

II. THE OFFICE OF ATTORNEY

A. ADMISSION TO PRACTICE

§ 4. In General

- a. Nature of office
- b. Nature of right to practice

a. Nature of Office

An attorney is an officer of the court with an obligation to the public as well as to his clients.

An attorney does not hold an office or public trust, in the constitutional or statutory sense of that term,³² but is an officer of the court.³³ He is, however, in a sense an officer of the state, with an obligation to the courts and to the public no less

authorized a third person to make arrangements with a named attorney relative to court proceedings and agreed to pay such third person from moneys received for services as adviser, was held not on its face violative of a statute prohibiting persons not attorneys from soliciting employment as, or furnishing, attorneys, or holding themselves out as attorneys.—*Cagliardi v. Hoffman*, 284 N.Y.S. 81, 246 App.Div. 753.

(9) Advertisements concerning services furnished by a trust company in connection with trusts in wills, not offering legal advice, have been held not to advise the public that the trust company maintained a place for the practice of law, in violation of the statute.—*In re Umble's Estate*, 177 A. 340, 117 Pa.Super. 15.

(10) Suggestions by accountants as to how a corporation could reduce its franchise tax has been held not to be practice of law.—*Elfenbein v. Luckenbach Terminals*, 166 A. 91, 111 N.J.Law 67.

(11) Assisting workman or his dependents in submitting a compensation claim is not "practice of law."—*Goodman v. Beall*, 200 N.E. 470, 130 Ohio St. 427.

(12) Patent attorney's contract, to protect a client's interest by employing counsel when necessary and prosecuting an infringement suit, was not illegal as an agreement to "practice law," although the patent attorney was not an attorney at law.—*Schroeder v. Wheeler*, 14 P.(2d) 903, 126 Cal.App. 367.

(13) The act of an attorney in fact or an agent in merely signing a notice of appeal on behalf of his principal is not a violation of the statutes regulating the practice of law.—*Tomondong v. Ikezaki*, 32 Hawaii 12.

(14) Practice of a notary and bank employee, acting in effect as a lawyer in connection with the execution of a will, is strongly condemned.—*In re Flynn's Estate*, 253 N.Y.S. 638, 142 Misc. 7.

(15) Act of an agent of a bonding company in preparing and executing the bond for his principal, where he merely performs the duties of agent, does not constitute "practice of law."

—*State ex rel. Wright v. Barlow*, (Neb.) 268 N.W. 95.

(16) One who acts merely as an amanuensis in preparing an assignment of a judgment is not engaged in the "practice of law."—*State ex rel. Wright v. Barlow*, supra.

(17) Person who is not a member of the bar is entitled to prepare instruments, such as simple deeds, mortgages, promissory notes, and bills of sale, when such instruments are incident to transactions in which such person is interested, provided no charge is made therefor.—*Cain v. Merchants Nat. Bank & Trust Co. of Fargo*, (N.D.) 268 N.W. 719.

"Investigation" of a case does not necessitate the "practice of law," "investigation" being synonymous with "detection," since it is not part of a lawyer's function to ferret out evidence which may be helpful to his client in prosecution of such client's claim.—*Meunier v. Bernich*, (La.App.) 170 So. 567.

32. Cal.—*Ex parte Galusha*, 195 P. 406, 184 Cal. 697—*In re Cate*, (App.) 273 P. 617, supplementing opinions 270 P. 968, and 271 P. 356. Fla.—*In re Clifton*, 155 So. 324, 115 Fla. 168.

Kan.—*In re Hanson*, 5 P.(2d) 1088, 134 Kan. 165. Minn.—*In re Greathouse*, 248 N.W. 735, 189 Minn. 51.

Mo.—*In re H—S—*, (App.) 69 S.W.(2d) 325.

Neb.—*State ex rel. Sorensen v. Goldman*, 255 N.W. 32, 127 Neb. 340. 6 C.J. p 568 note 21.

Public officer

In some jurisdictions by virtue of statutes, an attorney at law is a public officer.—*State v. Goldstein*, 220 P. 565, 109 Or. 497.

33. U.S.—*U. S. v. Frank*, (D.C.N.J.) 53 F.(2d) 128, reversed on other grounds (C.C.A.) *Loughlin v. U. S.*, 57 F.(2d) 1080, and reversed on other grounds in part *Pearse v. U. S.*, 59 F.(2d) 518—*Bowles v. U. S.*, (C.C.A.Md.) 50 F.(2d) 848, certiorari denied 52 S.Ct. 29, 284 U.S. 648, 76 L.Ed. 550—*Bartos v. U. S. Dist. Court for Dist. of Nebraska*, (C.C.A.Neb.) 19 F.(2d) 722, reversing (D.C.) *In re Bartos*, 13 F.(2d) 138—*Hertz v. U. S.*, (C.C.A.Minn.)

18 F.(2d) 52—*In re Evans*, (D.C.N.C.) 116 F. 909, 8 Am.Bankr. 730. Ala.—*Wise v. Miller*, 111 So. 913, 215 Ala. 660.

Ariz.—*State v. Superior Court of Maricopa County*, 5 P.(2d) 192, 33 Ariz. 242.

Cal.—*Ex parte Galusha*, 195 P. 406, 184 Cal. 697—*Daily v. Superior Court in and for Monterey County*, 40 P.(2d) 936, 4 Cal.App.(2d) 127—*People v. Frank*, 22 P.(2d) 792, 132 Cal.App. 360—*In re Cate*, (App.) 273 P. 617, supplementing opinions 270 P. 968 and 271 P. 356—*Falloon v. Superior Court of Los Angeles County*, 248 P. 1057, 79 Cal.App. 149—*Furlong v. White*, 196 P. 902, 51 Cal.App. 265—*Platnauer v. Superior Court in and for Sacramento County*, 163 P. 237, 32 Cal.App. 463.

Fla.—*Baruch v. Giblin*, 164 So. 831—*In re Clifton*, 155 So. 324, 115 Fla. 168—*Gould v. State*, 127 So. 309, 99 Fla. 662, 69 A.L.R. 699.

Ill.—*People ex rel. Chicago Bar Ass'n v. Templeman*, 1 N.E.(2d) 857, 363 Ill. 152—*In re Casey*, 195 N.E. 39, 359 Ill. 496—*In re Zahn*, 190 N.E. 419, 356 Ill. 283—*People ex rel. Chicago Bar Ass'n v. Green*, 187 N.E. 811, 353 Ill. 638—*In re Information to Discipline Certain Attorneys of Sanitary Dist. of Chicago*, 184 N.E. 332, 351 Ill. 206—*People v. Forman*, 178 N.E. 880, 340 Ill. 432—*People v. People's Stock Yards State Bank*, 176 N.E. 901, 344 Ill. 462—*People v. Johnson*, 176 N.E. 278, 344 Ill. 132—*People v. Czarniecki*, 109 N.E. 14, 268 Ill. 278.

Ind.—*Neff v. City of Indianapolis*, 198 N.E. 328—*In re McDonald*, 164 N.E. 261, 200 Ind. 424.

Iowa.—*In re Clough*, 250 N.W. 160, 217 Iowa 3.

Kan.—*State ex rel. Boynton v. Perkins*, 28 P.(2d) 765, 138 Kan. 899—*In re Hanson*, 5 P.(2d) 1088, 134 Kan. 165.

Ky.—*Commonwealth ex rel. Ward v. Harrington*, 98 S.W.(2d) 53, 266 Ky. 41—*Sparks v. Commonwealth*, 8 S.W.(2d) 397, 292 Ky. 334—*Dunn v. Bradley*, 6 Ky.S.Op. 241.

Mass.—*Berman v. Coakley*, 137 N.E. 667, 243 Mass. 328—*In re Carver*, 112 N.E. 877, 224 Mass. 169.

Minn.—*In re Greathouse*, 248 N.W. 735, 189 Minn. 51.

Miss.—*Ex parte Raymond*, 82 So. 510, 120 Miss. 536.

significant than his obligation to his clients.³⁴ The office of attorney is indispensable to the administration of justice and is intimate and peculiar in its relation to, and vital to the well-being of, the court.³⁵ An attorney has a duty to aid the

court in seeing that actions and proceedings in which he is engaged as counsel are conducted in a dignified and orderly manner, free from passion and personal animosities, and that all causes brought to an issue are tried and decided on their

Mo.—In re H—— S——, (App.) 69 S.W.(2d) 325.

Mont.—State v. District Court of First Judicial Dist. in and for Lewis and Clark County, 191 P. 772, 58 Mont. 276.

Neb.—State ex rel. Sorensen v. Goldman, 255 N.W. 32, 127 Neb. 340.

N.J.—Raimondi v. Bianchi, 134 A. 666, 100 N.J.Eq. 238.

N.Y.—People ex rel. Karlin v. Culkin, 162 N.E. 487, 248 N.Y. 465, 60 A.L.R. 851, affirming 228 N.Y.S. 373, 223 App.Div. 822—In re Brooklyn Bar Ass'n, 227 N.Y.S. 666, 223 App.Div. 149—Meegan v. Tracy, 223 N.Y.S. 355, 220 App.Div. 600—In re Strandburg's Estate, 247 N.Y.S. 194, 138 Misc. 732, modified on other grounds 248 N.Y.S. 164, 138 Misc. 859—Weinblatt v. Parkway-St. Johns Place Corporation, 241 N.Y.S. 721, 136 Misc. 743, affirmed 243 N.Y.S. 810, 229 App.Div. 865.

N.C.—In re Dillingham, 124 S.E. 130, 188 N.C. 162—Chatham Lumber Co. v. Parsons Lumber Co., 90 S.E. 241, 171 N.C. 320.

N.D.—Simon v. Chicago, Milwaukee & St. P. Ry. Co., 177 N.W. 107, 45 N.D. 251.

Okl.—In re Shoemaker, 31 P.(2d) 928, 188 Okl. 77.

Or.—In re Crum, 204 P. 948, 103 Or. 198—State v. Edmunson, 204 P. 619, 103 Or. 243.

Pa.—Childs v. Smeltzer, 171 A. 883, 115 Pa. 9—Miller v. Knabb, 5 Pa. Co. 636.

R.I.—Rhode Island Bar Ass'n v. Automobile Service Ass'n, 179 A. 139.

Wis.—Petition of Board of Law Examiners, Examination of 1926, 210 N.W. 710, 191 Wis. 359—Langen v. Borkowski, 206 N.W. 181, 188 Wis. 277, 43 A.L.R. 622—In re Maresh's Will, 187 N.W. 1009, 177 Wis. 194—Hanson v. Temple, 185 N.W. 225, 175 Wis. 349—Armstrong v. Morrow, 183 N.W. 179, 166 Wis. 1, Ann. Cas.1918E 1156.

6 C.J. p 568 note 22.

34. Fla.—In re Clifton, 155 So. 324, 116 Fla. 168.

Ill.—People ex rel. Chicago Bar Ass'n v. Green, 187 N.E. 811, 353 Ill. 638—People v. Johnson, 176 N.E. 278, 344 Ill. 132.

Kan.—In re Hanson, 5 P.(2d) 1088, 184 Kan. 165.

Miss.—In re Opinion of the Justices, 194 N.E. 313.

Mo.—In re H—— S——, (App.) 69 S.W.(2d) 325.

N.Y.—People ex rel. Dawson v. Knox, 247 N.Y.S. 731, 231 App.Div. 490, affirmed 196 N.E. 582, 267 N.Y. 565

—In re Strandburg's Estate, 247 N.Y.S. 194, 138 Misc. 732, modified on other grounds 248 N.Y.S. 164, 138 Misc. 859.

Wis.—In re Jaeger's Will, 259 N.W. 842, 218 Wis. 1, 99 A.L.R. 738—Petition of Board of Law Examiners, Examination of 1926, 210 N.W. 710, 191 Wis. 359—Langen v. Borkowski, 206 N.W. 181, 188 Wis. 277, 43 A.L.R. 622—Hanson v. Temple, 185 N.W. 225, 175 Wis. 349.

6 C.J. p 568 note 23, p 596 note 6 [a].

First duty not to clients

"Counsel must remember that they, too, are officers of the courts, administrators of justice, oath-bound servants of society; that their first duty is not to their clients, as many suppose, but is to the administration of justice; that to this their clients' success is wholly subordinate; that their conduct ought to and must be scrupulously observant of law and ethics; and to the extent that they fail therein, they injure themselves, wrong their brothers at the bar, bring reproach upon an honorable profession, betray the courts, and defeat justice."—U. S. v. Frank, (D.C. N.J.) 53 F.(2d) 128, 129, reversed on other grounds (C.C.A.) Loughlin v. U. S., 57 F.(2d) 1080, and reversed on other grounds in part Pearse v. U. S., 59 F.(2d) 518—In re Kelly, (D. C.Mont.) 243 F. 696, 705.

Public has a deep and vital interest in his integrity.—Berman v. Coakley, 137 N.E. 667, 243 Mass. 348.

Conflict of duties

(1) In case of conflict between attorney's duty to client and that to court, his duty to court must prevail.—State v. Barto, 232 N.W. 553, 202 Wis. 329.

(2) Where duties to court and profession conflict with those an attorney deems due a client from friendship, he should abandon the relation of attorney.—State v. Woodville, 108 So. 309, 161 La. 125.

Accepting employment entails duty to courts and faithful performance of services, and it is a dereliction of duty for an attorney to abandon a cause on appeal and fail to favor the court with a brief.—Larimer v. Smith, 19 P.(2d) 825, 130 Cal.App. 98.

Oath shows first duty is to public

Oath of an attorney to support constitutions and obey laws shows intent to charge him with public function, which is superior to private interests of client.—Petition of Board of Law Examiners, Examina-

tion of 1926, 210 N.W. 710, 191 Wis. 359.

Duty to know reports and documents are true and correct

(1) Attorneys have a duty to know that the contents of reports and documents are true and correct, and a presentation is a representation that this duty has been performed.—U. S. v. Ford, (D.C.Mont.) 9 F.(2d) 990—Sparks v. Commonwealth, 8 S. W.(2d) 397, 225 Ky. 334.

(2) Conduct of attorneys in permitting their names to be signed to a brief which they did not read has been held highly improper.—In re Glauberman, 152 A. 650, 107 N.J.Eq. 384.

Suits in forma pauperis

(1) It is the duty of attorneys concerned in applications to sue in forma pauperis to ascertain so far as they are able by investigation that applicant is entitled to the favorable consideration of the court, and that all the facts calling for the exercise of the court's discretion in behalf of applicant exist.—Osiel v. Osiel, (N.J.Ch.) 63 A. 549.

(2) Attorneys, requiring a county to bear the expense of an appeal of an impecunious person, owe a duty to the court to appear and point out by brief or oral argument wherein their client has not had a fair trial.—Flores v. State, 4 P.(2d) 384, 39 Ariz. 106—Fogal v. State, 3 P.(2d) 1053, 39 Ariz. 55 (first case), followed in 3 P.(2d) 1053, 39 Ariz. 57 (second case), and Johnson v. State, 3 P.(2d) 1054, 39 Ariz. 57.

Client having governmental powers

Attorney's official status on behalf of client with governmental powers does not make him a "public official" within a statute relating to holding over of the office.—People ex rel. Dawson v. Knox, 247 N.Y.S. 731, 231 App.Div. 490, affirmed 196 N.E. 582, 267 N.Y. 565.

State may attach conditions to right to practice

Since the right to practice law is created by statute, and an attorney practices under a license from the state, the state may attach such conditions to the license as it believes necessary for the protection of the public.—Yeiser v. Dysart, 45 S.Ct. 399, 267 U.S. 540, 69 L.Ed. 775, affirming In re Yeiser, 192 N.W. 953, 110 Neb. 65.

35. In re Maresh's Will, 187 N.W. 1009, 177 Wis. 194—6 C.J. p 569 note 25.