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# Disbarment--Evasion of Federal Income Tax

Peter Thomas Denny

*West Virginia University College of Law*

Martin Joseph Glasser

*West Virginia University College of Law*

John Charles Lobert

*West Virginia University College of Law*

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citing its recent decision in *Richmond v. Campbell*, 148 W. Va. 595, 136 S.E.2d 877 (1964).

#### Disbarment—Evasion of Federal Income Tax

Defendant was previously convicted of a felony for willful violation of the Internal Revenue Code. He was then brought before the court in a disciplinary proceeding based on the By-laws of the West Virginia State Bar which require that an attorney's license to practice law "shall" be revoked should he be convicted of a crime involving moral turpitude. *Held*, willful evasion of payment of income tax is a crime involving moral turpitude and the by-laws make license revocation mandatory precluding the court from considering extenuating circumstances. *In Re Mann*, 154 S.E.2d 860 (W. Va. 1967).

Refusing to consider extenuating circumstances would appear to place West Virginia in a minority position. *Annot.*, 59 A.L.R.2d 1398 (1958). The court states the weight of authority is that a conviction involving the element of fraud is one involving moral turpitude. However, such conviction does not necessarily dictate disbarment because the majority will give the defendant an opportunity to show himself free of moral turpitude by considering extenuating circumstances. This is true even in situations where the statutory language is similar to West Virginia's. *Baker v. Miller*, 236 Ind. 20, 138 N.E.2d 145 (1956); *Re Hallinan*, 43 Cal. 2d 243, 272 P.2d 768 (1954).

#### Procedure—Unincorporated Associations

*D*, a county circuit court, issued a preliminary injunction against *P-relator*, an unincorporated labor union, enjoining *P* from engaging in unlawful picketing. *P* then sought a writ of prohibition to prohibit *D* from perpetuating the preliminary injunction on the grounds that *P*, an unincorporated association, is not subject to suit in its name or as a separate entity. *Held*, an unincorporated association may not sue or be sued in its name or as a separate entity in absence of a statute authorizing such suits. But, an unincorporated association may still protect its rights against third persons by maintaining an action in the name of the State, which acts in a representative capacity. Therefore, *P-relator* has properly maintained this action in the name of the State. Both *P* and the State have a bona fide interest in this proceeding, *P's* interest