Marquette Law Review

Volume 24
Issue 2 *February 1940*

Article 4

Bar Integration By Supreme Court Rule

Robert D. Jones

NOTES

BAR INTEGRATION BY SUPREME COURT RULE

Bar integration has in a comparatively short period of years become a problem of paramount importance to the legal profession. It is an attempt to remedy the failure of sporadic efforts by the courts and voluntary associations to maintain the high standards of the profession. The movement was based on recognition that the bar no longer enjoyed the high degree of public confidence and respect it had once merited. The argument for concerted action is primarily founded on the belief that a few unethical members have degraded the good name of the entire bar.[1] Proponents of bar integration feel that a unified cooperating bench and bar could purge the profession of its unworthy members, revive the ideal of public service, suppress the unauthorized practice of law, provide necessary funds for research and study by committees, and in general promote the proper administration of justice.[2]

Today Puerto Rico and 23 states have integrated bars. It is felt in these states that the chief objectives have been gained. In 14 other states, among them Wisconsin, there has been a strong movement for integration.[3]

Three principal methods of bar integration have been followed: 1) by legislative act, as was done in 1923 in Alabama and Idaho, the first states to achieve successful union; 2) by legislative incorporation, the plan followed in California[4]; and 3) by orders promulgated by the supreme court of the state, acting on petitions of individuals and voluntary associations. The brief history of the movement shows a growing tendency to shun detailed statutory control, coupled with an increasing assertion by the courts of their power to regulate the practice of law independently of any legislative permission. South Dakota, in 1931, was the first state to have an organization in part dependent upon bylaws requiring supreme court approval.

In 1934, the Kentucky bar was organized by supreme court rules following a brief legislative enactment purporting to authorize it to do so. A similar procedure is now being followed in Wyoming and Texas. It was also in 1934 that Missouri integration was accomplished, the first instance where a court acted on the petition of a bar associa-

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[1] Clark, *Disciplinary Problems of an Integrated Bar* (1936) 5 KAN. CITY L. REV. 11.
[2] Hugus, *An Integrated Bar* (1937) 43 W. VA. L. Q. 10.
[3] 23 J. of Am. Jud. Soc. 161 (1939).
[4] Cal. Stat. (1927) p. 38.

tion.[5] The Nebraska bar was unified, in 1937, by means of rules promulgated by the Supreme Court of that state.[6]

The Oklahoma Supreme Court has recently taken the same action. *In re Integration of the State Bar of Oklahoma*[7] was a swift response to the action of the legislature which repealed the act[8] authorizing such an organization. One of the pioneers in the battle for statewide integration, Oklahoma had passed an act authorizing it as early as 1929.[9] After ten years of violent attack its opponents succeeded in having the act repealed. On the following day the attorneys of the state began to search for another route to their goal. After hearing the report of a committee of lawyers, favoring integration in the public interest and for the advancement of justice, the Supreme Court ordered such integration.

In doing so the court discussed the position of attorneys as officers of the court and advisers to the public. Because of this position and the importance of the relationships involved the court felt that it had the right to protect itself and the public from the acts of its officers. The Oklahoma Constitution did not expressly grant the power to define and regulate the practice of law to any of the three departments of government, the court said, but it is an inherent power of the judiciary and includes the right "to promulgate rules to create, control and regulate the bar of the state."[10]

In this action we see a crystallization of an inchoate conflict during the preceding years between the legislature and the judiciary of the various jurisdictions as to the proper repository of the power to organize members of the profession. The Nebraska Supreme Court, in acting favorably on the petition of a committee of attorneys appointed by the State Bar Association, had upheld the inherent power of the judicial department in this respect. That branch was the one to which the power naturally belonged, the court said, although it should be exercised only in its sound discretion.[11]

Many other jurisdictions have denied the right of the legislature to control and regulate the legal profession beyond a certain point. Massachusetts had ruled that no statute can control the judiciary in its right to admit and its power to remove, although such rights can be recognized by legislative enactment. In *Re Opinion of the Justices*[12]

[5] 23 J. of Am. Jud. Soc. 161 (1939).
[6] *In re* Integration of the Nebraska State Bar Ass'n., 133 Neb. 283, 275 N.W. 265, 267, 114 A.L.R. 151 (1937).
[7] (Okla. 1939 95 P. (2d) 113
[8] 5 Okla. Stat. Ann. 712 ff. (1939).
[9] *Ibid.*
[10] *In re* Integration of State Bar of Oklahoma (Okla. 1939) 95 P. (2d) 113.
[11] *In re* Integration of the Nebraska Bar Ass'n., 133 Neb. 283, 275 N.W. 265, 114 A.L.R. 151 (1937).
[12] 279 Mass. 607, 180 N.E. 725, 727, 81 A.L.R. 1059 (1932).

it was held that restrictions on entry into the practice of law found in the statutes are to be regarded as limitations on individuals but not on the judicial power itself.

A Kentucky disbarment proceeding, *In re Sparks*,[13] gave the court of that state the opportunity to reiterate its position that statutes purporting to give the court power to investigate and punish acts of offenders added nothing to authority already possessed by it, without the need for legislative action. From the time of Justice Taney no court has denied this doctrine.[14] In Kansas, Iowa, Montana and New Jersey the courts have taken it as a matter of course.

In the last named states the supreme courts have implicitly stated that it was necessary to show an increased voluntary membership in the state bars as they then existed before the courts would care to attempt integration by judicial order.[15]

The future of unification by court order alone is one of special interest in Wisconsin because of the failure of repeated efforts to achieve legislative sanction. On one occasion a bill which had been passed by the legislature was vetoed by the lieutenant-governor. At the last session, in July of 1939, an integration bill passed the house, then failed by a few votes in the Senate. In view of these experiences perhaps the road to integration in this state is the one used in Oklahoma and Nebraska. However, if other states are to follow their lead it seems that the nature of the act must first be determined. It has been a long-standing precept in our jurisprudence that under a constitution such as ours the creation of a corporation is exclusively a legislative function and one which cannot be delegated to the courts.[16]

Is the integration of the bar an act of incorporation? Integration in California was achieved by legislation making the state bar a public corporation.[17] But does integration require the creation of a legal entity? If it does, there would seem to be some doubt as to the right of a court to achieve this result, even granted that the courts have inherent power to control the bar. It may be that the solution in Wisconsin lies in a constitutional amendment which will dispel any doubt as to the power of the Supreme Court to act.

ROBERT D. JONES.

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[13] 267 Ky. 93, 101 S.W. (2d) 194 (1936); Commonwealth *ex rel* Ward v. Harrington, 266 Ky. 41, 98 S.W. (2d) 53 (1936).
[14] *Ex parte* Secombe, 19 Harv. 9, 13, 15 L.Ed. 567 (1936).
[15] 23 J. of Am. Jud. Soc. 161 (1939).
[16] Martinez v. De Ponce La Asociacion De Senoras Damas Del Santo Asilo, 213 U.S. 20, 129 Sup. Ct. 327, 53 L.Ed. *79 (1909); State *ex rel.* Shumway v. Bennett, 29 Mich. 451, 18 Am. Rep. 107 (1874); Territory *ex rel.* Kelly v. Stewart, 1 Wash. 98, 23 Pac. 405, 8 L.R.A. 106 (1890).
[17] Cal. Stat. (1927) p. 38.