee.

Cordially,

Arthur H. Snowden, II  
Administrative Director

AHS:cm

cc: Donna Willard, Esq.  
President, Alaska Bar Association

Introduced: 1/26/79  
Referred: Judiciary

1 IN THE HOUSE

BY MCKINNON

2 HOUSE BILL NO. 85

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to bar examination review procedures;  
7 and amending Alaska Bar Rule 7, Section 1."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. Alaska Bar Rule 7, section 1 is amended to read:

10 SECTION 1. An applicant who has been denied an examination permit  
11 or who has been denied certification to the Supreme Court for admission  
12 to practice shall have the right within thirty days after notice of such  
13 denial to file with the Board a written verified statement of appeal.  
14 Failure timely to file an appeal statement shall constitute waiver of  
15 appeal rights. In his statement an applicant shall state all grounds  
16 upon which he intends to rely and may:

17 (a) object to the form of notice from which such appeal is taken,  
18 on the ground that it is so indefinite or uncertain that he cannot  
19 reasonably prepare his statement;

20 (b) present new matter on which he relies to establish his eligi-  
21 bility for admission to practice.

22 An applicant who is denied an examination permit or who is denied  
23 certification shall allege facts which, if true, would establish an  
24 abuse of discretion or improper conduct on the part of the Board, the  
25 Executive Director, the Committee or a master. If the allegation in the  
26 verified statement are found to be sufficient by the Board, a hearing  
27 shall be granted. A hearing shall be granted in all cases where the  
28 applicant requests it and the score of the applicant on the bar examina-  
29 tion is within five points of the passing grade of the bar examination.

*under current system HB 85 Bd. of Gov.  
will only grant hearing where substantial  
issues raised. Rest of info. currently available.*

SAME language as application of Peterson.  
established certain minimum guidelines.

"grades assigned thereto" → Bar Rule

1 The applicant shall be given access to his examination questions, his  
2 answers to those examination questions, and the model answers for the  
3 particular examination together with a representative sampling of the  
4 examination papers of other applicants who received overall passing  
5 and overall failing grades.

6 \* Sec. 2. Section 1 of this Act amends the Rules of Court (Rule 7 of Part  
7 I of the Alaska Bar Rules).

8 ~~Section~~ Rule 4 of Part I

grades analyses

I.

5 points - how many individuals  
fit in that class.

Should period be made  
shorter.

II.

other items / multistate questions and answers  
② relative weight given to  
various issues which  
one is supposed to  
discuss in essay answers

III.

not want to limit the scope  
of discovery

Appellants are entitled to utilize  
all of the discovery procedures  
contemplated by the Alaska Rules  
of Civil Procedure.

Peterson didn't rule on the  
scope of discovery.

yet is Peterson abandoned  
by 1-4.5 BAR Rule.  
to extent Bar Rules approved  
by Sup. Ct.

## I-4

## ALASKA BAR RULES

ignated by the code number of each, the maximum possible point value of each bar examination part or section and other information the committee or the board may deem relevant.

Section 4. The board shall determine the qualifications of each applicant upon the basis of the report of examination, the recommendations of the executive director, and such other matter it may consider pertinent under these rules. The board shall certify to the supreme court the results of the bar examination and its recommendations as to those applicants who are determined qualified for admission to the practice of law and who have complied with the provisions of Rule 6. Notice of the board's determination shall be provided in writing to each applicant. Notice to an applicant determined not qualified shall state the reason for such determination

## Section 5.

Section 6. The passing grade of the bar examination shall be seventy percent of the highest possible grade. A scaled score, as determined by the National Conference of Bar Examiners, of 135 on the Multistate Bar Examination shall be the equivalent of seventy percent of the highest possible grade on that portion of the examination. (Amended by Supreme Court Order 247(I) effective April 1, 1976)

Section 7. An applicant who has taken the Multistate Bar Examination within one year prior to the bar examination as part of an examination required by a state, territory or the District of Columbia for admission to the practice of law may

H.B. 85

Norm Gorsuch > Reg. lobbyist for  
AK Bar Assn.

Chairman of Grading Committee.

BAR Records - 5 yrs - 1023

Applicants; 75% passed  
of # failed, 23 petitions  
13 hearings granted

National Conference of Bar  
Examiners - AK statistics  
in range of most jurisdictions

■ Calif. 58%

---

Mr. Helm, chairman of graders.

1971 been grading since.

12 lawyers on committee

3 yr. terms

2 session > Calif. BAR > general law US

" " Multi-state bar exam

AK ESSAY

Multi state - results graded by  
machine.

Read answers to AK. Bar Exam.  
2 graders to read every  
answer to family law question.  
Before Begin - 1 sample  
analysis

Review 5 answers from  
random - begin grading  
scores compared.

---

Answers - graded by Ca graders.

Calif. 40 40 AK.  
20 AK

---

70 or better - reccom. to pass  
65 and 70 > have Ca. answers  
re-read.

---

40% obj || subjective / 60%

30-35% pass 2nd time  
around

% assigned on basis of time  
used to answer the questions.

giving Ca. exam or multistate -  
before time of Helms.

48 - states use the multistate  
60% = essay questions.

% that pass each element separate.  
generally fail in more than one  
portion of the exam.

highest in multistate

↳ Lowest = Ca. ESSAY

↳ AK a little better.



⇒ results in more  
people passing overall exams.  
69.65 = fails

No indication when exam paper-answers - Returned what they did wrong.

---

Bart Rozell >  
correlation on performance.

---

Rt of Appeal = absolute right hearing  
gets those as a matter of rts - items in bill. He hasn't noticed grader's analysis.

if no fact question =  
no need for hearing.

Rt to Appeal to the Courts.

Hearings - rationale basis for renewing bar exams.

form given  
why grader  
wrong exam given

These BAR  
will tail  
up.

error in question - graded -  
everyone got to pass.  
if got 84 got to keep that.

- Multistate Bar Exam -  
Supreme Court -  
members could  
review > strict.  
review

This is  
key contract

NBE  
|

Why Ca. Section  
AK. Section >  
no one knows why  
doing what doing.

How relevant is AK.  
Section - to real AK Law.

D2  
ANCS Act

Their rules should be  
renewed by themselves.

---

hearing should be granted.

---

Malone - how often does  
BAR Review its  
procedure || validity  
of ~~B~~ Admissions procedures.

---

atty. admitted to other  
jurisdictions -

Rule 7 just amended  
done in Sept.

essay scores - 65-70

Ca. Portions <sup>re</sup>read  
by one grader  
2nd grader

---

Regulation -

one occasion did  
re-read AK section.

AK essay / answer not  
<sup>decided</sup>  
re-read.

#3 is the regulation.

**Rule 7. Review.**

**Section 1.** An applicant who has been denied an examination permit or who has been denied certification to the Supreme Court for admission to practice shall have the right within thirty days after notice of such denial to file with the Board a written verified statement of appeal. Failure timely to file an appeal statement shall constitute waiver of appeal rights. In his statement an applicant shall state all grounds upon which he intends to rely and may:

(a) object to the form of notice from which such appeal is taken on the ground that it is so indefinite or uncertain that he cannot reasonably prepare his statement;

(b) present new matter on which he relies to establish his eligibility for admission to practice.

An applicant who is denied an examination permit or who is denied certification shall allege facts which, if true, would establish an abuse of discretion or improper conduct on the part of the Board, the Executive Director, the Committee or a master. If the allegation in the verified statement are found to be sufficient by the Board, a hearing shall be granted.

**Section 2.** In any appeal the applicant shall have the burden of proving the material facts upon which he relies.

**Section 3.** A master appointed by the President from among the active membership of the association shall preside at all hearings convened under this rule. The master shall hear the evidence without the Board unless the President shall order the hearing in the presence of the Board. No fewer than twenty days before the hearing the applicant shall be given notice of the date of the hearing, the identity of the master, and whether the hearing is to be before the master alone, or before the Board with the master. All notices shall be given by the Executive Director, as required by the master or the President.

**Section 4.** When the Board hears the case with the master, the master shall preside and rule on the admission of evidence. The hearing shall be administered as directed by the Board.

**Section 5.** A Board member or a master appointed under

this rule shall disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing. The applicant may request the disqualification of the master or of a Board member by filing an affidavit within ten days following the first notice of the hearing. The affidavit shall state with particularity why a fair and impartial hearing cannot be accorded by the person sought to be disqualified. Where the request concerns a Board member the issue shall be determined by the master. Notice of the determination shall be given applicant no fewer than 10 days before commencement of the hearing and such notice shall include the name of a new master if one is appointed. The time for notice fixed by Section 3 and by this Section shall not apply to notice concerning a master appointed to replace a disqualified master.

*see  
New  
Sect. #6*  
Section (6.) The hearing shall be electronically recorded with facilities provided by the Alaska Court System. Deposition testimony may be received as provided in the Alaska Rules of Civil Procedure. The record may be destroyed two years following the last date upon which administrative appeal rights may be available under the provisions of this rule.

Section (7.) The applicant shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, even if not covered in direct examination, to impeach any witness regardless of which party called him, and to rebut the evidence against him. The applicant may be called and examined as if under cross-examination whether or not he testifies on his own behalf. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient standing alone to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are required by civil rules to be recognized. Irrelevant and unduly repetitious evidence shall be excluded. The sworn testimony of a witness subpoenaed under these rules shall be deemed testimony received in a judicial proceeding. In any action for defamation arising out of such

sworn testimony the witness shall be entitled to the defense of privilege to the same extent available to witnesses in judicial proceedings within the State of Alaska.

Section (8) The master shall prepare in writing a proposed decision supported by findings of fact and conclusions of law.

Section (9) In cases in which a majority of the Board was not present during the evidentiary hearing, the master shall file the proposed decision with the Board and cause the entire record to be certified to the Board for decision. Copies of the proposed decision shall be served by the master on the applicant or his attorney of record and on the Executive Director. Within twenty days after service of the proposed decision, the applicant and the Executive Director may file exceptions and briefs and, upon request, may appear and present oral argument to the Board. Copies of exceptions and briefs, when filed, shall be served on the applicant or the Executive Director, as the case may be.

Section (10) The transcript of testimony and exhibits together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision by the Board and, upon payment of costs, shall be made available to the applicant.

Section (11) The Board may adopt the proposed findings, conclusions and decision of the master in whole or in part or reject it in its entirety and adopt its own findings of fact and conclusions of law and decision.

Section (12) The findings of fact, conclusions of law and decision of the Board shall be conclusive as to the matter alleged in applicant's statement of appeal unless an appeal to the Supreme Court shall be filed within thirty days following service upon applicant of the findings of fact, conclusions of law and decision in the manner provided by these rules. (Added by Supreme Court Order 161 effective immediately)

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 341

Amending Alaska Bar Rules  
7 and 8, Relating to  
Admissions and Adding a  
New Section, 7.1.

IT IS ORDERED:

1. Sections 6, 7, 8, 9, 10, 11, and 12 of Rule 7, Alaska Bar Rules, are deleted and a new section 6 is added to read:

Section 6. Only the following materials shall be subject to production by the Alaska Bar Association in any proceedings held pursuant to this Rule:

(a) Where certification for admission to practice has been denied, the failing applicant has the right to inspect his examination books, the grades assigned thereto, the examination questions, the graders' analyses of the questions and a representative sampling of passing and failing answers to the bar examination at the office of the Alaska Bar Association or at such other place and such time or times as the Board may designate;

(b) Where an examination permit has been denied because of failure to meet residency requirements, the applicant has a right to inspect the minutes of any meeting of the Board of Governors at which his application has been discussed, together with a synopsis of the facts with respect to any other person who, within the last two years, has been denied an examination permit for the same reason; and

(c) Where an examination permit has been denied on the basis of character, the applicant has a right to inspect the minutes of any meeting of the Board of Governors at which his application has been discussed, together with a statement of the

specific grounds upon which denial of the permit was based.

2. The Alaska Bar Rules are amended by adding a new section, 7.1, to read:

Rule 7.1. Procedures.

Section 1. All hearings before the master shall be electronically recorded with facilities provided by the Alaska Court System. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision. The record may be destroyed two years following the last date upon which administrative appeal rights may be available under the provisions of this rule.

Section 2. From the time he has been designated to preside until issuance of his proposed decision and the transfer of the proceeding to the Board, the master shall have the following authority to:

- (a) take or cause depositions to be taken;
- (b) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law upon which a ruling will be required;
- (c) hold conferences for the settlement or simplification of the issues by consent of the parties;
- (d) dispose of procedural requests;
- (e) establish the time limitations for the filing of pleadings and set the times for any hearings;
- (f) preside at and regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaged in contentious conduct or otherwise disrupting the proceedings;
- (g) administer oaths and affirmations;

- (h) examine witnesses;
- (i) rule upon questions of evidence; and
- (j) render interlocutory decisions which are appealable to the Board of Governors of which no fewer than three members shall constitute a quorum.

Section 3. The Alaska Rules of Civil Procedure shall not apply to proceedings held pursuant to Rule 1-7.

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Section 5. The master shall prepare in writing a proposed decision supported by findings of fact and conclusions of law. In cases in which the majority of the Board was not present during the

6000 Rules

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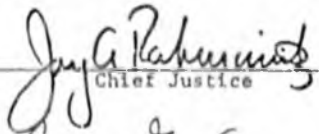
Section 4. The filing fees normally charged for matters brought before the Supreme Court shall be applicable in all admissions cases.

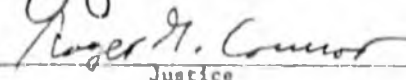
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EFFECTIVE DATE: April 1, 1979

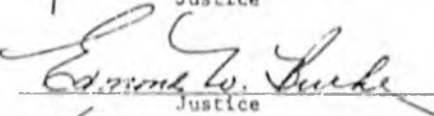
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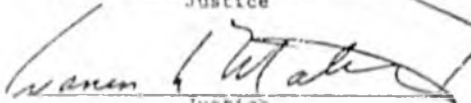
SC Justices  
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Dist/Ct Judges  
Magistrates  
Clks/Ct  
Law Librarian  
Probate Masters  
Adm Dir  
All Members ABA  
Gov  
Dep/Law  
Legs/Affrs  
Pub Def Agency  
Dep/Pub Safety  
Ak. Legal Services  
Cem. & Reg. Affrs.  
State Library  
Superior Court Law Clerks

  
\_\_\_\_\_  
Chief Justice

  
\_\_\_\_\_  
Justice

  
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Justice

  
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Justice

  
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Justice

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 341

Amending Alaska Bar Rules  
7 and 8, Relating to  
Admissions and Adding a  
New Section, 7.1.

IT IS ORDERED:

1. Sections 6, 7, 8, 9, 10, 11, and 12 of Rule 7, Alaska Bar Rules, are deleted and a new section 6 is added to read:

Section 6. Only the following materials shall be subject to production by the Alaska Bar Association in any proceedings held pursuant to this Rule:

(a) Where certification for admission to practice has been denied, the failing applicant has the right to inspect his examination books, the grades assigned thereto, the examination questions, the graders' analyses of the questions and a representative sampling of passing and failing answers to the bar examination at the office of the Alaska Bar Association or at such other place and such time or times as the Board may designate;

(b) Where an examination permit has been denied because of failure to meet residency requirements, the applicant has a right to inspect the minutes of any meeting of the Board of Governors at which his application has been discussed, together with a synopsis of the facts with respect to any other person who, within the last two years, has been denied an examination permit for the same reason; and

(c) Where an examination permit has been denied on the basis of character, the applicant has a right to inspect the minutes of any meeting of the Board of Governors at which his application has been discussed, together with a statement of the

specific grounds upon which denial of the permit was based.

2. The Alaska Bar Rules are amended by adding a new section, 7.1, to read:

Rule 7.1. Procedures.

Section 1. All hearings before the master shall be electronically recorded with facilities provided by the Alaska Court System. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision. The record may be destroyed two years following the last date upon which administrative appeal rights may be available under the provisions of this rule.

Section 2. From the time he has been designated to preside until issuance of his proposed decision and the transfer of the proceeding to the Board, the master shall have the following authority to:

- (a) take or cause depositions to be taken;
- (b) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law upon which a ruling will be required;
- (c) hold conferences for the settlement or simplification of the issues by consent of the parties;
- (d) dispose of procedural requests;
- (e) establish the time limitations for the filing of pleadings and set the times for any hearings;
- (f) preside at and regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaged in contentious conduct or otherwise disrupting the proceedings;
- (g) administer oaths and affirmations;

- (h) examine witnesses;
- (i) rule upon questions of evidence; and
- (j) render interlocutory decisions which are appealable to the Board of Governors of which no fewer than three members shall constitute a quorum.

Section 3. The Alaska Rules of Civil Procedure shall not apply to proceedings held pursuant to Rule I-7.

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Section 5. The master shall prepare in writing a proposed decision supported by findings of fact and conclusions of law. In cases in which the majority of the Board was not present during the

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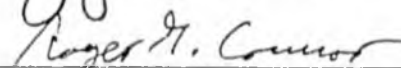
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EFFECTIVE DATE: April 1, 1979

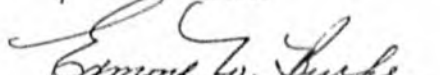
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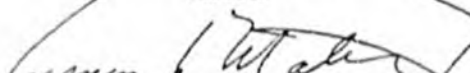
SC Justices  
Sup/Ct Judges  
Dist/Ct Judges  
Magistrates  
Clks/Ct  
Law Librarian  
Probate Masters  
Adm Dir  
All Members ABA  
Gov  
Dep/Law  
Legs/Affrs  
Pub Def Agency  
Dep/Pib Safety  
Ak. Legal Services  
Com. & Reg. Affrs.  
State Library  
Superior Court Law Clerks

  
Chief Justice

  
Justice

  
Justice

  
Justice

  
Justice



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

#### M E M O R A N D U M

TO: Representative Thelma Buchholdt  
FORM: Peggy Berck, Staff, House Judiciary Committee  
DATE: February 7, 1979  
RE: House Bill 85

Attached please find a copy of the Douglas Luna bar admission appeal. The case is relevant to HB 85 in that it discusses the kind of information available to a person contesting his denial of admission. See particularly on page 792 the discussion of Peterson and footnote 12 on same page.

Bar Assn.

- how many hearing requests
- how many hearing granted

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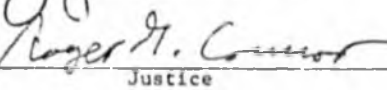
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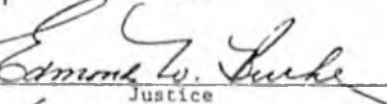
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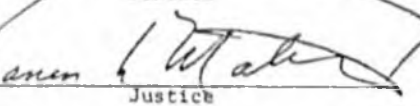
SC Justices  
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Dist/Ct Judges  
Magistrates  
Clks/Ct  
Law Librarian  
Probate Masters  
Adm Dir  
All Members ABA  
Gov  
Dep/Law  
Legs/Affrs  
Pub Def Agency  
Dep/Pub Safety  
Ak. Legal Services  
Com. & Reg. Affrs.  
State Library  
Superior Court Law Clerks

  
Chief Justice

  
Justice

  
Justice

  
Justice

  
Justice

H. B. 85 McKinnon's T. —

was able to review sample answers  
~~for~~ from other applicants or  
examinees.

graded by two other graders  
same question.

whether bar ~~file~~ followed  
procedures - did it matter whether  
question answered properly.

no point value given along with  
model answer.

Bar examiner - no perfect  
answer to any question.

McKinnon - wants:  
model answer

« But Bill would not require  
disclosure of the varying weights  
given each issue to be  
spotted.

Const. Problems - possibility, but  
thought should proceed.

Norm Gorsuch - Firm Lobby  
on behalf of Bar.

Hearing informal new rule  
model answers effective Apr. 1  
Bar Rule Answers 1979  
Problem asserted in bill.  
↳ see cc.

3 part

Co. Essay Part

AK. Essay Part

Multi State exam

Graders analysis

rec. answer, issues.

outline form.

two graders grade every  
single exam.

65-70 all are reread -

Co. Graders read

two AK. Graders

Model answer unfair - grader's analysis more fair to applicant.

New Bar Rule - representative sampling; full hearing r.t. of cross exam., r.t. of witnesses.

Practice of law - Sup. Ct. ~~Practises~~ has final authority to admit.

Could not avail himself of new procedures established. - person for whom bill submitted.

69.95 - will round up -  
he thinks.

Statistics of bar passing / failing rates.

Fred Brown 69 member  
of BAR.

BAR Assn - Sup. Ct. Battle.  
Hugo Black Character - Brown 13.  
55 - Curr. Leg. Passed -  
BAR Act.

Administ. of Court - has  
authority to approve lawyers.  
BAR asso. Art. 2 / Const. - AK.

BAR - Sup. Ct. > Sup. Ct. has  
authority =

whether good idea or not  
it is a public body. Not  
same as other professions.

A.K. Const. Sup. Ct. shall  
make rules - 2/3 vote of  
body of leg.

Substantive changes -

S/D - rules - made  
certain changes. (civil + criminal).

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leg. standards - rational  
connection.

Bill

— good public policy

— const. question -

language says we can't  
go this far - Sup. Ct.  
leg. not have power  
admin. of court -  
even if 2/3 votes.

Brown thinks unconst.  
Bradley - Clerkship  
program. - never  
challenged.

Malone = Brown saying  
Unconst.; begging question.  
also says - have authority  
to change rules.

disagrees with Brown's  
Const. argument.

Brown:

Could do by resolution.

Nels Courts - not badful  
in entering into legislative  
domain.

→ Chairman intent - whether  
to give people in Atlanta  
a chance - to testify.

→ Nels - not worried about  
Brown discourse.

Brown's  
Rules of Court - procedure  
Civil + Criminal cases.

\* Court case - failure to pass bar - Thelma desires me to research.

Hold few days - passage rates

then bring bill back up.  
but not for two weeks.

\* talk to

title 8 leg. by law est.

Bar Assn. as instrumentality -  
~~don't~~ disestablish it.

sunset - get that to  
apply - make same as  
board.