

CHAPTER 481

ATTORNEYS AT LAW

481.01 BOARD OF LAW EXAMINERS; EXAMINATIONS.

A bar association organized as a social and charitable corporation is not a part of the judicial department of the government and as such exempt from the corrupt practices act. *LaBelle v Hennepin County Bar*, 206 M 291, 288 NW 788.

The right to practice law is not a property right guaranteed or protected by either the state or federal constitution but a privilege conferred upon the individual by the court subordinate to the court's greater obligation to further the administration of justice and to protect constitutional rights. *Petition for Integration of the Bar*, 216 M 196, 12 NW(2d) 515.

The right to practice law is a matter of license and high privilege and is in no sense an absolute right. It is in the nature of a franchise, to the enjoyment of which one is admitted only upon proof of fitness and qualification, which must be maintained if the privilege is to continue in enjoyment. The purpose of disciplining an attorney is not to punish him, but to guard the administration of justice, and protect the courts, the profession, and the public. *In re Smith*, 220 M 197, 19 NW(2d) 324.

Notwithstanding the court's power to integrate the bar, as a matter of public policy the Wisconsin courts find that integration might destroy some virtues of a voluntary association and might impose upon the supreme court embarrassing duties of censorship and audit, which the court declines to assume in the absence of an exigency requiring integration. *Integration of the Bar*, 249 Wis. 523, 25 NW(2d) 500.

A justification for integrating the bar and compelling payment of fees is that the supreme court has inherent power to control and regulate its bar as officers of the court, and such power may be implemented by dues from the members which serve in a measure the function of license fees, but which are not such in a legal sense. *Integration of the Bar*, 249 Wis. 523, 25 NW(2d) 500.

Responsibility for protection of the courts and bar of a state rests upon the supreme court and its agents and attorneys. The method of selection must not violate the fourteenth amendment to the federal constitution. An application for admission may be denied one who has a conscientious belief in non-violence to an extent that he would not use force to prevent wrong. Such person could not take the oath of office or the oath on becoming a citizen. *In re Summers*, 65 SCR 1308.

Bar admission requirements. 7 MLR 208.

Power of the court to investigate abuses in the administration of justice; summary jurisdiction. 13 MLR 62.

Power of the court over discipline of attorneys as affected by statute. 13 MLR 252.

"I want to be a lawyer." 14 MLR 441.

Rules governing attorneys in the practice of their profession. 16 MLR 270.

Constitutionality of legislation regulating the bar. 16 MLR 857.

Power of the courts to determine who shall practice law. 20 MLR 457.

Reciprocal and retaliatory legislation. 21 MLR 371.

Suggested readings for pre-legal students. 22 MLR 586.

Liability of attorney for false imprisonment. 26 MLR 561.

481.02 UNAUTHORIZED PRACTICE OF LAW.

The supreme court in many decisions has made it plain that persons not admitted to the bar violate the law when they engage in the practice thereof. In the instant case a layman drew the contract for the parties. The case demonstrates that the interests of clients and the public require that the prohibition against practice of law by laymen be observed. *Trovatten v Minea*, 213 M 546, 7 NW(2d) 390.

What constitutes unlawful practice; drafting a will. 2 MLR 461.

Practice of law by a corporation. 15 MLR 107; 16 MLR 196, 18 MLR 227; 23 MLR 278.

Contracts to furnish attorneys to motorists in actions arising from operation of automobiles. 15 MLR 351.

Unlicensed law clerk's right to recover compensation for services amounting to the practice of law. 18 MLR 347.

Unauthorized practice of law. 20 MLR 451.

Unauthorized practice of law by lay insurance adjusters. 25 MLR 613.

ChamPERTY and maintenance; advertising by bar association. 25 MLR 788.

Attorney and client; unauthorized practice of law; laymen practicing before state administrative commissions. 31 MLR 288.

481.03 ATTORNEYS SHALL NOT EMPLOY SOLICITORS.

What constitutes champerty? 3 MLR 520.

Recovery by attorney on quantum meruit when express contract is champertous. 6 MLR 238.

Validity of statute prohibiting the solicitation of personal injury claims. 12 MLR 74.

Rules governing attorneys in the practice of their profession; employment of solicitors. 16 MLR 291; 17 MLR 805.

ChamPERTY and maintenance; advertising by bar association. 25 MLR 788.

481.06 GENERAL DUTIES.

A client has the right as an implied condition of the contract under the law to discharge his attorney with or without cause. In such a case, however, the attorney may recover the reasonable value of the services rendered, but he cannot recover damages as for breach of contract. *Krippner v Matz*, 205 M 497, 287 NW 19.

Any stipulation in a contract of employment between a client and his attorney requiring the consent of the attorney as a prerequisite to the settlement of the cause of action is void as against public policy. *Krippner v Matz*, 205 M 497, 287 NW 19.

While attorneys are officers of the court and owe a duty to assist in the administration of justice, a bar association organized as a social and charitable corporation is doing business in the state within the meaning of the corrupt practices act and consequently said association is prohibited from contributing money, property, or services directly or indirectly to any political party, organization, county, or individual for political purposes. *LaBelle v Hennepin County Bar*, 206 M 291, 288 NW 788.

It was improper for a lawyer who knew that his evidence would be essential in a will contest to accept a retainer from either side. *Cole v Healy*, 207 M 597, 293 NW 90.

Liability of an attorney for negligence in failing to carry out the client's instructions depends upon whether or not the attorney acted in good faith and with reasonable care. Mere error of judgment in such case will not create liability. *Sjoberg v Leach*, 213 M 360, 6 NW(2d) 819.

Criticism and comment concerning the services rendered by an attorney at law and computing to him gross neglect and unskillfulness if untrue are slanderous and actionable per se even though the words spoken relate to a single case. *High v Supreme Lodge*, 214 M 164, 7 NW(2d) 675.

Where an administrator comes into court with a charge for compensation for services, he should present a bill of particulars specifying time and dates and character of services rendered; and while the allowance of the administrator's compensation and that of his attorneys rests largely in the sound discretion of the court to which such claims are presented, it is discretionary only in the sense that no fixed rules determine the proper allowance and it is not discretionary in the sense that courts are at liberty to give anything more than a fair and reasonable compensation. *Fife v Jayne*, 214 M 388, 8 NW(2d) 222, 10 NW(2d) 481.

An attorney at law unfaithful in the performance of a fiduciary duty forfeits right to compensation. *Hursh v Lee*, 214 M 488, 9 NW(2d) 245.

The supreme court has in several instances called attention to the impropriety of counsel becoming a witness for his client in a case he is trying; but no objection having been raised during the trial, contestants are in no position to now complain. *Cunningham Estate*, 219 M 85, 17 NW(2d) 85.

Absence of defendant's counsel when additional instructions were given did not constitute error requiring a new trial. It is the duty of counsel to be present at court until the trial is ended. *Shockman v Minn. Transfer Co.* 220 M 334, 19 NW(2d) 814.

Professional responsibility follows a lawyer in all his work and is not something to be shed as a matter of convenience or whim. The misconduct of an attorney outside his profession, if indicative of moral unfitness of the profession, justifies disbarment. *In re Williams*, 221 M 554, 23 NW(2d) 4.

Members of the legislature are not prohibited from practicing before state boards or commissions whose personnel is elected or appointed by the legislature or otherwise. OAG May 22, 1947 (280-H).

Discharge of an attorney without cause as a breach of contract. 4 MLR 441, 451.

Some applications of the rules of legal ethics. 6 MLR 427.

Ethics; attorney testifying in client's case. 6 MLR 587.

Right of attorney to withdraw before termination of a suit. 11 MLR 552.

Rules governing attorneys in the practice of their profession. 16 MLR 270.

Privileged communications between attorney and client; waiver of privilege. 16 MLR 818.

Power of attorney to compromise his client's cause of action. 17 MLR 804.

Contract for compensation of attorney. 20 MLR 429.

Extent of privilege between attorney and client's agent. 26 MLR 744.

481.08 AUTHORITY.

On a motion to strike defendant's answer as sham and frivolous the party stipulated, the plaintiff having withdrawn his claim for damages, that the court should decide the case finally on the motion to strike and on the showing by affidavits for and against; and it was further stipulated that the case did not present a labor dispute as defined by L. 1933, c. 416, s. 12. In denying a rehearing it was determined that the stipulation entered into between the parties was controlling on each of them. *Lichterman v Laundry Union*, 204 M 75, 282 NW 689, 283 NW 752.

Reinstatement of garnishment proceedings was proper where the court had obtained jurisdiction over the defendant by his general appearance in the action and over the garnishee by its voluntary appearance and disclosure in the garnishment proceeding. *Weikert v Blomster*, 213 M 373, 6 NW(2d) 752.

Where, as here, in a receivership proceeding, a stipulation is freely and understandingly entered into by the appellant under which the receivership is to be wound up and the property in the possession of the receiver turned over to a

MINNESOTA STATUTES 1947 ANNOTATIONS

481.09 ATTORNEYS AT LAW

1062

corporation without prejudice to the right of appellant to assert his claim against the corporation, appellant cannot on appeal object to an order made in accordance with the terms of the stipulation. *Amundson v Cloverleaf Memorial Park*, 221 M 353, 22 NW(2d) 170.

Affect on client's case of attorney's attempt to bribe a witness. 13 MLR 144.

481.09 PROOF OF AUTHORITY.

There is an established presumption in favor of an attorney's authority to act for any client who he professes to represent. *Goodman v A. O. U. W.* 211 M 182, 300 NW 624.

481.11 CHANGE OF ATTORNEY.

An attorney has no implied authority to settle his client's case unless confronted by an emergency and there is no opportunity to consult with him. A contract of employment between attorney and client may be canceled by the client at will, with or without cause; but the attorney has the right to recover the reasonable value of the services rendered. *Pye v Diebold*, 204 M 319, 283 NW 487.

Client may discharge his attorney at any time with or without cause and be liable only for the reasonable value of the services rendered. *Anderson v High*, 211 M 227, 300 NW 597.

While a party may settle a controversy without advising his attorney, if the attorney is employed for a particular litigated controversy with an agreement for a fixed compensation in the event of a conclusive determination of the case, and the client without cause or justifiable reason discharges the attorney and employs another, who proceeds with the matter to a successful end, the attorney is entitled to the agreed compensation. *Weikert v Blomster*, 213 M 376, 6 NW(2d) 798.

Discharge of an attorney without cause as breach of contract. 4 MLR 441.

481.13 LIEN FOR ATTORNEYS' FEES.

1. Generally
2. Upon papers in possession
3. Money in his hands
4. Upon cause of action
5. Upon property in hands of adverse party
6. Upon the judgment
7. Summary enforcement

1. Generally

An attorney is given a lien for his compensation from the time of service of the summons in the action and he is vested with the legal right to resort to the cause of action, or any settlement thereof with or without his consent, for his compensation. *Krippner v Matz*, 205 M 497, 287 NW 19.

Client may discharge his attorney at any time with or without cause and be liable only for the reasonable value of the services rendered. *Anderson v High*, 211 M 227, 300 NW 597.

An ineffective notice of *lis pendens* cannot be given effect as a notice of intention to claim an attorney's lien where it does not comply with the statutory requisites of such notice. *Melin v Mott*, 212 M 517, 4 NW(2d) 600.

An attorney at law unfaithful in the performance of a fiduciary duty forfeits the right to compensation. *Hirsch v Lee*, 214 M 448, 9 NW(2d) 245.

Where in a divorce action a stipulation was signed dismissing the suit without prejudice and without costs, and the court ordered the files sealed and the suit dismissed, the motion by the wife's attorney to vacate the order because the settlement had been made without notice to him, and to determine and enforce a lien for his

services, was rightly denied. *Wagner v Wagner*, 34 M 441, 26 NW 450; *Johnson v Johnson*, 217 M 436, 14 NW(2d) 617.

Contingent fees; contract against settlement; recovery on quantum meruit. 5 MLR 367.

Validity of contract against settlement of case by client without consent of attorney. 5 MLR 382.

Attorney's lien in divorce actions. 5 MLR 549.

Right of client to inspect papers held under lien of attorney who had been wrongfully discharged. 6 MLR 588.

Division of fees when attorneys act wrongfully. 23 MLR 213.

Lien of attorneys for fees where divorce actions are dismissed. 28 MLR 488.

Defensive actions; extent of insured's right to participate in dividends; insurer's liability for insured's attorney's fees. 31 MLR 380.

3. Money in His Hands

The prosecution of judgments against the client of the attorney's claim for compensation for his services merges the debts in the judgment but does not extinguish the security of the attorney's lien. *Mantz v Sullwold*, 203 M 412, 281 NW 764.

6. Upon the judgment

In a proceeding to impress an attorney's lien on a judgment which he had recovered for plaintiff, where appellant asked in the alternative for a jury trial or a reference on the question of the value of the attorney's services, he is not in a position to claim prejudice because the case was referred to a judge for trial. *Coughlin v City of St. Paul*, 219 M 372, 19 NW(2d) 87.

481.14 REFUSAL TO SURRENDER PROPERTY TO CLIENTS.

Rule regarding prompt disposal of matters entrusted to an attorney. 16 MLR 285.

481.15 REMOVAL OR SUSPENSION.

Where respondent was served personally and failed to plead or appear, a judgment of disbarment may be entered. In re *Powers*, 203 M 346, 281 NW 271; In re *Turnquist*, 206 M 104, 287 NW 795; In re *Petri*, 209-M 247, 296 NW 10; In re *Lindquist*, 216 M 344, 12 NW(2d) 719.

Where an attorney over a long period of time has been persistently dilatory and has shown indifference to his client's affairs resulting in damage to the client and disrepute for the profession, he is properly disbarred. In re *Gennow*, 206 M 389, 289 NW 887.

The finding that the respondent committed wilful perjury in respect to conversations had and the further finding that he knowingly and wilfully testified falsely in stating that he signed his wife's name to a note when in fact the note was signed by the wife personally, warrants disbarment. In re *Priebe*, 207 M 97, 290 NW 552.

For repeated conversions of client's funds, restitution if any, under compulsion, and wilful deception practiced on the board of law examiners, judgment of disbarment is ordered. In re *Smith*, 208 M 23, 292 NW 620; In re *Clover*, 208 M 38, 293 NW 300; In re *Lipscomb*, 217 M 509, 15 NW(2d) 188.

Robert J. McDonald, having complied with an order of the supreme court dated Sept. 21, 1940, by the payment of \$7,500 costs, as required by the original judgment of disbarment, is hereby reinstated as a member of the bar in good standing. Re *Reinstatement of McDonald*, 208 M 31, 294 NW 481.

MINNESOTA STATUTES 1947 ANNOTATIONS

481.15 ATTORNEYS AT LAW

1064

Respondent was convicted on the plea of guilty of the crime of compounding a crime, and is accordingly disbarred. In re Wallace, 209 M 465, 296 NW 534.

Attorney's deliberate false statements to his client in respect to matters left to him for his professional attention, coupled with failure to respond to letters and communications from bar association committees and board of law examiners, constitute unethical and unprofessional conduct requiring discipline. In re Larson, 210 M 414, 298 NW 707.

The court having retained jurisdiction during a probationary period of three years on the facts before the court reinstate petitioner, conditioned upon his complying in all things with the canons of ethics of the bar association. In re Gennow, 210 M 593, 299 NW 683.

Respondent accused of 15 violations of professional ethics withdrew his answer when the matter was before the referee, and his later verified petition contained so many admissions of so many of the accusations that his petition to file a verified amended answer is denied and he is disbarred. In re Pluto, 211 M 308, 300 NW 897.

Respondent having been convicted of the crime of grand larceny in the second degree is disbarred from practice. In re Hokenson, 211 M 516, 1 NW(2d) 843.

Respondent having petitioned the court at the end of the one year probationary period is, upon proper showing, reinstated in his office as attorney. Reinstatement of Priebe, 213 M 75, 5 NW(2d) 396.

An attorney should be disbarred only upon a strong and convincing showing that he is unfit to practice law and that disbarment is necessary to protect the public and to guard the administration of justice. While a court should be slow to disbar, it should be even more cautious in readmitting an attorney to a position of trust. In re Smith, 220 M 197, 19 NW(2d) 324.

The showing in the instant case is insufficient to disbar. In re Pararnie, 220 M 257, 19 NW(2d) 439.

Attorney disbarred from practice for conduct relating to the administration of the August and Amelia Palm estates. In re Eriksson, 220 M 525, 20 NW(2d) 697.

Professional irresponsibility, through gross negligence and sheer incompetence to a degree revealing a total unfitness to discharge the duties of a lawyer, is a ground for disbarment. In re Williams, 221 M 554, 23 NW(2d) 4.

The wilful participation by an attorney in the destruction or suppression of evidence which he knows may be required upon a trial, hearing, or other legal proceeding constitutes a breach of professional duty and subjects such attorney to discipline. In re Williams, 221 M 554, 23 NW(2d) 4.

Disbarment for encouragement of divorce litigation. 5 MLR 71.

Weight of evidence required for disbarment of attorney. 5 MLR 141.

Disbarment for defamation of the court. 5 MLR 307.

Disbarment for advertising. 5 MLR 470.

Attempt to subject property of third persons to payment of attorney's fees. 8 MLR 158.

Acts in one state as basis for disbarment in another. 10 MLR 610.

Violation of the liquor laws as an offense involving moral turpitude and consequent suspension. 12 MLR 173.

Proof of crime in a civil proceeding. 13 MLR 556.

Threat or use of criminal proceedings in the enforcement of civil claims ground for disbarment. 15 MLR 338.

Rules governing attorneys in the practice of their profession. 16 MLR 270.

Excessive fees; acceptance of money from public funds without rendering adequate services. 18 MLR 217.

Reinstatement of disbarred and suspended attorneys. 18 MLR 348.

Constitutionality of statute limiting time for bringing disciplinary proceedings against attorneys. 20 MLR 813.

Effect of executive pardon. 21 MLR 837.