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Power of the Indiana Supreme Court to Disbar

ATTORNEYS

POWER OF THE INDIANA SUPREME COURT TO DISBAR

Defendant attorney, a member of the Indiana bar, brought an action in the state Supreme Court. In considering that case, certain matters arose which the Court directed the Attorney-General to investi-

gate. Subsequently, the Attorney-General filed an original action in the Supreme Court, charging defendant with professional misconduct Defendant claimed that by statute[1] exclusive jurisdiction of disbarment proceedings is given to the circuit and superior courts. Held, the Supreme Court has jurisdiction to disbar and the circuit and superoir courts merely have concurrent jurisdiction in this matter. Beamer, Atty. Gen. v. Waddell, Ind., 45 N. E. (2d) 1020 (1943).

The fact that a person has been admitted to the practice of law does not give him a natural, vested or constitutional right; the practice of law is a privilege granted only to individuals possessing the necessary qualifications,[2] and subject to revocation if the qualifications are subsequently found lacking.[3]

Attorneys are officers of the courts,[4] and since their admission to practice as well as their suspension or disbarment therefrom are judicial functions,[5] the determination of who may practice law is a question for the courts to decide.[6] The power over admissions to the

1. Ind. Stat. Ann. (Burns, Supp. 1942) §4-3608 to 4-3618.
2. In re Edwards, 45 Idaho 676, 266 Pac. 665 (1928); In re Day, 181 Ill. 73, 54 N. E. 646, 50 L.R.A. 519 (1899); Hulbert v. Mybeck, Ind. 44 N.E. (2d) 830 (1942; In re McDonald, 200 Ind. 424, 164 N.E. 261 (1928); In re Sparks, 267 Ky. 93, 101 S.W. (2d) 194 (1936); People Ex. rel. Karlin v. Culkin, 248 N.Y. 465, 162 N.E. 487 (1928) (per Cardozo, C.J.)
3. Continuation of the qualifications of office are a continuing prerequisite to the practice of law. Instant case at 1021. "In granting the license, it was on the implied understanding that the party receiving it should, at all times, demean himself in a proper manner." People ex rel. Atty. Gen. v. McCabe, 18 Colo. 186, 32 Pac. 280, 281 (1893).
4. In re Day, 181 Ill. 73, 54 N.E. 646. 50 L.R.A. 519 (1899); In re McDonald, 200 Ind. 424, 164 N.E. 261 (1928); In re Darrow and Talbott, 175 Ind. 44, 50, 92 N.E. 369, 371 (1910); In re Leach, 134 Ind. 665, 671, 34 N.E. 641, 642, 21 L.R.A. 701, 706 (1893).
5. In re Lavine, 2 Cal. (2d) 342, 41 P. (2d) 161 (1935); In re Day 181 Ill. 73, 54 N.E. 646, 50 L.R.A. 519 (1899); Garrigus v. State ex rel. Moreland, Auditor, 93 Ind. 239, 242 (1883); Hanson v. Grattan, 84 Kan. 843, 115 Pac. 646, 34 L.R.A. (NS) 240 (1911); Hoopes v. Bradshaw, 231 Pa. 485, 80 Atl. 1093 (1911); In re Application for License to Practice Law, 67 W. Va., 213, 67 S.E. 597 (1916).
6. Garrigus v. State ex rel. Moreland, Auditor, 93 Ind. 239 (1863). Generally, however, the legislature, in the exercise of its police power, may establish reasonable standards for qualification, but it cannot make these standards the ultimate qualification for the practice of law; the courts must have the final word and may ignore the legislature if it is deemed reasonable. In re Day, 181 Ill. 73, 54 N.E. 646, 50 L.R.A. 519 (1899); Hanson v. Grattan, 84 Kan. 843, 115 Pac. 646, 34 L.R.A. (NS) 240 (1911); In re Tracy, 197 Minn. 35, 266 N.W. 88 (1936), 35 Mich. L. Rev. 130, 20 Minn. L. Rev. 813; State ex rel. Clark et al. v. Shain et al., Judges, 343 Mo. 542, 122 S.W. (2d) 882 (1938); State v. Cannon, 206 Wis. 374, 240 N.W. 441 (1932); Note (1929) 5 Wis. L. Rev. 181. These cases represent the great weight of authority. Contra: In re Applicants for License, 143 N.C. 1, 55 S.E. 635, 10 L.R.A. (N.S.) 288 (1906) (strong dissent); and cf. In re Cooper, 22 N.Y. 67 (1860). These latter two cases stand practically alone. In Indiana, the inherent power to punish for contempt can be reg-

bar may be vested in a particular court or courts.[7] It is a generally accepted proposition that, in the absence of a statute vesting exclusive jurisdiction for that purpose in some other court, a court having the power to admit attorneys to the bar has the implied power to disbar them.[8] "The court having the power to determine who shall be admitted to practice law and under what circumstances, should impliedly have the power and duty to determine when those qualifications are lacking and when the privilege should be forfeited."[9] If the court could not discipline or regulate attorneys it had admitted to practice, it would be in the anomalous position of not being able to protect itself or the public from the effect of its own acts.[10] Since the Indiana Supreme Court is given the exclusive right to admit lawyers to the bar, it has the implied power to disbar them in the absence of a statute giving that power exclusively to some other court or courts.[12] The Court found that the legislative intent was not to give exclusive jurisdiction over disbarment to the circuit and superior courts, but rather that these courts should exercise jurisdiction concurrently with the Supreme Court.[13] Upon this ground alone, the Court based its opinion.[14]

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ulated but cannot be taken away or materially impaired by the legislature. State ex rel. Indpls. Bar Assn. v. Fletcher Trust Co., 211 Ind. 27, 5 N.E. (2d) 538 (1936); Little v. State, 90 Ind. 338, 339 (1883).

7. Del. Rev. Code (1935) No. 4284 (justices of respective courts may admit attorneys to practice throughout state); Iowa Code (Reichmann, 1939) §10907 (Supreme Court given exclusive power to admit); Miss. Code Ann. (1930) (court of county of residence); N.Y. Laws (Thompson, 1938) Jud. §88 (Supreme Court-second highest court in state- admits attorneys). In Rhode Island, there are apparently no statutory provisions as to disbarment. See also In re Mock, 146 Cal. 378, 80 Pac. 64 (1905).

8. People v. People's Stock Yards Bank, 344 Ill. 462, 472, 176 N.E. 901, 906 (1931) (" . . . in the absence of the power to control or punish . . . the power to control admission to the bar would be nugatory."); People ex rel. Chicago Bar Assn. v. Berezniak, 292 Ill. 305, 127 N.E. 36 (1920); In re Sparks, 267 Ky. 93, 101 S.W. (2d) 194 (1936) (power must rest where the responsibility rests); State ex rel. Atty. Gen. v. Harber et al., 129 Mo. 271, 31 S.W. 889 (1895): State Bar Comm. v. Sullivan, 35 Okla. 745, 131 Pac. 703 (1912). The court which admits the attorney to practice has to some extent asserted that the attorney is fit and worthy to practice. Certainly that court has the power to withdraw its representations if it later appears that the attorney is not fit and worthy. Contra: In re Waugh, 48 Wash. 153, 92 Pac. 929 (1903). However, this case is practically overruled by In re Robinson, 48 Wash. 153, 92 Pac. 929, 15 L.R.A. (N.S.) 525 (1907) (per concurring opinion of Fullerton, J., at 92 Pac. 932).

9. In re Integration of the State Bar of Oklahoma, 185 Okla. 505, 506, 95 P. (2d) 113, 114 (1939).

10. Commonwealth ex rel Ward v. Harrington, 266 Ky. 41, 50, 98 S.W. (2d) 53, 58 (1936).

11. Ind. Stat. Ann. (Burns, 1933) §4-3605.

12. Beamer, Atty. Gen. v. Waddell, Ind., 45 N.E. (2d) 1020 (1943).

13. id. at 1022. The same (1937) session of the General Assembly which passed this act (cited note 1 supra) also passed an act giving the Supreme Court the power to make rules and regulations governing practice and procedure in Indiana. Ind. Stat. Ann.

Nevertheless, it is to be noted that the power to admit and the power to disbar are distinct, and the right to disbar does not necessarily rest alone on the right to admit.[15] Most courts have claimed the right to discipline attorneys as one of their inherent[16] powers,[17] ex-

(Burns, Supp. 1942) §2-4718. Since both acts related to practice and procedure and were passed by the same session of the Legislature, the court construed them as being in pari materia, so that the circuit and superior courts can disbar an attorney from practice in all the courts of the state, but subject to the exercise of the rule-making power of the Supreme Court.

14. The Court said (at 1023) that it was not necessary "to consider the subject of the inherent powers of this court so ably advanced in the briefs of the attorney general and amicus curiae [Ind. State Bar Assn.]. If such powers exist and are applicable to a situation like the one before us, no injury to them results by reason of the fact that we have not been called upon to exercise them in this instance."

15. Gould v. State, 99 Fla. 662, 127 So. 309, 69 A.L.R. 699 (1930); State v. Mosher, 128 Iowa 82, 103 N.W. 105 (1905); State ex rel. Wood v. Reynolds, 22 N.M. 1, 158 Pac. 413 (1916); Burns v. State, 129 Tex. 303, 103 S.W. (2d) 960 (1937). The right to admit may be vested either by express statute or by implication from the power to admit in a particular court or courts (see note 7 supra), but regardless of whether or not a court has the right to admit attorneys to practice, most courts claim the inherent power to discipline them. See note 18 infra.

16. The term "inherent powers" may be used in several senses. See Dowling, Inherent Power of the Judiciary (1935). 11 Ind. L. J. 116, 119, 120. It has been used to mean an authority derived independent of, and over and above, a constitution, State v. Cannon, 196 Wis. 534, 221 N.W. 603, 604 (1928), but this claim is unwarranted. See the dissenting opinion in State v. Cannon, supra at 221 N.W. 607; also, State v. Cannon, 206 Wis. 374, 240 N.W. 441, 449 and note (1929) 5 Wis. L. Rev. 181. The term may be used to connote the power of the court to act only where the legislature has not acted. In re Applicants for License, 143 N.C. 1, 55 S.E. 635, 10 L.R.A. (N.S.) 288 (1906). In such case the inherent power amounts to little or nothing. Dowling, loc. cit. Generally, however, the term "inherent power" denotes a power derived from the constitution, not aside from it. In re Opinion of the Justices, 279 Mass. 607, 180 N.E. 725 (1932). It is in the latter sense that the term is herein used. "It may be . . . it is not strictly accurate to speak of this right or power as inherent . . . [but] in a very practical sense, whether termed implied or inherent, [this power] naturally belongs to each department of government to which the power expressly delegated is conferred." In re Richards, 333 Mo. 907, 63 S.W. (2d) 672, 676 (1933).

17. By the constitution, all judicial power is vested in the courts. Ind. Const. Art. 7, §1; Little v. State, 90 Ind. 338, 339 (1883). Where the constitution expressly confers powers, the general rule is that, by implication, it confers all powers necessary to the express grant. People ex rel. Ill. State Bar Assn. et al. v. People's Stockyards State Bank, 344 Ill. 462, 176 N.E. 901 (1931); State v. Redman, 183 Ind. 332, 339, 109 N.E. 184, 187 (1915); In re Steen, 160 Miss. 874, 134 So. 67 (1931). For examples of the many inherent powers claimed by the courts, see Dowling, supra note 16 at 118, 119.

isting independently of any state.[18] It grows out of the relation of the attorney to the court,[19] because it is essential to the efficiency, prestige, dignity and respect of the court.[20] This power is claimed as being inherent when there are no statutory provisions as to admission or disbarment.[21] Even when a statute expressly gives disbarment powers to the court, the power is said to be inherent.[22] Where the power to disbar is exclusively vested in some other court, the power to disbar is still claimed as inherent.[23] The decisions are not uniform as to the effect of such disbarment insofar as practice before other courts of the same state is concerned.[24] It is submitted that whenever the power to disbar is claimed as an inherent power (and not as a power implied from the right to admit)[25] only those courts which are empowered to admit attorneys to the bar should be able to enter a disbarment order effective in all the courts of that jurisdiction.[26] The

18. See, for example, In re Sparks, 267 Ky. 93, 101 S.W. (2d) 194 (1936); In re Opinion of the Justices, 279 Mass. 607, 180 N.E. 725 (1932); In re Steen, 160 Miss 874, 134 So. 67 (1931); State ex rel. Wood v. Reynolds, 22 N.M. 1, 158 Pac. 413 (1916); and the cases cited in 5 Am. Jur., Attorneys at Law, §249; 1 C.J.S., Attorney and Client, §18a, footnote 14.

19. An attorney is an officer of the court and owes certain duties to it. Ind. Stat. Ann. (Burns, Supp. 1942) §4-3608; In re Egan 22 S.D. 355, 117 N.W. 874, 878 (1908); and see the cases cited in note 4, supra.

20. See Commonwealth ex rel. Ward v. Harrington, 266 Ky. 41, 98 S.W. (2d) 53 (1936) and the material cited in note 18, supra.

21. In re Integration of the Nebraska State Bar Assn., 275 N.W. 265, 114 A.L.R. 151 (1937); State ex rel. Selleck v. Reynolds, 252 Mo. 378, 380, 158 S.W. 671 (1913).

22. In such case, the statute is regarded as merely declaring existing powers. In re Sparks, 267 Ky. 93, 101 S.W. (2d) 194 (1936); In re Eaton, 60 N.D. 580, 235 N.W. 587 (1931); In re Thatcher, 80 Ohio St. 492, 89 N.E. 39 (1909).

23. Generally, courts of record can revoke the power to practice before that particular court regardless of whether they are authorized by statute to so do. State v. Kirke, 12 Fla. 278, 95 Am. Dec. 314 (1868-9); In re Keenan, 310 Mass. 166, 37 N.E. (2d) 516 (1941); State ex rel. Wood v. Reynolds, 22 N.M. 1, 158 Pac. 413 (1916); Legal Club of Lynchburg v. Light, 137 Va. 249, 119 S.E. 55 (1923); Ex parte Fisher, 6 Leigh, 619, 624 (Va. 1835); In re Dougherty, 103 W. Va. 7, 136 S.E. 402 (1927). Cf. Winkelman v. People, 50 Ill. 449 (1869), which states what appears to be a contra rule. In that case, however, a circuit court attempted to make the disbarment effective throughout the entire circuit, not in just the particular court.

24. There is a split of authority as to whether—in the absense of a statute—a disbarment by a court not authorized to admit is effective beyond that particular court. It is not the purpose of this note to consider that problem. See notes Ann. Cas. 1917D 572, (1910); 24 L.R.A. (N.S.) 756; 5 Am. Jur., Attorneys at Law, §255.

25. The implication, that a court having the power to admit has the power to disbar the attorney from practice throughout the jurisdiction, would be destroyed if exclusive disbarment powers were vested in another court. See instant case at 1021.

26. This view is supported by State v. Kirke, 12 Fla. 278, 95 Am. Dec. 314 (1868-9); In re Thatcher, 80 Ohio St. 492, 89 N.E. 39, 84

right of any other court to make its disbarment order effective throughout the state should be based on statute;[27] this is the case in Indiana.[28]

It appears then, that even if the General Assembly had given to the circuit and superior courts the exclusive right to disbar, the Supreme Court could still have exercised its inherent power.[29]

BANKRUPTCY

AGRICULTURAL COMPOSITION AND EXTENSION

Petitioner held respondents' note secured by a mortgage on their Indiana farm. On March 4, 1939, foreclosure proceedings were instituted in a state court and a judgment was obtained on Nov. 20, 1939, ordering the property sold to satisfy the debt. The sheriff sold the farm on May 25, 1940, and three days later respondents filed petition for agricultural composition and extension under the Bankruptcy Act[1] listing the farm in their schedules. The sheriff's deed was executed

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(1909); Ie re Strong, 27 Ohio C.A., 29 Ohio C. D. 281 (1917); In re Dougherty, 103 W. Va. 7, 136 S.E. 402 (1927). Cf. Commonwealth ex rel, Ward v. Harrington, 266 Ky. 41, 50, 98 S.W. (2d) 53, 58 (1936).

27. See cases cited in note 26 supra.

28. A disbarment by a circuit or superior court revokes the attorney's privilege to practice in any and all of the courts of the state. Ind. Stat. Ann. (Burns, 1933) §4-3614.

29. Apparently only one other state, Texas, could have the same problem which confronted the Court in the instant case. See Texas Rev. Stat. (Vernon, 1936) arts. 305, 306, 313. The Supreme Court has control of admission to the bar, but by statutes (art. 313), the power to disbar is given to the district courts. The Texas Supreme Court has not had to take original jurisdiction of a disbarment case, but it is said that "While the legislature has given the district court jurisdiction of disbarment proceedings generally, it would seem that the Supreme Court by virtue of its power to admit to the bar would have a like power to disbar, and all other courts of record and general jurisdiction may at least exercise disciplinary control over those who practice before them." Green, Court's Power over Admission and Disbarment (1925) 4 Tex. L. Rev. 1, 25. This same argument should hold true in Indiana.

1. 49 Stat. 942-945; 11 U. S. C. §203. Petition was filed under section 75 (a-r) but we are concerned here only with a portion of subsection (n) which provides that "The filing of a petition . . . praying for relief under this section, shall immediately subject the farmer and all his property . . . to the exclusive jurisdiction of the court including . . . the equity of redemption when the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

"In all cases where at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extened or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."