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ATTORNEY AND CLIENT-FORFEITURE OF RIGHT TO FEE FOR FAILURE OF ATTORNEY TO REGISTER UNDER INTEGRATED BAR ACT

RECENT DECISIONS

ATTORNEY AND CLIENT—FORFEITURE OF RIGHT TO FEE FOR FAILURE OF ATTORNEY TO REGISTER UNDER INTEGRATED BAR ACT—Plaintiff, an attorney, sued for reasonable value of professional services rendered to defendant. The Washington integrated bar act[1] requires all attorneys to register annually at certain date and to pay a registration fee. Those who fail to comply are deemed to be under suspension until the provisions are complied with. At the time these services were performed plaintiff was in default. *Held*, this requisite is a condition imposed for the privilege of exercising a lawyer's franchise. Failure to comply forfeits plaintiff's right to compensation for professional services undertaken during the period of default. *Smith v. Kneisley*, (Wash. 1935) 49 P. (2d) 916.

The rapid growth of the incorporated bar throughout the United States[2] makes the question of compensation for services performed by attorneys in default of various provisions of the statutes both interesting and pertinent. All the acts require registration and the payment of a regular fee and provide for suspension in case these provisions are not met.[3] Michigan, the last to adopt such a statute,[4] stipulates for suspension after a three month's delinquency and a thirty-day period of grace after notice at that time.[5] The principal case appears to be the first arising under the bar acts but the cases are numerous in holding that the right to recover for services in the capacity of attorney is confined to those duly admitted and entitled to practice at the time they were rendered.[6] It has even been held that a client with knowledge of the default is not estopped from raising this defense.[7] There are also abundant precedents arising under licensing statutes applicable to other professions and businesses holding that failure to procure a required license voids recovery for services performed or contracts undertaken.[8] Running through

[1] WASH. COMP. STAT. (Rem. 1922), §139-20.

[2] Since 1927, Alabama, Arizona, California, Idaho, Kentucky, Michigan, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Utah, Washington, Porto Rico. Missouri and Pennsylvania, with supreme court control over suspension and disbarment, are integrated to some degree. For progress in other states see 20 A. B. A. J. 130, 193, 389, 803 (1934). See generally, Sunderland, "Progress Toward a Better Administration of Justice," 17 J. AM. JUD. SOC. 49 (1933) and "A Unified and Self-Governing Bar," 11 TENN. L. REV. 236 (1933); Seebirt, "Reorganization of the Bar," 7 IND. L. J. 153 (1931).

[3] But see ALA. CODE, 1928, § 6230, any attorney in default of payment shall not be recognized as being in good standing.

[4] Pub. Acts (1935), No. 58, approved May 15, 1935. The Supreme Court, acting under provisions of the statute, promulgated rules Nov. 12, 1935.

[5] Supreme Court Rules for State Bar of Michigan, § 4 (1935).

[6] Ames v. Gilman, 10 Met. (51 Mass.) 239 (1845); Foundation Finance Co. v. Robbins, 179 La. 259, 153 So. 833 (1934); 1 THORNTON, ATTORNEYS AT LAW, § 23 (1914) and cases cited, 6 C. J. 570 (1916).

[7] Harriman v. Strahan, (Wyo. 1934) 33 P. (2d) 1067, attorney from another state.

[8] *Physicians and Surgeons:* Lynch v. Kathmann, 180 Iowa 607, 163 N. W. 408 (1917); Yankowitz v. Arkin, (Sup. Ct. 1917) 163 N. Y. S. 266; Paine v. Eckhardt, (Tex. Civ. App. 1918) 203 S. W. 459; 42 L. R. A. (N. S.) 326 (1912). *Veterinary:* Zimmerman v. Brown, 30 Idaho 640, 166 P. 924 (1917). *Pharmacist:* Shattuck v.

each of these cases there is the policy of refusing recovery to one who has violated a statute,[9] and the same would seem to apply here. The Washington court rejected plaintiff's contention that the statute was only a revenue measure,[10] and that there was no legislative intent to have him lose compensation. Deprivation of fees would undoubtedly be successful in enforcing these statutes, but such means would appear drastic. An inclusion of a penalty, enforced by the state,[11] might preclude the result reached here and obviate the complete windfall gained by the client. On this score, however, perhaps there is a comparison with state statutes requiring the licensing of foreign corporations. While there is great confusion as to the susceptibility of a corporation in default to collateral attack, the decisions on either side appear to disregard an unwarranted benefit to the third party and rest entirely upon an interpretation of the particular statute.[12]

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Watson, 164 Mich. 167, 129 N. W. 196 (1910). *Architect:* Wedgewood v. Jorgens, 190 Mich. 620, 157 N. W. 360 (1916); Medoff v. Fisher, 257 Pa. 126, 101 A. 471 (1917). *Plumber:* Ottman v. Crooks, (Del. 1916) 97 A. 424. *Blue Sky Laws:* Randle v. Interstate Grocer Co., 147 Ark. 402, 227 S. W. 760 (1921); Reilly v. Clyne, 27 Ariz. 432, 234 P. 35 (1925). *Real Estate Brokers:* see Theobald, "Real Estate License Laws in Theory and Practice," 7 J. LAND AND PUB. UTIL. ECON. 13, 138 (1931).

[9] "In general, where the law prohibits an act, no one can have the aid of the law to recover compensation for doing it." Ames v. Gilman, 10 Met. (51 Mass.) 239 (1845).

[10] Howard v. Lebby, 197 Ky. 324, 246 S. W. 828, 30 A. L. R. 830 (1923), house painter allowed recovery. 2 THORNTON, ATTORNEYS AT LAW 885 (1914).

[11] CAL. GEN. LAWS, 1931, Act 591, § 49, an attorney who practices while under suspension shall be guilty of a misdemeanor. See also Furlong v. Johnston, 209 App. Div. 198, 204 N. Y. S. 710 (1924), affd. 239 N. Y. 141, 145 N. E. 910 (1924), where stock was issued in violation of a statute.

[12] See 17 FLETCHER, CYCLOPEDIA CORPORATIONS, § 8504 (1933) for numerous cases. But see Fritts v. Palmer, 132 U. S. 282 at 289, 10 S. Ct. 93 (1889), where comparative hardship and benefit are taken into consideration in determining legislative intent.