

Administrator's Rights to Appeal: Widow's Allowance During Administration

Thomas W. Hayden

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Thomas W. Hayden, *Administrator's Rights to Appeal: Widow's Allowance During Administration*, 14 Marq. L. Rev. 229 (1930).
Available at: <http://scholarship.law.marquette.edu/mulr/vol14/iss4/6>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

NOTES AND COMMENT

Administrator's Right to Appeal: Widow's Allowance During Administration.

In *Re Sullivan's Estate*, Wis., 229 N.W. 65.

In this case, which was decided by the Supreme Court of Wisconsin on February 4, 1930, two statutory questions were passed upon, involving an interpretation of sections 318.01 (2) and 324.01 (2) of the Wisconsin Statutes; the first having to do with the allowance made to the family pending administration of the deceased husband's estate; the second being concerned with an administrator's right to appeal from an order denying such an allowance.

On the construction of Section 324.01 (2), which in effect provides: "The widow and minor children, or either, constituting the family of the deceased testator or intestate, shall have such reasonable allowance out of the personal estate or the income of the real estate of the deceased as the County Court shall judge necessary for their maintenance during the progress of the settlement of the estate" etc., the Court is unanimously agreed. The widow of the intestate petitioned the County Court for an allowance under such statute which petition was denied, and from such order the widow and the administrator of the deceased appeal. In the opinion delivered by Chief Justice Rosenberry, the Supreme Court, in reversing such order and directing the petition to be granted, points to the fact that "the object and purpose of the statute is to substitute the estate of the husband for the deceased husband during the progress of the settlement of the estate, so far as support of the family is concerned." The amount of such allowance is generally a sum sufficient to provide the same degree of comfort as was provided by the husband. Objections to such allowance, made on behalf of the intestate's minor children by a former marriage, to the effect that the petitioner was receiving insurance moneys and aid from other sources are of no avail, because whatever other source of income the widow may have, such as loans from friends, she cannot be deprived of her right to support money under the statute.

But on the interpretation of Section 324.01, Justices Stevens and Owens severally dissented; the former agreed that the administrator was a party aggrieved in this case, but refused to sanction the rule that an administrator was in all cases a party aggrieved and entitled to appeal, no matter what the question involved; while the latter denied the right of the administrator to appeal on a question, such as was presented in this case, because he had no interest in the subject matter of the litigation.

The majority opinion holds that the administrator may appeal as a party aggrieved, within the intention of the statute, because he stands "as the representative of persons who would be injuriously affected by a determination of the County Court, if it were allowed to stand," and cites as authority for such position the case of *McKenney v. Minahan*, 119 Wis. 651.

The Court disposes of the contention that the widow's appeal should be dismissed because not perfected by stating that inasmuch as such appeal was taken in good faith, "it would be our duty under Section 274.32 to stay the proceedings and permit it to be perfected."

THOMAS W. HAYDEN

Attorney and Client: Solicitation: Disbarment.

State v. Rubin, --- Wis., ---, 229 N.W. 30, decided February 4, 1930, was an action begun September 8, 1928, by the state bar commissioners, pursuant to the provisions of Section 256.28, of the Statutes of 1927 to disbar from practice W. B. Rubin, a prominent Milwaukee lawyer. The Circuit Court of Milwaukee, presided over by Judge Aarons, was making a thorough investigation of ambulance chasing as practiced in Milwaukee. The attempted investigation of Mr. Rubin was met by him with passive and then active resistance. Disbarment was asked. This was refused, but he was fined \$500.00, plus fees of the clerk, for unprofessional conduct.

The power of the Supreme Court to discipline a member of its bar by suspending or cancelling his license to practice law, when necessary to protect the courts and the public, was well established in *State v. Cannon*, 196 Wis., 534. *State v. Cannon*, however, differed from the case under discussion in that there solicitors worked directly out of the office of the attorney and devoted their time entirely to ambulance chasing. Cannon was investigated at the same time as was Rubin.

The charges against Mr. Rubin were:

1. That he solicited cases;
2. Statements made by him in a document filed with Judge Aarons;
3. His conduct in connection with the filing of the affidavit for an adverse examination in an action for conspiracy to defame.

The proof shows that Mr. Rubin never authorized anyone to solicit cases for him, and that he never paid any ambulance chaser for services rendered in securing cases which came to his office. Of 26,000 cases handled through Mr. Rubin's office, only 13 were found to have been solicited. One of these cases solicited was of a former client,