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### Attorneys – Disciplinary Proceedings – Integrity of Court

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# CASES NOTED

## ATTORNEYS — DISCIPLINARY PROCEEDINGS INTEGRITY OF COURT

A proceeding was initiated by an order directing an attorney to appear and show cause why he should not be disbarred from practice before the United States Federal District Court. *Held*, that where the attorney corresponded with his client, who was in prison, and the letter was intercepted by the jailor, the letter could not be made the basis for disbarment. *In re Bull*, 123 F. Supp 389 (D. Nev. 1954).

No attorney has an absolute right to practice law. He has a privilege only, which may be revoked whenever his conduct renders him unfit to exercise the duties of his office.<sup>1</sup> This privilege is revoked by a disbarment proceeding which is neither criminal or civil.<sup>2</sup> It is of a summary nature<sup>3</sup> necessarily incident to the inherent powers<sup>4</sup> of a court to control its officers,<sup>5</sup> and is possessed by all courts which have authority to admit attorneys to practice.<sup>6</sup> The purpose of this action is to protect the public and those charged with the administration of justice, rather than to punish the attorney.<sup>7</sup> Thus, the ultimate question in each disbarment case seems to be whether the conduct of the attorney shows him to be unfit either to exercise the privileges, or to be intrusted with the duties of a member of the legal profession.<sup>8</sup> The conduct need not be criminal in order to support this action.<sup>9</sup> An attorney may be disbarred for violation of his duty to pay the courtesy and respect due to courts of justice and judicial officers. He is required to observe this

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1. *In re Thatcher*, 190 Fed. 969 (N.D. Ohio 1911); *Wernimont v. State ex rel.*, Little Rock Bar Ass'n, 101 Ark. 210, 142 S.W. 194 (1911); *In re Clifton*, 115 Fla. 168, 155 So. 324 (1934); *In re Lacy*, 234 Mo. App. 71, 112 S.W. 524 (1937).

2. *State v. Peck*, 88 Conn. 447, 91 Atl. 274 (1914).

3. *State v. Finley*, 30 Fla. 302, 11 So. 500 (1892).

4. *Ex parte Burr*, 9 Wheat 529 (U.S. 1824); *Gould v. State*, 99 Fla. 662, 127 So. 309 (1930); *In re Yablunsky*, 407 Ill. 111, 94 N.E.2d 841 (1950); *State v. Mosher*, 128 Iowa 82, 103 N.W. 105 (1936); *State Board of Law Examiners v. Spriggs*, 61 Wyo. 70, 155 P.2d 285 (1945); see *Johnson, The Inherent Powers of the Court in Regard to Admission and Disbarment of Attorneys*, 37 Ky.L.J. 58(1948).

5. *Ex parte Garland*, 4 Wall. 333 (U.S. 1886); *Bar Association of the City of Boston*, 212 Mass. 187, 97 N.E. 751 (1912), see *WEEKS, ATTORNEY AT LAW*, 153(2d ed 1892).

6. *Ex parte Robinson*, 19 Wall. 513 (U.S. 1873); *Bradly v. Fisher*, 13 Wall. 335 (U.S. 1871); *in re Saddler*, 35 Okla. 510, 130 Pac. 906 (1913); *State Bar Commission v. Sullivan*, 35 Okla. 745, 131 Pac. 703 (1912).

7. *State v. Kehoc*, 49 Fla. 389, 38 So. 605 (1905); *Chicago Bar Association v. Baker*, 311 Ill. 66, 142 N.E. 554 (1924); *Ex parte Finn*, 32 Ore. 519, 52 Pac. 756 (1898).

8. *In re Damron*, 131 W. Va. 66, 45 S.E. 2d 741 (1947).

9. *Thomas v. State*, 87 Ga. App. 769 S.E. 2d 193 (1953); *Willford v. State*, 56 Ga. App. 840, 194 S. E. 384 (1937).

duty at all times,<sup>10</sup> both in<sup>11</sup> and out<sup>12</sup> of court, and must abstain from insulting language and offensive conduct toward the judge personally for his judicial acts.<sup>13</sup> The rule is generally applied only to official acts,<sup>14</sup> but the trend is to extend it to any conduct which tends to shower reproach upon the legal profession.<sup>15</sup>

When a case is finally adjudicated, the courts are not immune from criticism.<sup>16</sup> An attorney does not surrender his right as a citizen to criticize the decisions of the court in a fair and respectful manner. He does, however, subject himself to a possibility of disbarment by using written or spoken words reflecting unjustly on the character or integrity of the judge. Such usage, if permitted, would bring the system of administering justice into disrepute.<sup>17</sup> In a Utah case,<sup>18</sup> an attorney was disbarred for his slanderous attack upon the supreme court in a funeral address over the body of one of his former clients who had been executed. The court pointed out that the purpose of the attorney's speech was to express his contempt and to show his disrespect to the court, as well as to degrade it and impair its usefulness.

Courts are reluctant to exercise the disbarment power. They realize that to do so means "excommunication." Therefore, the power should be resorted to only when it is apparent that the interests of the community and the integrity of the courts and the profession demand it.<sup>19</sup> That is why accusations on impulses caused by dissatisfaction, not intended to be placed upon the records of the court or in any way published, while greatly deplored, do not generally warrant suspension

10. *In re Ades*, 6 F. Supp. 467 (D.C. Md. 1934); *In re Mitchell*, 196 Ala. 430, 71 So. 467 (1916); *In re Hansen*, 99 Kan. 23, 160 Pac. 1141 (1916), see Sims, *The Lawyers Duty to the Judge*, 11 A.B.A. JOURNAL 449 (1925).

11. *Holman v. State*, 165 Ind. 513, 5 N.E. 556 (1886); *In re Mains*, 121 Mich. 603, 80 N.W. 714 (1899); *In re Maestretti*, 30 Nev. 187, 93 Pac. 1004 (1908).

12. *Johnson v. State*, 152 Ala. 93, 44 So. 671 (1909); *In re Richeson*, 64 Ariz. 85, 166 P.2d 583 (1946); *People v. Green*, 7 Colo. 237, 3 Pac. 65 (1884); *State Board of Law Examiners v. Spriggs*, 61 Wyo. 70, 155 P.2d 285 (1945).

13. *In re Secombe*, 19 How. 9 (U.S. 1856); *In re Hanson*, 99 Kan. 23, 160 Pac. 1141 (1916); *In re Newbery*, 76 Neb. 482, 107 N.W. 850 (1906); *State Bar Commission v. Sullivan*, 35 Okla. 745, 131 Pac. 703 (1912); cf. *In re Troy*, 43 R.I. 279, 111 Atl. 723 (1920).

14. *Bradley v. Fisher*, 13 Wall 335 (U.S. 1871); *People v. Green*, 7 Colo. 237, 3 Pac. 65 (1884).

15. *Wernimont v. State ex rel. Little Rock Bar Association*, 101 Ark. 210, 142 S.W. 194 (1911); *In re Wills*, 293 Ky. 201, 168 S.W. 2d 730 (1943); *Commonwealth v. Roc*, 129 Ky. 650, 112 S.W. 683 (1908); *In re Erwens*, 94 S.C. 414, 78 S.E. 227 (1913); *In re Damron*, 131 W.Va. 66, 45 S.E. 2d 741 (1947).

16. *Patterson v. Colorado*, 205 U.S. 454 (1907); *State Attorney General v. Circuit Court of Eau Claire County*, 97 Wis. 1, 72 N.W. 193 (1897).

17. *In re McCowan*, 175 Cal. 51, 170 Pac. 1100 (1917); *In re Troy*, 43 R.I. 279, 111 Atl. 723 (1920); *State v. Edward*, 15 S.D. 383, 89 N.W. 1011 (1902); *State v. Sweetland*, 3 S.D. 503, 54 N.W. 415 (1893).

18. *In re Hilton*, 48 Utah 172, 158 Pac. 691 (1916).

19. *McGehee v. State*, 182 Ark. 603, 32 S.W. 2d 308 (1930); *In re Sizer*, 306 Mo. 356, 267 S.W. 922 (1924); *In re Reily*, 75 Okla. 192, 183 Pac. 728 (1920); *In re Sitton*, 72 Okla. 13, 177 Pac. 555 (1919).

or disbarment.<sup>20</sup> A belligerent and headstrong attitude on the part of an attorney has been held insufficient to warrant action.<sup>21</sup> In the case of *In Re Huppe*,<sup>22</sup> the attorney referred to the judge as "an arrogant jackass" in a letter to a state representative. The court held that this did not warrant disbarment, absent evidence that the attorney intended the letter to be circulated. Likewise,<sup>23</sup> a proper retraction or apology will be considered in mitigating the offense,<sup>24</sup> and in the majority of cases will dismiss the action.<sup>25</sup> In a Nebraska case<sup>26</sup> the court stated, ". . . we were painfully disappointed that no apology was made."

In the principal case the letter was written for the purpose of advising the defendant's client in regard to the taking of an appeal. There was no intent to bring disgrace to the court.<sup>27</sup> The letter was written in the heat of disappointment at the outcome of the client's trial.<sup>28</sup> Since the defendant promptly apologized to the judge,<sup>29</sup> the court rightly recognized these facts as not warranting disbarment.

It is submitted that the result achieved in this case is just and equitable. The power to disbar is not an arbitrary one to be exercised at the whim of the court,<sup>30</sup> but should be used only in a clear case for the most weighty reasons.<sup>31</sup> An attorney may feel at various times that the court is biased. He may feel that the court has certain idiosyncrasies which should be taken into account in the proceeding of his case. The attorney should be free to discuss these factors with his client without fear of exposing himself to punishment.

Irwin G. Christie.

### CONSTITUTIONAL LAW—EFFECT OF TRANSPORTATION ACT— LIMITATION OF ACTIONS

Alleging negligent damage to an interstate shipment of goods, shipper sued carrier in a state court within the two year period prescribed by the uniform express receipts which were in strict conformance with the

20. *In re Rockmore*, 127 App. Div. 499, 111 N.Y.S. 879 (1908); *Matter of Mannheim*, 113 App. Div. 136, 99 N.Y.S. 87 (1906).

21. *People v. A'Brunswick*, 315 Ill. 442, 146 N.E. 483 (1925).

22. 92 Mont. 211, 11 P.2d 793 (1932).

23. See note 19, *supra*.

24. *In re Snow*, 27 Utah 278, 75 Pac. 741 (1904); *In re Robernson*, 48 Wash. 153, 92 Pac.929 (1907).

25. *In Matter of Carrao*, 170 App. Div. 545, 156 N.Y.S. 379 (1915).

26. *In re Dunn*, 85 Neb. 606, 124 N.W. 120, 130 (1909).

27. See note 15, *supra*.

28. See note 20, *supra*.

29. See note 24, *supra*.

30. *People v. McCallum*, 341 Ill. 579, 173 N.E. 827 (1930); *In re Lemisch*, 321 Pa. 110, 184 Atl. 72 (1936).

31. *State v. Ledbetter*, 127 Okla. 85, 260 Pac. 454 (1927).