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## THE GENESIS OF BAR EXAMINATIONS IN INDIANA

Indiana has often been derided for its lack of requirements for admission to the bar. A law school professor once said (and this was in the days before prohibition of intoxicants) that there was one state where the qualifications of a saloon-keeper were greater than those of a lawyer; that the Constitution of Indiana provided that a person of good moral character could practice law, but that under the statutes of that state a person to secure a license to operate a saloon must not only be of good moral character but must not be an habitual drunkard. A distinguished Indiana lawyer at the last session of the Indiana State Bar Association said that any man of good moral character, regardless of any knowledge of the law, could become a lawyer, and after he became one it didn't make any difference whether he had moral character or not.

The Indiana Constitution of 1851 with its many crudities remains the fundamental law of the state. But we are concerned here only with the provision with reference to admission to the bar. It provides that "Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice."<sup>1</sup>

This constitutional provision is vestigial of our early excesses of democracy. As we emerged from colonial days it was thought that any training in the law as a prerequisite to its practice was in conflict with sound democratic principles and militated unfairly against the student of limited means. The pioneers of Indiana were imbued with these ideas and incorporated them into its fundamental law. And at the time of the adoption of its constitution this provision was not so baneful as we might at first suspect. Pioneer life

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<sup>1</sup> ART. 7, § 2.

did not require expert knowledge of the law. Compared with modern times and conditions the problems of Indiana's early life were simple. It does not require a lawyer to know that the increasing complexities of social and economic life bring about correspondingly greater complexities in the administration of justice. To say that a lawyer in this age needs no training is, of course, absurd. To say that a student of limited means but with a genuine predilection for the law would be denied a legal career unless he is admitted without legal qualifications, is almost equally as absurd. Colleges are now so numerous and opportunities for self help so generally prevail that no intelligent and industrious young man need be denied a college education. But be that as it may, as Dean Pound once said: "There is no intrinsic reason why democratic institutions should be inefficient."

Indiana has made many efforts to rid itself of this constitutional provision but without success. Each effort failed by reason of another constitutional provision, and that the one which has to do with amending the constitution. This last provision is to the effect that a proposed amendment must be agreed to by a majority of the members elected to each of the two houses of the General Assembly and be referred to the General Assembly to be chosen at the next general election; and if such proposed amendment is agreed to by a majority of all the members of each house of the General Assembly next so chosen, then it shall be the duty of the General Assembly to submit such amendment to the electors of the state "and if a majority of said electors shall ratify the same such amendment . . . shall become a part of this constitution."<sup>2</sup>

The General Assembly has four times, in constitutional form, referred to the electors an amendment to the effect that "The General Assembly shall by law prescribe what qualifications shall be necessary for admission to practice

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<sup>2</sup> IND. CONST., ART. 16, § 1.

law in all courts of justice." Each time an overwhelming majority of the electors who voted on the question of the amendment voted for it, and each time it failed for want of a constitutional majority. That is to say, a majority of the electors voting at the election for various officers, did not vote for it. For example this proposed amendment was submitted to the electors in 1900, and more than 240,000 votes were cast for, and less than 145,000 against, the amendment. At the same election more than 660,000 votes were cast for presidential electors. The court measured the number of electors of the state, within the meaning of Article 16,<sup>3</sup> by the number voting at the election, and not by the number voting on the amendment.<sup>4</sup> The result is that those electors who go to the polls, and fail to vote on an amendment by reason of ignorance, lack of interest, or for any other cause, virtually vote against the amendment, and their votes are so counted. Thus, it is seen that the way to the amendment of the constitutional provision of Indiana as to the qualification of lawyers is almost an impassable one.

The Supreme Court of Indiana by its decisions has recognized to some extent at least that this provision in the constitution, by reason of changed circumstances, cannot be given the same interpretation that it might have been given at the time of the adoption of the constitution in 1851. Prior to the time of woman suffrage (1893) the Supreme Court held that a woman could be admitted to the practice of law, notwithstanding the constitution providing that "Every person of good moral character, *being a voter* shall be entitled to admission to practice law."<sup>5</sup> In the case of *In re Petition of Leach*<sup>6</sup> the court held also that the power

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<sup>3</sup> *Op. cit.*, *supra* note 2.

<sup>4</sup> *In re Denny*, 156 Ind. 104 (1901). See, also, *In re Boswell*, 179 Ind. 292 (1912), as to identical amendment submitted to the electors in 1910.

<sup>5</sup> *In re Petition of Leach*, 134 Ind. 665 (1893).

<sup>6</sup> *Op. cit.*, *supra* note 5.

exists as one of the inherent privileges of the court, and as necessary incident to its control over the membership of its bar, to prescribe all reasonable rules for admission of persons to practice, such rules, of course, not conflicting with the constitution or laws of the state. Here at least is some recognition of the principle that changed social and economic conditions must enter into the construction of the constitution, and the further principle that courts do have some control over the membership of the bar. In a recent case,<sup>7</sup> however, the court has made a most enlightened and progressive pronouncement upon the subject, as follows:

"The Constitution of Indiana makes good moral character an essential qualification for admission to practice law in this state. Art. 7, Sec. 21, Constitution of Indiana. From appellant's statement to the Grievance Committee, and from his plea in abatement, it would seem that, at the time of his admission and since that time, he was and is under the impression that on a mere showing of good moral character any voter of this state is entitled to be admitted to practice law as a constitutional right, but this impression is not entirely correct, for, notwithstanding this constitutional provision, courts may make reasonable rules and regulations for the admission of such applicants. . . . It, therefore, follows that the practice of law in this state is not an unqualified constitutional or natural right. It should be termed a privilege which, when once lawfully acquired, continues during good behavior."

It is believed that if the Supreme Court were to again consider the constitutional provision with reference to admission to practice law, it might reach a conclusion contrary to the early decisions of that court which took it for granted that no educational requirements could be imposed upon applicants for admission. A constitution is not static; it is fundamental but its meaning is enriched by the experiences of man as read into, and incorporated therein. Changed social and economic conditions, as well as the problems which the changes have produced, must logically enter into and become influential factors in the construction of this constitutional provision.

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<sup>7</sup> In re McDonald, 200 Ind. 424 (1928).

What does this constitutional provision mean? It would seem that it has no reference to an educational qualification that was not deemed essential at the time of its enactment. It must have reference to the political right of a person to practice law; the same right that a citizen has to hold public office, that is to say the right to the office providing he qualifies under the law.

Every voter has the political right to hold the office of Justice of the Supreme Court. Notwithstanding that political right it will not be denied that the law might require one to be a lawyer before he can be elected to that office. A lawyer is an officer of the court, and it logically follows that the law might prescribe reasonable qualifications as a prerequisite to holding the office of attorney without denying to any voter of good moral character his political right to admission to the bar.

As long as every applicant to the bar is treated equally and educational requirements are reasonable for the protection of the state and its citizens, the provision, it would seem, is not infringed. Give it stricter interpretation if you please. What results? If it means every person of good moral character, regardless of educational or other qualifications, except being a voter, may be admitted, then every idiot, imbecile, and person *non compos mentis*, may be admitted, for you could not say that they are necessarily not of good moral character, and, under the constitution, they are not excluded as voters.<sup>8</sup>

It is becoming more and more the opinion of the profession that a person who holds himself out as a lawyer when he is without training and learning in the law, is not of good moral character. There is some foundation in logic for this conclusion. If a person holds himself out as a physician and surgeon, for example, when he has no learning, training or skill as such, and attempts to diagnose an

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<sup>8</sup> See IND. CONST., ART. 2, § 2.

ailment in the diabolical region, and proceeds to perform an appendectomy without proper instruments or equipment, what could you say as to his moral character? A lawyer handles for his clients matters just as important, where life and all that life holds depends upon his learning, skill and ability. It is submitted that if the physician and surgeon under the circumstances supposed is not of good moral character then an individual who falsely represents himself as being trained in the law and "practices" on his clients is not of good moral character.

Notwithstanding any interpretation that might be given to the constitutional provision as to admission to the bar, this provision has remained to embarrass the profession in the state and has continued to be used to the end that those who were not qualified have been permitted to prey upon its unsuspecting citizens. This has been a matter of deep concern to the bar association of the state, and to those lay citizens who recognize that the public needs protection as against those quacks and shysters whose sustenance is gleaned from people who are unable to discriminate as between the well qualified expert and the imposter.

Recognizing the seeming futility of changing the constitution itself the Indiana Bar Association through its Committee on Legal Education recommended to the General Assembly of the state at its 1931 session a bill which was duly passed and became effective July 1, 1931. This bill which is now the law of the state is as follows:

"The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state under such rules and regulations as it may prescribe."<sup>9</sup>

This is such a simple disposition of the problem that the wonder is that it was not suggested many years ago. The Supreme Court should have, and does have for that matter, control of its own roster of attorneys. Attorneys

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<sup>9</sup> CHAP. 64, ACTS 1931, INDIANA GENERAL ASSEMBLY.

are officers of the court and in the due administration of justice, the court must determine the educational and other qualifications of its officers. Under this act the Supreme Court, rather than the local circuit and superior courts, determines what qualifications are prerequisite to admission to the bar. Whereas formerly one was first admitted to a local court and was thereafter on the strength of such admission, admitted to the Supreme Court, now he is first admitted to the Supreme Court and his right to practice in the inferior courts of the state follows as a matter of course. Under this act the responsibility for rules and regulations for admission to the bar is definitely fixed, and resides in the Supreme Court of the state.

The Supreme Court, in conformity with the Act of 1931, amended its rules as to admission to the bar, providing as follows:

#### ROLL OF ATTORNEYS AND ADMISSIONS TO BAR

Rule 41-1. The names of all attorneys, who, prior to July 1, 1931, were admitted to the bar of this court, whose names have not subsequently been stricken therefrom and who, since the date of their respective admissions, have not been removed or suspended by any court of record, shall be and constitute the roll of attorneys of this court on July 1, 1931.

The clerk of this court shall keep a permanent record known as the roll of attorneys in which the names of all such attorneys and all attorneys and persons subsequently admitted to practice law shall be listed in their alphabetical order.

#### *Admission Without Examination—Temporary Practice*

Rule 41-2. "Any court may permit an attorney who is not a resident of this state to practice law therein during any term of such court, upon his taking an oath for the faithful discharge of his duties." §833, ch. 38, Acts 1881, §1035, Burns 1926.

#### *Admission Without Examination—To Practice Generally*

Rule 41-3. Any attorney who, prior to July 1, 1931, was duly admitted to practice law in a circuit court of any county of this state and who, on that date, was actively engaged in the practice of law, may be admitted to practice law by this court upon submitting to this court a certificate signed by the judge of the circuit court of the county in which he is engaged in the practice of law or by the presi-



dent of the bar association of such county, showing that such attorney is a voter, is a person of good moral character, is in good standing at the bar and is actually engaged in the practice of law in said county, and has been engaged in the practice of law for a period of at least six months immediately prior thereto.

*Admission Without Examination—Upon foreign license*

Rule 41-4. Any person who has been admitted to practice law in the highest court in any other state or territory or the District of Columbia of the United States, or in another country whose jurisprudence is based upon the principles of the English Common Law and who has actually practiced at least three years in such court or in the highest court of original jurisdiction therein, may be admitted to practice law in this state upon his filing with this court a "judges certificate of practice upon foreign license" (form to be provided the applicant by the clerk of this court) and upon the motion of a member of the bar of this court who shall show that the applicant is a citizen of the United States, a person of good moral character and that he has become a bona fide resident voter of the State of Indiana.

*Admission Upon Examination*

Rule 41-5. There is hereby constituted a State Board of Law Examiners for the State of Indiana, for the purpose and with the powers hereinafter set forth. Said Board shall consist of five members of the bar, one from each Supreme Court Judicial District, and shall be appointed by this court to serve for terms of three years and until their successors are appointed. The board shall elect annually a president, vice-president and secretary-treasurer.

Rule 41-6. The board shall meet and conduct three examinations annually in Indianapolis, in quarters to be designated by the court, beginning on the first Monday in March, the second Monday in July, and the first Monday in October. Such part of said examinations as deals with questions on legal subjects shall be conducted by printed interrogatories, shall be uniform and shall be supervised by the members of the board as a body; provided, however, that the board may supplement said written examination with an oral examination by the board. A majority of the board shall constitute a quorum. In the absence of a quorum, the court shall appoint an Examiner or Examiners *pro tem* from the bar of the Supreme Court. The board shall certify to the court those who have met the requirements for admission to the bar, and the applicants so certified shall appear in person before this court and may be admitted to the bar on motion in open court. Such admission shall entitle the attorney to practice in any court of the state.

Rule 41-7. Any resident voter of the State of Indiana who is of good moral character shall be entitled at any time, under such rules and regulations as the Board of Law Examiners shall provide, and subject to the rules and regulations herein set forth, to make application hereinafter provided for and shall present to the Board of Law Examiners in the manner hereinafter provided, satisfactory proof that he is a resident voter of the state, and also that he is a person possessed of those requisites of good moral character necessary to qualify one to serve in the dual capacities of an attorney, to-wit, as an officer of the courts, and as legal counselor or practitioner; and to faithfully perform his duties to the courts, the public and his clients.

Rule 41-8. Each application for admission must be made on forms prescribed by the board and filed with the clerk of this court in duplicate at least three weeks before a stated meeting of the board, and must be accompanied by all proofs required and a fee of fifteen dollars (\$15.00). The clerk shall forward one copy of said application and the fee deposited to the secretary of the board.

Rule 41-9. At the time the members of the Board of Law Examiners are appointed there shall be appointed by this court a Committee on Character and Fitness in each Supreme Court Judicial District, consisting of at least one attorney-at-law from each county in such district and the member of the board for that district. The members of such committees shall continue in office until their successors are appointed. The board shall send a copy of each application for admission to the bar of this state to the member of the Board of Law Examiners from the district in which the applicant resides. The committee shall require the attendance before it, or some member designated by the board member for the district, of each applicant from that district, and inquire into the question as to whether or not the applicant is possessed of those requisites of good moral character (other than a knowledge of the law) necessary to qualify him to serve as an attorney. The applicant shall present to the committee, or its member, at least three practicing attorneys of such district who are personally acquainted with said applicant, residing in the district with such applicant, to testify as to such requisites of good moral character and the general fitness of such applicant for admission to practice law. In the event that said applicant finds it impossible to secure the personal attendance of said attorneys, or all of them, he may submit in lieu thereof their affidavits as to said subject-matter; provided that said affidavits shall set forth in detail the facts upon which the opinion is based. If the applicant attended an organized law school said applicant may present in lieu of such affidavits, similar affidavits from at least three of his law professors; or one affidavit from the dean of the law school, certifying that a majority of his faculty con-

cur in the statement of facts contained in the affidavit. The committee shall make such further inquiry into the matter as it sees fit.

The committee or member hearing the matter shall make a finding and recommend the approval or disapproval of the applicant and forward the finding and recommendation and all papers filed in connection therewith to the board, which shall at its next stated meeting review said finding, make such further inquiry as it sees fit and take such action as the case requires.

Rule 41-10. The application shall contain a sworn statement showing the full name, age, birthplace, place of residence and length of residence in such place of said applicant; if born in a foreign country, at what age he came to the United States, and when and where he was naturalized; the name, birthplace, residence and occupation of his parents; the schools attended by him, and the dates of such attendance; the name and location of the college or colleges attended by him, and degrees received, if any; the time employed in law offices, if any, together with a list of such offices and the dates of employment in each; whether he has applied for admission to practice law in any other state or country, and if so, when and where and whether he was admitted to practice in such other state or country; and if not admitted, why he was not admitted; whether he was engaged in any occupation, business or profession and if so when and where, giving the names and addresses of his employers, the positions occupied by him and the period of employment; and whether he has ever been a party to a legal action, or proceeding of any kind, and if so, the full details of his interest therein. "State" as used in this rule shall include the District of Columbia, and any territory or possession of the United States.

Rule 41-11. If an applicant for admission to the bar by examination shall be rejected at a second examination he shall not again be admitted to an examination until one examination has intervened after such rejection. If an applicant shall be rejected at a third or fourth examination he shall not again be admitted to an examination until two examinations have intervened after such rejection. Before a third or subsequent examination is allowed he must furnish evidence satisfactory to the board that he has diligently pursued the study of law since his last examination.

Rule 41-12. Applications for admission and all information in reference thereto shall be made upon blank forms furnished by the clerk of this court.

Rule 41-13. The board shall have authority to prescribe such forms and adopt such rules as are necessary, not inconsistent herewith. The members of said board shall be allowed and paid out of the fees re-

ceived by the board from applicants for admission, their necessary expenses and reasonable compensation, such amounts to be fixed by the court and not to exceed the amount received in fees.

Rule 41-14. The Board of Law Examiners shall audit annually the accounts of its secretary-treasurer and shall report to the court before the October meeting a detailed statement of the finances of the board together with such recommendations as shall seem advisable.

Rule 41-15. The Board of Law Examiners shall act and report on all applications within forty-five days after the stated meeting at which the applicant presented himself for admission.

Rule 41-16. Applicants for admission to the bar who are eligible to admission under the foregoing rules may be admitted by appearing in person before the court on a day when the court is sitting and having his admission moved by a member of the bar of the court.

#### *Certification to Counties of Admission*

Rule 41-17. Upon the admission of an applicant to practice law the clerk of this court shall issue to said applicant a proper certificate showing such admission and the clerk shall send to the circuit court of the county of the applicant's residence for entry in the records of such court, a certified copy of the Supreme Court order book entry of such admission.

#### *Certification from Counties of Removals and Suspensions*

Rule 41-18. When any court of record has finally removed or suspended an attorney from practicing therein in the manner provided by law (§§842-846, ch. 38, Acts 1881, §§1044-1047, Burns 1926) the Attorney General or/and the prosecuting attorney of the judicial circuit in which said court is located, shall cause a certified copy of such judgment of removal or suspension to be filed in this court.

The Indiana Board of Law Examiners has been appointed under the rules of the Supreme Court and the first examination was held at Indianapolis, on October 5th and 6th, 1931. The examination was written and consisted of comprehensive questions upon the numerous subjects of the law, supplemented by oral examinations in those cases where the Board believed it necessary in justice to the applicants.

Thus Indiana is now on its way to blot out the stigma that has so long marred its legal escutcheon.

*Lenn J. Oare.*

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