DISBARMENT PROCEDURE IN IOWA

Despite the fact that society is vitally interested in the way the legal profession disciplines its own members, statistics on disbarment, temporary suspension, or reinstatement to the profession are rarely published. In the belief that this is a matter of special interest to lawyers, an examination[1] has been made of the unreported cases in Iowa since January 1, 1940, for the purpose of discovering the number of such proceedings, the types of disciplinary action and the reasons for disbarment. Following a statement of the results of this study is a summary of disbarment procedure in Iowa with some suggestions for its improvement.

Since January 1, 1940 there have been twenty-six proceedings either for permanent disbarment or temporary suspension or to obtain reinstatement. Six of these cases were tried, resulting in two permanent disbarments, three suspensions and one dismissal after the defendant was completely exonerated. Of the cases which did not reach trial, two were dropped because of death and in a third, no action was taken after the accusation was filed. The significant fact is that in seventeen cases the attorney voluntarily surrendered his certificate before trial. There are reasonable explanations for the large number of voluntary cancellations: the desire to avoid further publicity with the resulting embarrassment to the attorney involved and to his family; and the realization that the charges in the accusation could not be successfully refuted. Another possible reason is that if the attorney voluntarily surrenders his certificate before an accusation is filed, there is no formal record of the basis for his action. The files of the Clerk of the Supreme Court reveal that in five cases only the cancelled certificate was filed, and in two cases, only the accusation was filed. If the defendants in these cases felt that an application for reinstatement would be made easier if the record were scanty, it might be noted that since 1940[2] there have been two reinstatements, three refusals to reinstate and one application withdrawn before the court ruled.

In only three instances were the accusations drawn up by individuals. In nine cases the court specifically directed the accusation to be drawn, usually by a committee of the bar. In seven other cases the accusations were drafted by attorneys representing

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[1] Source material for this study consisted of the files of the Supreme Court of Iowa on disbarment from January 1, 1940 through September, 1951. Helpful suggestions were also made by the chairman of the committee on Professional Ethics and Conduct of the Iowa State Bar Association.

[2] These figures do not include proceedings resulting in temporary suspensions in which reinstatement after the specified period is automatic.

the bar, but the records do not reveal whether this was done at the direction of the court.

It is difficult to break down the grounds for disbarment into exact classifications since in almost every instance there were at least three grounds for disbarment. Embezzlement was the principal ground for disbarment and it included such specific charges as failure to account, misappropriated funds, charging of excessive costs and fraud in procuring money from clients. Other charges of unethical conduct included forgery, interference with the administration of justice, perjury, alterations of an original notice, passing bad checks, solicitation of business and general moral turpitude.

PROCEDURE

The proceeding to revoke or suspend the privilege[3] of practicing law is commenced either at the direction of the court or on motion of any individual. In the former case the court designates and directs an attorney to draw up the accusation;[4] in the latter, the accusation is drawn up and sworn to by the person making it. When the action is commenced by the court, the court may appoint one attorney or several to draft the accusation.[5]

If an individual files the accusation, the court in its discretion may, but is not required to, appoint an attorney to prosecute the charges. For appellate purposes, there is no error unless an abuse of discretion is shown.[6] It is desirable that the appointment of an attorney is not mandatory since the proceeding may be commenced by a person actuated by improper motives or by one who has not been injured by the alleged wrongdoing. The proceeding is a matter of public interest, and disbarment results solely from proof of the charges, not because of the identity or motives of the accuser.[7] The suit is not, of course, terminated by a defrauded

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[3] See In re Disbarment of Cloud, 217 Iowa 3, 5, 250 N.W. 160 (1933).

[4] CODE OF IOWA § 610.25 (1950). See Byington v. Moore, 70 Iowa 206, 207, 30 N.W. 485 (1886): "An attorney may be appointed to draw up an accusation against a member of the bar for criminal or unprofessional conduct, looking to his disbarment; . . . but it is probable that the court, in the exercise of its inherent authority, could require a member of the bar to discharge such duty. But the exercise of such authority rests in the sound discretion of the judge."

[5] IOWA CODE § 610.25 (1950). The section provides ". . . the court must direct some attorney to draw up the accusation . . ." It has been contended on appeal that it is error for more than one attorney to prepare the accusation since the statutory phrase "some attorney" requires the appointment of one attorney only. In State v. Howard, 112 Iowa 256, 83 N.W. 975 (1900), it was held to be immaterial that the court appointed three attorneys instead of one to draw up the accusation. In In re Hunt, 201 Iowa 181, 205 N.W. 321 (1925), a bar association committee was appointed to draft charges and present them to the court at a convenient and proper time. Held, this was properly within the power of the court.

[6] Byington v. Moore, 70 Iowa 206, 30 N.W. 485 (1886).

[7] In re Boyer, 231 Iowa 597, 1 N.W.2d 707 (1942). The charges must be proven by "clear, satisfactory, and convincing" proof. See In re DeCaro, 220 Iowa 176, 183, 262 N.W. 132 (1935); State v. Howard, 112 Iowa 256, 264, 83 N.W. 975 (1900).

client's opposition to the disbarment proceedings because the accused has promised to repay the loss[8] or has made a complete settlement.[9]

Disbarment is a special proceeding in rem of a civil nature. Since it is not criminal, the accused is not entitled to be confronted by witnesses, and depositions may be used as in other civil actions.[10] Moreover, jurisdiction to disbar exists even though the order for hearing is served on the attorney outside the state.[11] The granting of a continuance is within the discretion of the trial court.[12] In a case in which the accused made application for a continuance claiming inadequate time to obtain material evidence and to prepare his defense, it was held that the continuance was properly refused since the accused actually appeared to be familiar with the facts involved.[13] The power of the court to permit an amendment is as broad in this action as in any other special proceeding.[14] An amendment, continuance, and change of venue can be had upon the same conditions and upon compliance with the same rules as in ordinary civil actions.[15]

The license to practice law cannot be suspended or revoked in a summary proceeding since the statute requires an accusation, charge, notice and a day in court.[16] If the action is commenced at the direction of the court, court costs are taxed and disposed of as in criminal cases.[17] The remedy for wrongful taxation of costs

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[8] In re Boyer, 231 Iowa 597, 1 N.W.2d 707 (1942). The accused paid the defrauded client about $100 before the trial and promised to pay 15 per cent of his future earnings. The client testified that she was opposed to disbarment because it would deprive the attorney of his earning capacity. The court, however, concluded: "The loss suffered by Mrs. Dilley due to the wrongdoing of her lawyer is regrettable. Such matters are of deep concern to courts. But other people are equally entitled to protection. An attorney found to be morally unfit should not be given opportunity to prey upon the general public in the expectation or hope he will thereby be the better able to repay the losses of an earlier victim." 231 Iowa, at 600.

[9] In re Disbarment of Cloud, 217 Iowa 3, 250 N.W. 160 (1933).

[10] State v. Mosher, 128 Iowa 82, 103 N.W. 105, 5 Ann. Cas. 984 (1905).

[11] In re Ryan, 229 Iowa 339, 294 N.W. 566 (1940). The defendant was in a hospital in Hot Springs, Arkansas, when the order for hearing was personally served on him. The court was presented with a letter from a doctor stating that the defendant's physical condition was improving but that at present he was totally disabled. A special appearance was entered to question jurisdiction. The court held that since the proceeding is in rem, jurisdiction may be obtained by serving the defendant outside the state. In view of the fact that no application for continuance had been made, the order of disbarment was affirmed.

[12] State v. Kimball, 158 N.W. 578 (Iowa, 1916).

[13] In re Condon, 166 Iowa 265, 147 N.W. 769 (1914).

[14] State v. Kimball, 158 N.W. 578 (Iowa, 1916). In State v. Howard, 112 Iowa 256, 83 N.W. 975 (1900), the court held there was no error in the lower court's striking of an amendment to the accusation where the additional facts alleged were provable under the original charge.

[15] State v. Clarke, 46 Iowa 155 (1877).

[16] IOWA CODE § 610.27 (1950). See State v. Start, 7 Iowa 498 (1859).

[17] IOWA CODE § 610.26 (1950).

is a motion for retaxation of costs in the district court.[18] The statutory provision that no allowance shall be made for the payment of attorneys fees as part of the costs is constitutional.[19]

The accusation should be entitled "In the Matter of————," not "State v.————", since the court has held that the proceeding is in the nature of a rule to show cause why the defendant's name should not be stricken from the roll of attorneys.[20] This practice does not appear to be followed closely, however. The contents of the accusation are not limited to the facts before the court at the time it ordered the accusation to be drawn up but the attorneys may include any matter deemed appropriate.[21] However, the accused must be clearly apprised of the charges so that he may fully defend himself. This is illustrated by one case in which the accusation charged that the defendant insulted the court and refused to obey an order of the court. The Supreme Court held that the trial court should have sustained a demurrer to the accusation on the ground that it failed to specify the manner in which the court was treated disrespectfully. If by insulting language, the words used by the accused should be given; if by disrespectful acts, those acts should be described so that the ac-

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[18] State v. Kimball, 158 N.W. 578 (Iowa, 1916). In State v. Tracy, 115 Iowa 71, 87 N.W. 727 (1901), the accused, although exonerated of the charges, was reprimanded and costs were taxed to him. The court held that he could appeal even though the costs were less than $100 and he had not moved for a retaxation of costs. The court felt that because of the reprimand more than costs were involved in the appeal.

[19] IOWA CODE § 610.26 (1950). In Hyatt v. Hamilton County, 121 Iowa 292, 96 N.W. 855, 63 L.R.A. 614, 10 Am. St. Rep. 354 (1903), the plaintiff, executrix of her husband's estate, sued the county for reasonable compensation for her husband's services rendered in connection with a disbarment proceeding. It was held that in the absence of a statute prohibiting compensation, the plaintiff is entitled to be compensated. Although an attorney is an officer of the court, he is not a public officer and may not be required to give his services to the public without compensation. Since the statute required him to render his services, there is an implied obligation on the county to pay for them.

After this decision, § 610.26 was adopted, expressly prohibiting compensation. The constitutionality of the statute was tested in Brown v. Warren County, 156 Iowa 20, 25, 137 N.W. 474, 42 L.R.A. (N.S.) 529, Ann. Cas. 1915B 185 (1912). The plaintiff, an attorney appointed to draw up the accusation, sued the county for attorney's fees. He contended that the statute required him to render valuable services without due compensation contrary to Art. I, § 18 of the Iowa Constitution. The plaintiff had not declined the appointment to prosecute the disbarment proceeding. It was first held that the plaintiff must decline the appointment and the trial court refuse the declination before the constitutionality of the statute could be tested. On rehearing, the former opinion was modified so as to place the decision squarely on the ground that the statute was constitutional. The court apparently felt that the office of attorney carried with it certain obligations, one of which was the duty to see that the proper standards of the profession are maintained.

[20] Hyatt v. Hamilton County, 90 N.W. 508 (Iowa, 1902) overruled on other grounds in 121 Iowa 292, 96 N.W. 855, 63 L.R.A. 614, 100 Am. St. Rep. 354 (1903).

[21] State v. Mosher, 128 Iowa 82, 103 N.W. 105, 5 Ann. Cas. 984 (1905).

cused may know what charges he must answer. If he refused to obey an order of the court, that order should be shown.[22]

If the court deems the accusation sufficient to justify further action, it enters an order requiring the accused to appear and answer in the court where the accusation or charge was filed on a date therein set out, and a copy of the accusation and order is served upon him personally.[23] It would seem from the above provision that it is contemplated that the accusation will be examined by the court before the accused is ordered to answer. A failure to pass on the accusation is not, however, reversible error since the statute is held to be merely directory.[24] When the accusation is filed, the clerk of the district court is required to certify a copy of the accusation to the clerk of the Supreme Court.[25] The Chief Justice is then required to notify and deliver a copy of the accusation to the Attorney General. Thereafter, it is the duty of the Attorney General to superintend, either through his office or through a special assistant designated by him, the prosecution of the charges.[26] If a committee is appointed to draw up the accusation, it is not error to appoint another committee to prosecute those charges.[27]

The Supreme Court is then required to designate three district court judges to sit as a special tribunal to hear and decide the charges.[28] This statute providing for the special tribunal has withstood attacks on its constitutionality.[29] The hearings are held at such time and place as the Chief Justice of the Supreme Court may designate and are held within the county where the accusation was originally filed.[30] There the determination of all issues are made by the judges selected by the Supreme Court.[31] The records and judgments of the trial court constitute a part of the records of the district court in the county in which the accusa-

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[22] Perry v. State, 3 Greene (Iowa) 550 (1852).

[23] Iowa Code § 610.27 (1950).

[24] State v. Mosher, 128 Iowa 82, 103 N.W. 105, 5 Ann. Cas. 984 (1905). The court stated that the statute contemplates an examination of the accusation by the court and a finding as to its sufficiency before the accused is ordered to answer. Statutes of this nature are generally held to be directory, and since the defendant tested the sufficiency of the accusation by motion and demurrer and thereafter answered, the irregularity was not prejudicial. See also State v. Howard, 112 Iowa 256, 83 N.W. 975 (1900).

[25] Iowa Code § 610.28 (1950).

[26] Iowa Code § 610.29 (1950).

[27] State v. Kimball, 158 N.W. 578 (Iowa, 1916).

[28] Iowa Code § 610.30 (1950).

[29] In re Disbarment of Cloud, 217 Iowa 3, 250 N.W. 160 (1933) holding that this special tribunal is a valid court of record created pursuant to the authority granted to the legislature in Art. IV, § 1 of the Iowa Constitution.

[30] Iowa Code § 610.31 (1950).

[31] Iowa Code § 610.32 (1950).

tions were originally filed.[32] Thus the trial court is given power to hear and determine all the issues involved in the special proceeding submitted to it.[33] In Iowa the district court judges cannot constitutionally sit in banc. Therefore, it is held that any preliminary order by the three judges is not an order of the court until it is filed in the office of the clerk of the district court when it becomes an order of that court.[34] The accused may plead to the accusation and the issues joined are tried by the judges selected. All the evidence at the trial is reduced to writing, filed and preserved to enable the accused to appeal.[35] If, however, the accused is acquitted, he has no right to demand that the testimony be transcribed and preserved for future reference.[36]

Court costs incident to the trial and the reasonable expenses of the three judges are paid as court costs by the executive council after being approved by the Supreme Court.[37] If the accused pleads guilty or fails to answer, the court has authority to render such judgment as the case requires.[38] The trial court need not be unanimous in its decision.[39] The final judgment of the trial court should state the exact charge or charges of which the accused was found guilty. This is done out of fairness to the accused since there may be many charges some of which may not be supported by sufficient evidence.[40] The trial court may modify a disbarment but once it has been modified that modification cannot be extinguished and the original disbarment order restored.[41] An acquittal by a court of record is final.[42] When a judgment has been entered

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[32] IOWA CODE § 610.33 (1950).

[33] In re Disbarment of Cloud, 217 Iowa 3, 250 N.W. 160 (1933).

[34] *Ibid.*

[35] IOWA CODE § 610.34 (1950).

[36] In State v. Tomlinson, 131 Iowa 617, 618-619, 109 N.W. 120 (1906), the Court stated: "But counsel argue that the evidence is required to be in writing and preserved for another purpose; i.e., that of enabling any one to refer to the testimony at any future time. There is no more occasion for rendering the evidence accessible in this class of cases than in others of equal importance, and we are of the opinion that it was not the intention of the lawmakers that the evidence be preserved save for the purposes of appeal."

[37] IOWA CODE § 610.35 (1950).

[38] IOWA CODE § 610.36 (1950).

[39] In re Disbarment of Cloud, 217 Iowa 3, 25 N.W. 160 (1933).

[40] Perry v. State, 3 Greene (Iowa) 550 (1852).

[41] In Maxey v. Polk County District Court, 182 Iowa 366, 165 N.W. 1005 (1918), the plaintiff, after disbarment, applied for and received a modification of that disbarment. Still later he applied for a minor modification of the first modification. The court extinguished the first modification and restored the disbarment order. On certiorari, it was held that the district court acted beyond its authority. No application for a cancellation of the first application was made to the court, and the plaintiff was given no opportunity to resist.

[42] IOWA CODE § 610.38 (1950). In State v. Tracy, 115 Iowa 71, 87 N.W. 727 (1901), the trial court found the defendant not guilty and dismissed the charges against him. Held, that the court could not render judgment against him for costs.

in a court of record in the state revoking or suspending the license of any attorney at law to practice in court, the clerk of the court in which the judgment is rendered shall immediately certify to the clerk of the Supreme Court the order or judgment of the court.[43] In case a removal or suspension is ordered, an appeal therefrom lies to the Supreme Court and all the original papers, together with the transcript of the record, are transferred to the Supeme Court.[44]

The appellant may select his grounds of appeal and prepare his abstract to that end. Evidence need not be included in the abstract, and if not included, only points of law are then reviewable.[45] If the appellant appeals from only part of the record, he may not object to the state's using the entire record.[46] The sole question on appeal is whether the evidence sustains the finding and judgment.[47] If review is by certiorari, the sole question is whether the judges acted pursuant to law.[48] The general rule is that special proceedings are triable as law actions and on appeal the issues are to be determined on the errors assigned. The disbarment proceeding, however, is an exception, and the appeal is triable de novo,[49] even though it is agreed in the trial court that it will be a law action.[50]

Conclusion

One weakness in the Iowa procedure in disbarment cases is the incompleteness of the files in the individual proceedings. Under the present system, if an accusation has not been filed at the time the attorney surrenders his certificate, the file on the case remains incomplete and is of little value for future use. Some record of the reason for the cancellation of the certificate should be made. Moreover, there should be some permanent record of the reasons for discontinuing or dropping disbarment proceedings which have been commenced. If an accusation has been filed, the charges should be regarded as confessed where there is a voluntary relinquishment of the certificate. A permanent record would be of great value to the Supreme Court in considering later applications for reinstatement.

There appears to be some disagreement in Iowa as to the manner in which matters of discipline should be investigated, initiated and conducted. It is suggested by some that the prevail-

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[43] Iowa Code § 610.38 (1950).

[44] Iowa Code § 610.37 (1950).

[45] State v. Kimball, 158 N.W. 578 (Iowa, 1916).

[46] State v. Kauffman, 202 Iowa 157, 209 N.W. 417 (1926).

[47] *Ibid.*

[48] See Maxey v. Polk County District Court, 182 Iowa 366, 165 N.W. 1005 (1918).

[49] State v. Mosher, 128 Iowa 82, 103 N.W. 105, 5 Ann. Cas. 984 (1905).

[50] In re Disbarment of Cloud, 217 Iowa 3, 250 N.W. 160 (1933).

ing system of designating lawyers in the community in which the accused resides to investigate charges of unethical practices and, where necessary, to draw up the accusation and try the proceeding is desirable. It is felt that lawyers residing in the same community or district are "closer" to the problem and therefore better equipped to make a complete investigation. On the other hand, the Board of Governors of the Iowa State Bar Association in 1950 approved a committee recommendation that disbarment proceedings should be handled by the state association, rather than by local bar associations.[51] Presumably a rule by the Supreme Court would be necessary in order to adopt this procedure, even though it is intended merely to supplement the existing statutory procedure.

The advocates of the system of control of disciplinary matters by a state association are for the most part in favor of a system similar to the one used in Illinois.[52] In that state permanent commissioners of the Supreme Court investigate all complaints. They have authority to secure the attendance of the accused and of witnesses, to require the production of books and papers, to take and preserve testimony, to make reports to the court of their conclusions of law and fact. After notice, the accused has ten days within which to file exceptions and twenty days more to bring records and proofs before the court in order that it may pass upon the exception. The commissioners then appoint a member of the bar to file the necessary abstracts and briefs to support their recommendations. The Supreme Court has the ultimate responsibility for disbarment and its decision is final.

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51 Annual Proceedings, Iowa State Bar Ass'n, Part I, 24 (1950).

52 2 Ill. REV'D STAT. c. 110, § 259.59 (State Bar Ass'n ed., 1949); see Potts, *Disbarment Procedure*, 24 Texas L. Rev. 160, 181 (1946).