Michigan Law Review

Volume 46 | Issue 1

1947

ATTORNEY AND CLIENT--STRIKING ATTORNEY FROM ROLL OF FEDERAL DISTRICT COURT

Richard J. Archer
University of Michigan Law School

ATTORNEY AND CLIENT—STRIKING ATTORNEY FROM ROLL OF FEDERAL DISTRICT COURT—For twelve years gambling had been carried on in a wide open manner in the district; more than three thousand hand books on race horses were operated in cafes, restaurants, and night clubs. Newspapers had published the names of those paying the federal taxes, and a poll of school children indicated that they were familiar with gambling devices in the community. Responsibility for law enforcement rested with the Commonwealth's Attorney, an elective official who had held the position for twenty years; an attempt to remove him from office by quo warranto proceedings,[1] and an attempt to investigate the situation by grand jury [2] had failed. A group of ministers and other residents filed a formal complaint alleging that by allowing these open violations of the gambling laws, the Commonwealth's Attorney had become unfit to be an attorney at law, and asking the issuance of a rule to show cause why the attorney should not be stricken from the rolls of the federal district court. Rule issued and after hearing, *held*, an order striking the attorney from the roll should be entered. *Wilbur v. Howard*, (D.C. Ky. 1947) 70 F. Supp. 930.

A court has inherent power to strike an attorney from the rolls or to disbar,[3] and as was pointed out in this case, a formal complaint is unnecessary,[4] the only

[1] Commonwealth Attorney General v. Howard, 297 Ky. 488, 180 S.W. (2d) 312 (1944).

[2] Northcutt v. Howard, 279 Ky. 219, 30 S.W. (2d) 70 (1939).

[3] In re Spicer, (C.C.A. 6th, 1942) 126 F. (2d) 288 at 289; Green, "The Courts' Power over Admission and Disbarment," 4 TEX. L. REV. 1 at 12, note 35 (1925).

[4] In re Santosuosso, 318 Mass. 489 at 491, 62 N.E. (2d) 105 (1945), 161 A.L.R. 892 at 898 (1946).

requirements being notice to the attorney and a hearing.[5] While state courts have disbarred attorneys for misconduct in office [6] with the result in some cases of disqualifying the offender for such office,[7] striking from the rolls by a federal court is a more novel procedure. In the latter case the attorney could not automatically be disqualified for his position, but such might be an indirect result if in a disciplinary proceeding in the state court the prior federal action were regarded as presumptive proof of the charges alleged.[8] An inevitable collateral effect if the offender cannot show cause to the contrary is disbarment from the United States Supreme Court,[9] several United States circuit courts of appeal,[10] and some United States district courts.[11] So while courts usually say the purpose of the proceeding is not to punish, but to protect the court and public,[12] the con-

[5] In re Santosuosso, id. at 491; In re Noell, (D.C. Mo. 1937) 21 F. Supp. 379, (C.C.A. 8th, 1937) 93 F. (2d) 5.

[6] Weston v. Board of Governors of State Bar, 177 Okla. 467, 61 P. (2d) 229 (1936); In re Stolen, 193 Wis. 602, 214 N.W. 379 (1927), 55 A.L.R. 1355 at 1373 (1928); In re Simpson, 79 Okla. 305, 192 P. 1097 (1920); note in 10 UNIV. CHI. L. REV. 354 (1943).

[7] Danforth v. Egan, 23 S.D. 43, 119 N.W. 1021 (1909); But see, In re Holland, 377 Ill. 346, 36 N.E. (2d) 543; Re Snyder's Case, 301 Pa. 276, 152 A. 33 (1930); In re Strahl, 201 App. Div. 729, 195 N.Y.S. 385 (1922).

[8] In the case of In re Ulmer, 268 Mass. 373, 167 N.E. 749 (1929), evidence of disbarment in the federal district court was admitted in the state proceeding. Several states have given "full faith and credit" to disbarment proceedings in other states: In re Leverson, 195 Minn. 42, 261 N.W. 480 (1935); In re Van Bever, 55 Ariz. 368, 101 P. (2d) 790 (1940).

[9] Rule 2 (5), Revised Rules of Supreme Court of United States, 306 U.S. 685 at 686, 59 S.Ct. cxlvii at cxlviii (1939). Apparently this rule follows the decision of Selling v. Radford, 243 U.S. 46, 37 S.Ct. 377 (1917).

[10] C.C.A. 1st, Rule 7 (3) (1941), Mason's Fed. Ct. Rules Ann., Cum. Supp., p. 3 (1941); C.C.A. 3rd, Rule 8 (3) (1941), id. p. 14; C.C.A. 5th, Rule 7 (3) (1946), Mason's Fed. Ct. Rules Ann., vol. 6, no. 4, p 18; C.C.A. 8th, Rule 7 (1943), id., vol. 3, no. 4, p. 10 (1943); C.C.A. 10th, Rule 7 (3) (1946), id., vol. 6, no. 4, p. 35 (1946). See, In re Noell, (C.C.A. 8th, 1937) 93 F. (2d) 5.

[11] Rules of United States District Courts; E.D. Mich., Rule 1 (3) (1944), 9 Fed. Rules Serv. 1026; N. D. Okla., Rule 3 (e) (1944), 9 id. 1051; N. D. Cal., Rule 1 (b) (1944), 8 id. 944; S. D. Cal., Rule 1 (f) (1944), 8 id. 957; E. D. La., Rule 1 (f) (1944), 8 id. 976; Neb., Rule 6, ¶2 (1943), 7 id. 1043; Utah, Rule 1 (b) (1942), 6 id. 895; N. J., Rule 4 (a) (1942), 6 id. 889; W. D. Wash., Rule 6, ¶2 (1941), 5 id. 953; N. H., Rule 1 (6) (1941), 5 id. 944; S. D. Iowa, Rule 1 (j) (1941), 4 id. 1046 (1941); N. D. Ohio, Rule 1 (e) (1941), 4 id. 1053; E. D. Wis., Rule 1 (e) (1940), 4 id. 1057; North Dakota, Rule 1 (f) (1940), 3 id. 823; E. D. Okla., Rule 3 (e) (1940), 3 id. 826; W. D. Okla., Rule 3 (e) (1940), 2 id. 829; W. D. Wis., Rule 1 (e) (1940), 3 id. 832; N. D. N. Y., Rule 4 (1940), 2 id. 812; E. D. Ill., Rule 1 (g) (1940), 2 id. 781; N. D. Ill., Rule 1 (f) (1940), 2 id. 795; S. D. Ill., Rule 1 (f) (1940), 2 id. 801; Conn., Rule 1 (d) (1940), 2 id. 783; E. D., W. D. Ark., Rule 1 (e) (1939), 2 id. 779; Ariz., Rule 2 (1938), 1 id. 871. See, Suggested Local Rules of the United States District Courts, Rule 1 (e), ¶2. (1940), 4 Fed. Rules Serv. 1021.

[12] Commonwealth v. Porter, 242 Ky. 561 at 564, 46 S. W. (2d) 1096 (1932); In re Rothrock, 16 Cal. (2d) 449 at 454, 106 P. (2d) 907 (1940).

sequence of depriving an attorney of his right to practice in state and federal courts is certainly punitive and coercive; [13] readmission to the bar is not easy.[14] Thus federal disbarment of state officials could have a very real effect on local law enforcement in situations which may not be clothed with an interstate character nor concerned with federal rights and would be subject to criticism for this reason.[15] Since "the cause is that of the court,"[16] it would seem that the court should exercise its discretion to prevent an extension of its authority into situations such as presented by this case particularly where the official's actions have received apparent approval of a majority of the voters.

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[13] "We consider that suspensions of this character can only be justified on the ground that they are for disciplinary purposes and to act as a restraining influence upon others." In re Stolen, 193 Wis. 602 at 623, 214 N. W. 379 (1927).

[14] In re Stephenson, 243 Ala. 342, 10 S. (2d) 1 (1942), 143 A.L.R. 166 at 172 (1943); In re Keenan, 310 Mass. 166, 37 N.E. (2d) 516 (1941), 137 A.L.R. 766 at 781 (1942).

[15] There has been considerable objection to the extension of federal authority into this field even in cases arising under the Fourteenth Amendment: "In the absence of clear direction by Congress we should leave to the States the enforcement of their criminal law, and not relieve States of the responsibility for vindicating wrongdoing that is essentially local or weaken the habits of local law enforcement by tempting reliance on federal authority for an occasional unpleasant task of local enforcement." Dissent of three justices in Screws v. United States, 325 U. S. 91 at 149, 65 S. Ct. 1031 (1945).

[16] Principal case at 932.