

# Michigan Law Review

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Volume 35 | Issue 1

---

1936

## ATTORNEYS - DISBARMENT - STATUTE OF LIMITATIONS

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### Recommended Citation

*ATTORNEYS - DISBARMENT - STATUTE OF LIMITATIONS*, 35 MICH. L. REV. 130 (1936).

Available at: <https://repository.law.umich.edu/mlr/vol35/iss1/9>

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## RECENT DECISIONS

ATTORNEYS — DISBARMENT — STATUTE OF LIMITATIONS — An attorney guilty of professional misconduct interposed as a defense the statute of limitations, which required that no proceeding to disbar or suspend an attorney be instituted except within two years after the commission of the offense or within one year after the discovery thereof. The court *held* the statute unconstitutional as an attempted projection of legislative power into the judicial department; the effect of the statute being to dictate to the court what evidence it might consider. *In re Tracy*, (Minn. 1936) 266 N. W. 88.

As a general rule the power to admit or disbar attorneys is considered to be an inherent judicial power.<sup>1</sup> The legislature may set up requirements which applicants for admission must possess (a minority will not let the legislature do even this),<sup>2</sup> provided they do not defeat or materially impair the exercise of the judicial function.<sup>3</sup> Quære: whether the statute in the principal case has the effect of usurping this function? The decisions are diverse. A statute requiring that jury trial be accorded an attorney in disbarment proceedings, the verdict of the jury not being merely advisory, was held valid as not interfering with the judicial power.<sup>4</sup> A statute was held valid which required disbarment on receipt of a certified copy of a record of an attorney's conviction of a felony or misdemeanor involving moral turpitude.<sup>5</sup> A statute has been upheld which provides for disbarment only upon conviction for a criminal offense or after confession in open court.<sup>6</sup> One of the most surprising decisions is one upholding the validity of a statute which was construed as withholding from the court the power to examine into the moral character of the applicants.<sup>7</sup> On the validity of statutes which provide for the admission without examination of graduates of certain schools there are decisions both ways.<sup>8</sup> Other statutes which have been held invalid include those requiring that an attorney who has been admitted to practice in any court of common pleas and in the supreme court shall be admitted to practice in any other court of the state upon motion;<sup>9</sup> and that the supreme court recommend certain persons without examination.<sup>10</sup> It is sub-

<sup>1</sup> *Ex parte Secombe*, 19 How. (60 U. S.) 9, 15 L. Ed. 565 (1856); 66 A. L. R. 1512 (1930); 81 A. L. R. 1064 (1932); 10 L. R. A. (N. S.) 289 (1907); Lee, "The Constitutional Power of the Courts Over Admission to the Bar," 13 HARV. L. REV. 233 (1899); Green, "The Courts' Power Over Admission and Disbarment," 4 TEX. L. REV. 1 (1925).

<sup>2</sup> *Re Branch*, 70 N. J. L. 537, 57 A. 431, 66 A. L. R. 1507 at 1512 (1904).

<sup>3</sup> *Brydonjack v. State Bar of California*, 208 Cal. 439, 281 P. 1018 (1929).

<sup>4</sup> *State Board of Law Examiners v. Phelan*, 43 Wyo. 481, 5 P. (2d) 263, 78 A. L. R. 1317 at 1323 (1931).

<sup>5</sup> *Re Casebier*, 129 Kan. 853, 284 P. 611 (1930).

<sup>6</sup> *Ex parte Schenck*, 65 N. C. 353 (1871).

<sup>7</sup> *Re Applicants for License to Practice Law*, 143 N. C. 1, 55 S. E. 635, 10 L. R. A. (N. S.) 288 (1906).

<sup>8</sup> Valid: *Re Cooper*, 22 N. Y. 67, 20 How. Pr. 1 (1860). Invalid: *Re Day*, 181 Ill. 73, 54 N. E. 646 (1899).

<sup>9</sup> *Petition of Splane*, 123 Pa. 527, 16 A. 481 (1889).

<sup>10</sup> *Re Branch*, 70 N. J. L. 537, 57 A. 431 (1904).

mitted that the court in the principal case was justified under some such reasoning as this: "the court will regard reasonable enactments regulating admission of attorneys. But the moment the Legislature by a law couched in whatever form, negative or affirmative, forbids the court to inquire into the merits of the applicant, or impairs the power of the court to control its own officers, the members of its bar, resistance to such a law becomes the duty of every self-respecting court."<sup>11</sup>

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<sup>11</sup> Lee, "The Constitutional Power of the Courts over Admission to the Bar," 13 HARV. L. REV. 233 at 251-252 (1899). See *In re Lavine*, 2 Cal. (2d) 324, 41 P. (2d) 161 (1935).