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Attorney and Client: Solicitation: Disbarment

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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,

three of them he personally solicited, and in them circumstances were such as would lead anyone to believe he was to be retained. Ten of these cases were brought to him by known ambulance chasers, but in these cases the chasers had made their bargains with the client and had nothing to expect of Mr. Rubin. These facts, the court was satisfied, and rightly so, did not establish the fact that Mr. Rubin was a man unfit to practice before the bar of this state. The court declared it unethical for a member of the bar to solicit business, but two minor infractions over a period of years would not render the offender unfit. It is organized solicitation, by men tempted in their commercial zeal to stir up litigation and to attempt to create causes of action where none exist, that the courts must guard against. Mr. Rubin has consistently opposed ambulance chasing; in 1915 he presented a bill to the Wisconsin Legislature prohibiting it, and placed a resolution before the state bar association to accomplish the same purpose. The referee in the instant case found that Mr. Rubin had given "his services in many cases as a matter of charity."

Chapter 457 of the laws of 1927 (256.29) declares it ground for disbarment for an attorney to "stir up strife and litigation; or to hunt up causes of action and inform thereof, in order to be employed to bring suit, or to breed litigation by seeking out those having claims for personal injuries, etc., or to employ agents and runners." A contract of employment made in violation of this section is void as to the attorney.[1] This statute does not apply to the agents or runners themselves. They may do such work and then hand it over to an attorney.

The second charge against Mr. Rubin was for statements made by him in an affidavit filed with Judge Aarons. In the process of investigation, by Judge Aarons' court, proof was offered that tended to connect Mr. Rubin with organized solicitation of cases. Mr. Rubin then began an action against the three members of the bar conducting the investigation, alleging in an affidavit for an adverse examination that these men had conspired to defame him. At this the court summoned Mr. Rubin to be sworn to disclose the facts that led him to make these charges. He refused to do so and was found guilty of contempt. The Supreme Court upheld the contempt in *Rubin* v. *State,* 194 Wis., 207, and it directed him to testify in order to purge himself. This recital of the facts demonstrates that the filing of this document cannot be made the basis of any proceeding to discipline Mr. Rubin. He resisted the right of the court to require him to disclose the information contained in this document until he was forced to do

[1] From an address by Judge Aarons made June 21, 1928, at Madison, Wisconsin, before the Wisconsin State Bar Association.

so by the mandate of the court in order to purge himself of contempt and to escape confinement in jail.

The only thing that reflects upon Mr. Rubin is that this statement discloses that he had accepted information as sufficient basis for his charge of conspiracy without making investigation to determine whether the information upon which he relied and acted was in fact true. But this is not ground for disbarment. If all lawyers were disbarred who have started actions relying upon information that was subsequently found to be unreliable, the number of the members of the bar would be greatly reduced.

The third charge is also founded upon the affidavit. It was very lengthy, and, as Mr. Rubin admitted, carried much offensive matter that should have been omitted. One of his motives in making it was the hope of it being published. Mr. Rubin had the right of questioning the jurisdiction (*Rubin* v. *State,* 194 Wis., 207). So he can't be censured for questioning the power of the court to proceed with the investigation.

"The only question that is open is whether he is subject to censure because of the means adopted by him to present that question. Had he responded to the request that he appear at the investigation and meet the proof offered that tended to show that he had been guilty of unprofessional conduct, as he met and explained it upon this trial,—instead of sending the curt response that those conducting the investigation could go to hell,—he would have played the part of a high-minded member of our profession." If he had remained passive, nothing would have come of it, but his aggressive opposition was considered as being unprofessional conduct. One may have the right to question the power of a governmental agency, but he may not do so by casting aside all orderly procedure and seek to control such agency by interrupting its proceedings, discrediting it, and intimidating its officers as did Mr. Rubin. The case upholds Mr. Rubin for his stand but not for his conduct. Justice Crownhart in his dissenting opinion in *State* v. *Cannon,* supra, said, "If attorneys may be subjected to such inquisitions and ruthless charges in the future, we may expect a weak and spineless bar—one that will be afraid to fight the battles of the poor and humble as they ought to be founght to secure justice."

COSMAS B. YOUNG

Bills and Notes: Negotiability: Reference to Other Instrument.

"A mere reference in a note to another instrument or mere statement of the transaction out of which the note arose does not destroy its negotiability; but if in a note there is a reference to another agree-