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David R. Burch

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operation of article 1499 by imposing a resolutory condition on his spouse's usufruct to the effect that if his forced heirs demand their legitime, his spouse shall only have the usufruct of the disposable portion. Such conditions find considerable support in Civil Code articles 542 and 608,[32] provided they contain nothing contrary to law or good morals.[33] In addition, since article 1499 imposes a costly option on the forced heirs seemingly in an attempt to effect the presumed intention of the testator, the testator's desire to relieve the heirs of this burden should be controlling.[34]

Estate planners should also note the effectiveness of article 1499 in deterring attacks on the will. Whenever the estate is so large that a forfeit of even a small interest in the disposable portion would be costly, heirs will not likely demand their legitime in full ownership but will be content to suffer the temporary encumbrance of the usufruct to keep the entire succession. Likewise, if there is only one forced heir so that the disposable portion represents two-thirds of the testator's property, the heir apparently will choose to retain the naked ownership of the whole estate rather than satisfy himself with full ownership of a third. If the attack is prevented because of such considerations, the testator will achieve the twin aims of providing sufficient revenues for his spouse and preserving the ultimate control of his property to his heirs.

Robert W. Booksh, Jr.

SUMMARY SUSPENSION OF ATTORNEYS CONVICTED OF CRIME

An attorney was convicted of income tax fraud.[1] The Louisiana State Bar Association through the Committee on Professional Re-

32. LA. CIV. CODE art. 542: "Usufruct may be established simply, or to take place at a certain day, or under condition; in a word, under all such modifications as the person who gives such a right may be pleased to annex to it." LA. CIV. CODE art. 608 provides in part: "If the title of the usufruct has limited the right to it to commence or determine . . . in the event of a certain condition, the right does not commence or determine till the condition happens . . . ." *Cf.* Grayson v. Sanford, 12 La. Ann. 646 (1857).

33. "The donor may impose on the donee any charges he pleases, provided they contain nothing contrary to law or good morals." LA. CIV. CODE art. 1527. Although this article appears in the chapter treating donations *inter vivos*, it should have equal application to donations *mortis causa*.

34. AUBRY & RAU § 684(a), at 223; YIANNOPOULOS § 16, at 62 n.273; *cf. The Work of the Louisiana Appellate Courts for the 1967-1968 Term—Successions and Donations*, 29 LA. L. REV. 193, 199 n.22 (1969).

1. U.S. v. Ehmig, Crim. Doc. No. 71-381 (E.D. La., Aug. 1, 1972). Ehmig was convicted of violating 26 U.S.C. § 7206(1) (1954) which makes it unlawful for anyone

sponsibility determined that the crime for which the attorney had been convicted was a "serious crime" and petitioned the supreme court to suspend him from the practice of law pending disciplinary proceedings upon final conviction. The Louisiana supreme court *held* that suspension of an attorney's license to practice without holding a contradictory hearing to determine whether a serious crime has been committed is a deprivation of due process. *Louisiana State Bar Association v. Ehmig*, 277 So.2d 137 (La. 1973).

Bar association disciplinary proceedings, whether characterized as civil[2] or criminal[3] in nature, are designed to protect the public from lawyers who are unfit to practice law.[4] Accordingly, many states will discipline an attorney convicted of a crime if such is found to involve moral turpitude.[5] Unfortunately, this standard, generally defined as conduct "contrary to justice, honesty, and good morals,"[6] is inherently ambiguous, has produced inconsistent decisions,[7] and has often

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to wilfully make any return, statement or any other document which contains a declaration that is made under the penalty of perjury, and which he does not believe to be true and correct as to every material matter. He was sentenced to 2 years, but the trial judge suspended 18 months of this period at the time of sentencing. *See* Louisiana St. Bar Ass'n. v. Ehmig, 277 So. 2d 137, 138 n.1 (La. 1973).

2. "The great weight of authority . . . sustains the view that a proceeding to disbar an attorney is civil, not criminal in nature . . . the purpose thereof being to purify the bar and not to punish the respondent." State v. Flynn, 160 La. 483, 486, 107 So. 314, 315 (1926).

3. Dicta in Justice Douglas' opinion in *In re Ruffalo*, 390 U.S. 544 (1968) indicated a belief that the proceeding was criminal: "Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer." *Id.* at 550. Earlier in *Spevak v. Klein*, 385 U.S. 511 (1967), the Supreme Court extended the protection of the Fifth Amendment to disbarment proceedings by equating a "criminal case" with a case involving a "penalty" not restricted to fine or imprisonment, but involving the imposition of any sanction that made the assertion of the privilege against self-incrimination "costly." *Id.* at 515. For an analysis of the *Spevak* decision see Chilingirian, *State Disbarment Proceedings and the Privilege Against Self-Incrimination*, 18 BUF. L. REV. 489 (1968).

4. *In re* Ruffalo, 390 U.S. 544 (1968); Louisiana St. Bar Ass'n. v. Ruiz, 261 La. 409, 259 So. 2d 895 (1972). The due process requirement that there be a rational relationship between the grounds for disciplinary action and the attorney's fitness or capacity to practice law is applicable to state bar association proceedings. Schware v. Board of Bar Exam., 353 U.S. 232 (1957).

5. *In re* Comer, 197 La. 397, 1 So. 2d 673 (1941) (conviction of attorney showed he was not of good moral character, one of the attributes necessary in enjoying the privileges and exercising the duties of an attorney at law). *See, e.g.*, MD. ANN. CODE art. 10, § 16 (1967); OHIO REV. CODE ANN. tit. 47, § 4705.02 (1953); WASH. REV. CODE § 2.48.220(1) (1950).

6. *See* Noland v. State Bar, 63 Cal. 2d 298, 302, 405 P.2d 129, 131, 46 Cal. Rptr. 305, 307 (1965).

7. An especially difficult area has been the question of income tax violations.

resulted in lawyers being disciplined for conduct not always indicative of an unfitness to practice law.[8] In response to the deficiencies inherent in the moral turpitude standard, some jurisdictions have refined this standard by making discipline contingent on a showing that the conviction evidences a lack of honesty and trustworthiness.[9]

Compare In re Seijas, 52 Wash. 2d 1, 318 P.2d 961 (1957) (if indictment charged fraud, conviction for filing false returns involved moral turpitude and warranted summary disbarment) *with* United States v. Carrolo, 30 F. Supp. 3 (W.D. Mo. 1934) (offenses against the revenue laws do not involve moral turpitude). Also, *compare* Kentucky St. Bar Ass'n. v. McAfee, 301 S.W.2d 899 (Ky. Ct. App. 1957) (failure to file does not involve moral turpitude) *with* Nebraska St. Bar Ass'n v. Tibbels, 167 Neb. 247, 92 N.W.2d 546 (1958) (failure to file involves moral turpitude).

The Louisiana supreme court has held that either filing a fraudulent return or income tax evasion is sufficient grounds for disbarment. Louisiana St. Bar Ass'n v. Ponder, 263 La. 743, 269 So. 2d 228 (1972) (filing a false tax return); Louisiana St. Bar Ass'n. v. Seiner, 201 La. 923, 10 So. 2d 703 (1942) (income tax evasion); Louisiana St. Bar Ass'n v. Connolly, 201 La. 342, 9 So. 2d 582 (1941) (income tax evasion). However, no attorney has ever been disbarred for such an offense. In *Connolly*, mitigating circumstances were found which made disciplinary action inappropriate. 206 La. 883, 20 So. 2d 168 (1944). In *Steiner*, the attorney was suspended for two years. 204 La. 1073, 16 So. 2d 843 (1944). In *Ponder*, the proceedings were later dismissed without prejudice and have not yet been concluded.

8. *See, e.g.*, Grievance Comm. v. Broder, 112 Conn. 263, 152 A. 292 (1930) (sexual misconduct); *In re* Wells, 293 Ky. 201, 168 S.W.2d 730 (1943) (drunkenness); *Ex parte* Keeley, 189 P. 885 (Ore. 1920) (use of abusive language). Even when the facts surrounding a crime show no lack of fitness to practice law, attorneys have been disbarred. *In re* Morris, 74 N.M. 679, 397 P.2d 475 (1964) (involuntary manslaughter resulting from driving while intoxicated).

9. Hallinan v. Committee of Bar Exam., 65 Cal. 2d 447, 465, 421 P.2d 76, 94, 55 Cal. Rptr. 228, 246 (1966). The Louisiana supreme court has adopted such a rule. Louisiana St. Bar Ass'n. v. Bearden, 258 La. 983, 249 So. 2d 103 (1971) (conviction for embezzlement and converting monies deposited in a federally insured bank involves personal dishonesty and merits disqualifying a person from practicing law); Louisiana St. Bar Ass'n. v. Rayl, 208 La. 531, 23 So. 2d 206 (1945) (conviction of the felony of making false and fraudulent statements to a federal savings and loan insurance corporation involves dishonesty, disqualifying an attorney from the practice of law).

A survey of the reported cases reveals that the Louisiana supreme court has been consistent in following such a standard regarding misconduct resulting in a criminal conviction. Louisiana St. Bar Ass'n. v. Bearden, 258 La. 983, 249 So. 2d 103 (1971) (embezzlement); Louisiana St. Bar Ass'n. v. Cox, 252 La. 978, 215 So. 2d 513 (1968) (embezzlement of client's funds); Louisiana St. Bar Ass'n. v. Cawthorn, 223 La. 884, 67 So. 2d 165 (1953) (obstruction of justice); Louisiana St. Bar Ass'n. v. Rayl, 208 La. 531, 23 So. 2d 206 (1945) (forgery and uttering as true a false instrument); *In re* Comer, 197 La. 397, 1 So. 2d 673 (1941) (embezzlement of client's funds); State v. Gowland, 189 La. 80, 179 So. 41 (1938) (forgery and uttering as true a false instrument); State v. Stringfellow, 128 La. 463, 54 So. 943 (1911) (embezzlement of client's funds, forgery and uttering as true a false instrument). All these crimes evidence a lack of honesty and trustworthiness.

Conviction of a major felony, such as murder, has also been held to be grounds

An attempt to codify an objective standard of this nature was made by an American Bar Association committee, headed by former Supreme Court Justice Clark,[10] which utilized the notion of "serious crime."[11] The committee proposal was included in the Louisiana State Bar Association's 1971 revision of its Articles of Incorporation.[12] The articles now provide for an interim suspension of an attorney after an ex parte determination that he has been convicted of a serious crime, that is, a crime "the necessary element of which as determined by the statute defining such crime, reflects upon the attorney's moral fitness to practice law."[13] If the attorney is suspended, discipli-

for disbarment even though the conviction does not necessarily indicate a lack of honesty or trustworthiness. Dormenon's Case, 1 Mart.(O.S.) 129 (La. 1810) (conviction of engaging in a riot which led to murder).

In all the reported cases, nine attorneys have been disbarred by the supreme court for conviction of a crime. Only two of those involved conduct which would be classified as non-professional. It should be noted, however, that the supreme court from 1812 until 1921 declined jurisdiction over disbarment proceedings based upon non-professional misconduct believing it had no power to hear such cases since there was no constitutional grant of original jurisdiction. *See* the discussion of the history of disbarment proceedings in *Louisiana St. Bar Ass'n. v. Connolly*, 201 La. 342, 355-62, 9 So. 2d 582, 586-88 (1942).

10. ABA Special Committee on Evaluation of Disciplinary Enforcement, PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT (Final Draft, June, 1970) [hereinafter cited as CLARK REPORT]. In August, 1970, the House of Delegates of the American Bar Association unanimously approved the report recommending extensive reform in disciplinary structures and procedures at both state and local levels.

11. CLARK REPORT at 128 defines serious crime as "a felony or any specified lesser crime a necessary element of which, as determined by the statute defining such crime, reflects upon the attorney's fitness [to practice law]."

12. ARTICLES OF INCORPORATION, LOUISIANA STATE BAR ASSOCIATION art. XV, LA. R.S. 37, ch. 4, app. (Supp. 1971) [hereinafter referred to as ARTICLE XV]. The Special Committee on Disciplinary Enforcement, headed by John Pat Little, held meetings in the seven largest cities in the state and submitted a redraft of ARTICLE XV. The supreme court approved the revised ARTICLE XV by order dated May 25, 1971. Thus, this case presents the anomalous situation of the supreme court reversing the Committee on Professional Responsibility, itself a creature of the court, for following a rule approved by the court.

13. ARTICLE XV, § 8(2). The need for such a procedure was noted by the CLARK REPORT: "No single facet of disciplinary enforcement is more to blame for any lack of public confidence in the integrity of the bar than the policy that permits a convicted attorney to continue to practice while apparently enjoying immunity from discipline." *Id.* at 124. The former procedure in Louisiana provided that no action was to be taken until a conviction had become final, *i.e.*, all appeals had been exhausted.

The procedure recommended by the *Clark Report* was modeled after that used by California. CAL. BUS. & PROF. CODE § 6102(a) (Deering 1960). The California procedure was upheld against a due process challenge in 1922. *In re* Collins, 188 Cal. 701, 206 P. 990 (1922). A recent decision reaffirmed this decision and distinguished between those

nary proceedings are instituted but will not be brought to a hearing until the conviction becomes final.[14] At this formal hearing the committee considers mitigating circumstances which might make certain disciplinary action inappropriate.[15]

The interim suspension is designed to remove the attorney from practice so that he may not adversely affect his clients during this period. One unaware of the conviction might retain the attorney and unwittingly compromise his rights, since other attorneys might be reluctant to work with a convicted attorney. Moreover, if the attorney were imprisoned while the client's claim was still pending, the client might be forced to employ new counsel who would have to familiarize himself with the matter, causing the client more delay and considerable expense.[16] Further, since disciplinary proceedings may be instituted before the conviction becomes final, attorneys can no longer prolong their appeals and thereby delay disciplinary action for several years.

Due process allows summary action to protect the public,[17] if the

situations which require a hearing and those which do not. "In such cases [where no hearing is required] there is no real necessity to examine the facts, resolve any conflicts in the evidence, and exercise any judgment with respect thereto, but the only question is a legal one, *i.e.*, whether the licensee was convicted of a crime of the character specified in the statute. . . . A different situation arises, however, where an independent judicial or quasi-judicial determination of facts as a basis for the suspension or revocation must be made." Slaughter v. Edwards, 11 Cal. App. 3d 285, 294, 90 Cal. Rptr. 144, 150 (1970). Other states have adopted similar procedures. *See, e.g.*, INTEGRATION RULE OF THE FLORIDA BAR 11.07(2); NEW MEXICO SUP. CT. R. 3(14).

14. ARTICLE XV, § 8(4): "If the Supreme Court should concur with the opinion of the Committee that the crime of which the attorney has been convicted constitutes a serious crime, the Supreme Court may suspend the respondent from the practice of law and order the Committee to institute the necessary disciplinary proceedings, provided however, that the disciplinary proceedings so instituted will not, unless requested by the accused, be brought to a hearing until all appeals from the conviction are concluded."

15. ARTICLE XV, § 8(7)(d): "At the hearing based upon a respondent's conviction of a crime, the sole issue to be determined shall be whether the crime warrants discipline, and if so, the extent thereof. At the hearing the respondent may offer evidence only of mitigating circumstances not inconsistent with the essential elements of the crime for which he was convicted as determined by the statute defining the crime."

16. CLARK REPORT at 125.

17. Fahey v. Mallonee, 332 U.S. 245 (1947). The constitutionality of summary proceedings in the area of creditor's remedies has been subject to some question. In *Mitchell v. W.T. Grant Co.*, 94 S. Ct. 1895 (1974), Louisiana's writ of sequestration was upheld in the face of a due process challenge. *Fuentes v. Shevin*, 407 U.S. 67 (1972), had been taken by many to mean that due process required a hearing *prior* to the deprivation of any property, making no distinction between necessities of life as in *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare), and *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969) (wages), and non-necessities. *Grant* indicates the Court is now not

public interest is found to outweigh the right of the individual.[18] Thus, when a license, such as that to practice law, is designed to provide control over the licensee to protect the public, it may be in accord with due process to summarily suspend the license pending a hearing.[19] The Florida supreme court, in upholding a summary suspension provision similar to that of the Louisiana Bar Association, noted that "the individual attorney's right is no more vital than is that of the public or the profession."[20] Likewise, the requirements of due process are not so technical as to militate adherence to any particular procedure.[21] If the licensee has been afforded an opportunity for a hearing in another forum, such as a criminal trial in the case of lawyers convicted of crime, this alone may satisfy the dictates of due process.[22]

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willing to go that far and "represents a reaffirmation of the traditional meaning of procedural due process." Mitchell v. W.T. Grant Co., 94 S. Ct. 1895, 1910 (1974) (Powell, J., concurring). That is, a return to the balancing of interests test is indicated to determine if a prior hearing must be held: "In our view, this statutory procedure effects a constitutional accommodation of the conflicting interests of the parties." *Id.* at 1900.

18. "In a wide variety of situations, it has long been recognized that where harm to the public is threatened, and the private interest infringed is reasonably deemed to be of less importance, an official body can take summary action pending a later hearing." R.A. Holman and Co. v. SEC, 299 F.2d 127, 131 (D.C. Cir.), *cert. denied*, 370 U.S. 911 (1962) (suspension of exemption from stock registration requirement). *See also* Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950) (seizure of mislabeled vitamin product); North Am. Cold Stor. Co. v. Chicago, 211 U.S. 306 (1908) (seizure of food not fit for human use); Yakus v. United States, 321 U.S. 414 (1944) (adoption of wartime price regulations); Gonzalez v. Freeman, 334 F.2d 570 (D.C. Cir. 1964) (disqualification of a contractor to do business with the government).

19. 1 DAVIS, ADMINISTRATIVE LAW TREATISE § 7.08 (1958) [hereinafter referred to as DAVIS].

20. The Florida Bar v. Craig, 238 So. 2d 78, 81 (Fla. 1970).

21. Inland Empire Council v. Millis, 325 U.S. 697, 710 (1945). *See also* Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961) ("The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation"); NLRB v. Mackay Co., 304 U.S. 333, 351 (1938) (due process of law "guarantees no particular form of procedure, it protects substantial rights").

22. The members of the Clark Committee were satisfied that due process would be met as long as the attorney was afforded due process in the criminal prosecution. CLARK REPORT at 127-28. A similar procedure is used by the United States Supreme Court providing for summary suspension upon certification of an attorney's disbarment from practice by any state. Within forty days he must respond or be disbarred. U.S. SUP. CT. R. 8. *Cf. Nickey v. Mississippi*, 292 U.S. 393 (1934), where individualized property tax assessments were made without notice and hearing at the administrative level, but could only be collected by an ordinary action at law. The Supreme Court held that the subsequent trial provided the requisite notice and hearing. *See also* Bishop Proc. Co. v. Gardner, 275 F. Supp. 780 (D. Md. 1967). *But cf. Goldberg v. Kelly*, 397 U.S. 254 (1970), where the probable harm to a welfare recipient in having

The due process hearing requirements are also shaped by the nature of the facts to be determined,[23] whether adjudicative or legislative.[24] Adjudicative facts are those concerning the individual parties and their actions, roughly the kind of facts that require submission to a jury. They characteristically involve problems of credibility or state of mind, issues which normally call for cross-examination and confrontation. Legislative facts do not concern the immediate parties but are general facts which can often be established through documentary or statistical evidence. A contradictory hearing is required only if the facts to be determined are classified as adjudicative.[25] The effect a determination will have upon an individual—such as suspension from the practice of law—does not change the nature of the facts to be determined;[26] nor should the effect introduce the requirement of a contradictory hearing when the facts are clearly legislative.

In holding that summary suspension violates due process, the Louisiana supreme court found there was no overriding public interest to justify a summary proceeding.[27] While the majority invoked appealing notions of individual rights and the opportunity to be

benefits terminated without a prior hearing outweighed the possible harm to the government in protecting its revenues. In the words of Justice Brennan: "Termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits." *Id.* at 264. While suspension does temporarily deprive an attorney of his livelihood, his situation is certainly not so desperate as that of the welfare recipient. Further, the public interest to be protected is considerably greater than the interest in protecting public funds.

23. *See* DAVIS § 7.02.

24. Two early cases which have been cited to mark this distinction are *Londoner v. Denver*, 210 U.S. 373 (1908), and *Bi-Metallic Co. v. Colorado*, 239 U.S. 441 (1915). *Londoner* involved assessments to property owners for street improvements. The Supreme Court required that a hearing be conducted to determine the division of costs among particular property owners since the individual owners were in a good position to adduce evidence as to the increase in value of their respective property. The facts to be determined were adjudicative facts concerning the characteristics, situation, and valuation of each piece of property. In *Bi-Metallic* a state commission increased the valuation of all property in Denver 40% on the theory that it was undervalued in proportion to the rest of the state. Plaintiff, a property owner whose taxes would have thereby been increased, was held to have no constitutional right to a hearing. The facts to be determined were legislative concerning the general information and ideas affecting the blanket increase in property valuation.

25. DAVIS § 7.08. See the distinction drawn by the California court in *Slaughter v. Edwards*, 11 Cal. App. 3d 285, 90 Cal. Rptr. 144 (1970), discussed at note 13 *supra*.

26. DAVIS § 7.02.

27. Louisiana St. Bar Ass'n. v. Ehmig, 277 So. 2d 137, 140 (La. 1973): "We find that such emergency action is not appropriate in the case of an attorney who has been convicted of a crime; the public health and safety are not involved to the extent necessary to justify a suspension of his license without a prior hearing."

heard,[28] it seems to have accorded insufficient weight to the serious countervailing claims of the public to be protected against unfit lawyers.[29] The court noted that a formal hearing was required prior to institution of disciplinary proceedings when the grounds did not involve conviction of a crime and stated: "We see no reason why this requirement should be relaxed (as it is in Section 8) where the grounds for the suspension are that the attorney has been convicted of a crime."[30] The majority opinion also cited *Goldsmith v. United States Board of Tax Appeals*[31] for the proposition that a hearing must be held before suspension of an existing license to engage in a business or profession. But the facts to be determined in *Goldsmith*, as well as those in a disbarment action based on professional misconduct, are adjudicative.[32] When the grounds for suspension are conviction of a serious crime, there are no adjudicative facts in dispute, since the truth of the charges have already been proven. The only question to be determined before interim suspension is whether the crime is a serious one. The majority in *Ehmig* found this to be an adjudicative fact because it "related to the particular individual."[33] But the nature of the fact rather than the proceeding in which it is found should determine whether it is an adjudicative or legislative

28. *Id.* at 139: "The right to practice law (implemented through a license) is a constitutionally protected right and no attorney can be deprived of this right by a suspension or otherwise without strict adherence to basic constitutional principles of due process."

29. *Cf.* the discussion of the Florida supreme court in *The Florida Bar v. Craig*, 238 So. 2d 78 (Fla. 1970).

The briefs filed in the *Ehmig* case indicate that the main question argued was whether the application of the new rules to this attorney constituted an ex post facto law since the crime for which he was convicted occurred prior to adoption of the new rules, even though the conviction was after adoption. While the court did not decide this question, it would seem that the operative fact is the *conviction*, and since it occurred after the rule was adopted there would be no ex post facto application. For this reason the important public interests to be protected by such a rule and its favorable reception in other states was not presented to the court. Perhaps, had these been presented, the decision would have been different.

30. Louisiana St. Bar Ass'n. v. Ehmig, 277 So. 2d 137, 140 (La. 1973).

31. 270 U.S. 117 (1926).

32. Goldsmith applied for admission to practice before the board as an accountant. He was rejected upon charges of unfitness. The United States Supreme Court said that he was entitled to a hearing to rebut the charges since the *truth of the charges against him were in dispute*. Professor Davis concludes such facts were adjudicative. DAVIS § 7.04.

In the disciplinary proceeding the facts to be determined are the truth of the charges against the attorney. Thus a formal hearing is required by ARTICLE XV, § 3(b) before a suit can be instituted in the supreme court for the disbarment of the attorney.

33. Louisiana St. Bar Ass'n v. Ehmig, 277 So. 2d 137, 140 (La. 1973).

fact.[34] Such determination is more properly characterized as one of legislative fact and thus the court's determination that a hearing was constitutionally compelled seems erroneous.[35]

The decision also casts doubt upon other provisions of the new rules. *Ehmig* requires a hearing before the petition for suspension can be filed with the court when the proceeding is before final conviction. However, the case raises the possibility that another committee hearing will be required after the conviction becomes final, followed by an additional hearing before a commissioner, after filing a petition with the supreme court, to decide whether the previously determined serious crime warrants disciplinary action.[36] The resulting delay would destroy the objective of speeding disciplinary enforcement

34. DAVIS § 7.08.

35. This point was expressed in Justice Barham's dissent: "No evidence may be adduced before the Committee or the Louisiana Supreme Court for determining whether a 'serious crime' has been committed which warrants immediate suspension other than the certificates of conviction and the language of the statute under which the conviction was had. Such a provision is not unconstitutional, and certainly a hearing to make this determination would avail the claimant nothing. The statutory language of the criminal definition is all-encompassing of this determination of an interim suspension from practice." Louisiana St. Bar Ass'n v. Ehmig, 277 So. 2d 137, 140 (La. 1973) (Barham, J., dissenting). This is not to say that a hearing *should* not be held. The decision as to what is "serious" is to be made by the nine members of the Committee on Professional Responsibility according to the criteria established in the rule. The members composing such a board are themselves qualified to decide whether certain crimes indicate a moral unfitness to practice law. Administrative boards of this nature have long been allowed to take official notice, especially in regard to legislative facts. DAVIS § 15.03. *See, e.g.*, Jaffe v. State Dept. of Health, 135 Conn. 339, 64 A.2d 330 (1949) (medical examining board did not need to take expert testimony regarding standards of the medical profession or reasonableness of fees charged in decision to revoke medical license). Of course, the Committee's decision is subject to review by the supreme court. ARTICLE XV, § 8(4).

36. *Louisiana St. Bar Ass'n. v. Ponder*, 263 La. 743, 269 So. 2d 228 (1972), held that under "the articles of incorporation [there was] no right to hearing by the committee prior to the institution of disciplinary proceedings in this court." *Id.* at 230. But the language in *Ehmig*, decided more than three months after *Ponder*, speaks of requiring a hearing before filing a petition with the court for suspension or disbarment: "We note that the rules . . . require, in cases which do not involve the conviction of a crime, a formal investigative hearing prior to the institution of an action to suspend or disbar the attorney . . . . We see no reason why this requirement should be relaxed . . . where the grounds for the suspension are that the attorney has been convicted of a crime." Louisiana St. Bar Ass'n. v. Ehmig, 277 So. 2d 137, 140 (La. 1973). No mention is made of *Ponder* in *Ehmig*. The emphasis clearly seems to be on having a hearing before the petition for disbarment or suspension is filed with the court. This would indicate that in a case such as *Ponder*, where there was no interim suspension, a hearing must be held to determine "serious crime" before filing the petition with the court, even though after final conviction. But what of the situation where there has been an interim suspension? If another hearing is mandated, what is to be decided

sought by the 1971 revisions[37] and it is hoped that the holding of *Ehmig* will not be extended to apply to these other steps in the disciplinary procedure.

David R. Burch

MITCHELL v. W.T. GRANT CO.: PROCEDURAL DUE PROCESS REEXAMINED

A seller filed suit for the overdue balance of the price of goods purchased under an installment sales contract, and upon his ex parte application, the trial judge ordered a sequestration of the goods without affording the buyer notice or an opportunity for a prior hearing. The lower courts denied the buyer's motion to dissolve the writ, and the Louisiana supreme court affirmed.[1] On certiorari, the United States Supreme Court *held* that the Louisiana writ of sequestration is not violative of procedural due process, as it effects a "constitutional accomodation" of the conflicting interests of buyer and seller. *Mitchell v. W.T. Grant Co.*, 94 S. Ct. 1895 (1974).

Close scrutiny of traditional creditors' remedies generated by an increased awareness of the rights of consumers underlies two recent United States Supreme Court decisions: *Sniadach v. Family Finance Corp.*[2] and *Fuentes v. Shevin*.[3] In *Sniadach* the Court held unconsti-

since the question of "serious crime" has already been determined? Must the determination of whether the crime warrants discipline be made *before* the commissioner is appointed as well as by him? Though it would be possible to limit *Ehmig* to the interim suspension, the court may not be given that chance. It is possible that the Committee will feel obligated to hold a hearing after final conviction to insure that the proceedings would not possibly be found defective by the court for failure to do so.

37. Such a delay could be as long as five years from date of conviction until final disciplinary action. In *Louisiana St. Bar Ass'n. v. Funderburk*, 284 So. 2d 564 (La. 1973), the grounds for disbarment were conviction of a felony and professional misconduct, thus the procedure for professional misconduct was used. The defendant pleaded guilty on November 12, 1970; he received notice of the disciplinary hearing in May, 1971. The formal hearing was held October 13, 1972. Thereafter, a petition was filed with the supreme court for disbarment and a commissioner was appointed on December 6, 1972. The commissioner's hearing was held on March 22, 1973, and his report filed with the court on July 22, 1973. He was disbarred on October 29, 1973, a delay of thirty-five months. Had Funderburk not pleaded guilty there would have been further delays. In *Louisiana St. Bar Ass'n. v. Ponder*, 263 La. 743, 269 So. 2d 228 (1972), the defendant was convicted on December 29, 1969. His conviction became final upon the United States Supreme Court's denial of writ of certiorari on February 22, 1972, a delay of twenty-five months.

1. W.T. Grant Co. v. Mitchell, 263 La. 627, 269 So. 2d 186 (1972).

2. 395 U.S. 337 (1969).

3. 407 U.S. 67 (1972). *Fuentes* was decided with a companion case, *Parham v. Cortese. Id.*