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ATTORNEY AND CLIENT-CRITICISM OF COURT AS GROUND FOR DISCIPLINARY ACTION

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RECENT DECISIONS

This section is divided into two parts: notes and abstracts. The abstracts consist merely of summaries of the facts and holdings of recent cases and are distinguished from the notes by the absence of discussion.

NOTES

ATTORNEY AND CLIENT—CRITICISM OF COURT AS GROUND FOR DISCIPLINARY ACTION—Defendant, an attorney, while candidate for nomination to the office of Justice of the Supreme Court of Wyoming, wrote and circulated a pamphlet making false, contemptuous and scandalous charges against the court.¹ He admitted in the pamphlet that he became a candidate for the sole purpose of attacking the court. *Held*, preparing and circulating such a pamphlet amounted to willful violation of defendant's duties as an attorney of the State of Wyoming, and constituted a legal cause for his suspension from practice for six months. *State Board of Law Examiners v. Spriggs*, (Wyo. 1945) 155 P. (2d) 285.

This case poses the problem: when may an attorney be disciplined for bad faith criticism of members or judicial acts of the courts of his state? The law appears to be settled that such criticism may subject the attorney to disciplinary action in the following situations: (1) In court, where the criticism is in a pleading or in an argument. In such cases the courts have held that where the defamatory criticism is immaterial and irrelevant to the case, it will afford sufficient ground for discipline.² (2) Where the criticism takes place outside of court with respect to a matter in which he is acting or has acted as attorney. Here the courts consistently hold that to write abusive letters or to address opprobrious language to a judge in reference to his decision, or to publish in reference to his official acts statements containing such language will form the basis for disciplinary action.³ Whether bad faith criticism with respect to an action no longer pending will have the same effect is in dispute. Many courts hold that it will not.⁴ Furthermore, the latitude of criticism allowed an attorney in referring to a judge who is a candidate for re-election is much greater than in the ordinary case.⁵ (3) Where the criticism takes place out of court

¹ Typical of the derogatory language is Spriggs' statement in the pamphlet that he became a candidate "as the only possible way to place before the people of the State the horrible unbelievable breakdown of Justice in the Supreme Court of Wyoming." *State Board of Law Examiners v. Spriggs*, (Wyo. 1945) 155 P. (2d) 285 at 288.

² In *Re Philbrook*, 105 Cal. 471, 38 P. 511 (1884), and 884 (1895); 53 A.L.R. 1244 at 1245 (1928).

³ *People ex rel. Elliott v. Green*, 7 Col. 237, 3 P. 65 (1884); *State Board of Law Examiners v. Hart*, 104 Minn. 88, 116 N.W. 212 (1908), 17 L.R.A.(N.S.) 585 (1909); *State ex rel. Attorney General v. Breckenridge*, 126 Okla. 86, 258 P. 744 (1927); 17 L.R.A.(N.S.) 572 (1909); 53 A.L.R. 1244 at 1247 (1928).

⁴ In *Re Pryor*, 18 Kan. 72 (1877) (dictum); 17 L.R.A.(N.S.) 572 (1909); 53 A.L.R. 1244 at 1245 (1928).

⁵ *Thatcher v. United States*, (C.C.A. 6th, 1914) 212 F. 801, affirming (C.C. Ohio, 1911) 190 F. 969, rehearing denied with memorandum in (C.C.A. 5th, 1915)

with respect to matters in which he has not acted as attorney. In this class of cases the ruling has been that unless the criticism evidences such contumely as to manifest moral delinquency, no disciplinary proceedings will result.⁶ Where disciplinary action is authorized in the above cases it may consist of censure,⁷ suspension,⁸ disbarment,⁹ or contempt.¹⁰ The nature of the proceedings invoked will vary with the discretion of the court, and similar conduct occurring in different jurisdictions may result in different penalties.¹¹ Such penalties may be mitigated by disavowal or apology on the part of the attorney.¹² These proceedings are justified on the basis of public policy, i.e., on the theory "that the public confidence in the due administration of justice be upheld, and the dignity and usefulness of the courts maintained."¹³ Since, in the principal case, the pamphlet was written with reference to a matter in which Spriggs had acted as attorney, the case appears to fall within the second category. The decision rendered is in conformity with the weight of authority.

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219 F. 173, appeal dismissed for want of jurisdiction in 241 U.S. 644, 36 S.Ct. 450 (1916); 53 A.L.R. 1244 at 1251 (1928).

⁶ Ex Parte Steinman, 95 Pa. 220 (1880); In re Troy, 43 R.I. 279, 111 A. 723 (1920); 53 A.L.R. 1244 at 1253 (1928).

⁷In re Hanna, 30 N.M. 96, 227 P. 983 (1924).

⁸ State Board of Law Examiners v. Hart, 104 Minn. 88, 116 N.W. 212 (1908); 17 L.R.A.(N.S.) 585 (1909).

⁹ In re Wilhelm, 269 Pa. 416, 112 A. 560 (1921).

¹⁰ State ex rel. Cheadle v. District Court of 10th Judicial District in and for Fergus County, 92 Mont. 94, 10 P. (2d) 586 (1932).

¹¹ E.g., Attorney participated in a public meeting for purpose of influencing public sentiment with respect to merit of pending cause. Such conduct was held to warrant disbarment in In re Wilhelm, 269 Pa. 416, 112 A. 560 (1921), while the penalty invoked in a similar fact situation. In re Hanna, 30 N.M. 96, 227 P. 983 (1924), was censure.

¹² In re Robinson, 48 Wash. 153, 92 P. 929 (1907); 15 L.R.A.(N.S.) 525 (1908); 53 A.L.R. 1244 at 1254 (1928).

¹³ In re Humphrey, 174 Cal. 290 at 296, 163 P. 60 (1917); Canons of Professional Ethics adopted by American Bar Association, 1908. Canon I. The Duty of the Lawyer to the Courts. "It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected."