JUDICIAL DEPARTMENT

CHAPTER 480

SUPREME COURT

480.01 JUSTICES; TERMS

HISTORY. 1849 c 20 s 1, 5; RS 1851 c 69 art 1 s 2-4; 1852 c 19; 1853 c 3; 1854 c 53; 1858 c 8; PS 1858 c 56 s 2, 3, 14; 1862 c 25; GS 1866 c 63 s 6; 1872 c 43 s 1; GS 1878 c 63 s 6; 1881 c 141 s 1; GS 1878 Vol 2 (1888 Supp) c 63 s 1a; GS 1894 s 4822, 4828; RL 1905 s 69; GS 1913 s 118; 1919 c 96 s 1.

Judicial review by means of extraordinary remedies. 33 MLR 570, 685, 710.

480.03 PENDING CASES CONTINUED

HISTORY. 1852 Amend p 5 s 2; PS 1858 c 56 s 8; GS 1866 c 63 s 10; GS 1878 c 63 s 10; GS 1894 s 4832; RL 1905 s 71; GS 1913 s 120.

480.04 WRITS; PROCESS

HISTORY. RS 1851 c 69 art 1 s 5, 8; 1852 c 19; PS 1858 c 56 s 4, 7; GS 1866 c 63 s 1, 5; 1876 c 58 s 1; GS 1878 c 63 s 1, 5; GS 1894 s 4823, 4827; RL 1905 s 72; 1913 c 121; 1917 c 403 s 1.

Administrative law; judicial review; administrative orders under Federal Administrative Procedure Act. 32 MLR 807.

Administrative law; scope of judicial review; substantial evidence rule under the Federal Administrative Procedure Act and the Labor Management Relations Act. 32 MLR 812.

Judicial control of administrative action by means of extraordinary remedies in Minnesota. 33 MLR 569.

Certiorari; type of administrative action subject to control of. 33 MLR 685.

Scope of review under certiorari. 33 MLR 704.

Procedural aspects of certiorari. 33 MLR 710.

Where the relator in quo warranto proceedings, filed a motion for an order vacating the decision, the report of the referee, and for a new trial, grounds of motion not urged were waived. State ex rel v Village of St. Anthony, 223 M 149, 26 NW(2d) 193.

Where the right to enjoin payment of the salary annexed to a public office depends upon a determination of title to the office, and the title to the office is disputed and has not been determined in quo warranto proceedings, an injunction should not issue to restrain payment of salary. Ryan v Hennepin County, 224 M 444, 29 NW(2d) 385.

The supreme court in its description permitted individuals who were resident voters and taxpayers of a ward of a city, and who had the consent of the attorney general, to maintain quo warranto proceedings to protect the respondent's right to the office of alderman. State ex rel v Todd, 225 M 91; 29 NW(2d) 810.

The granting or withholding of leave to file an information in the nature of quo warranto at the instance of a private relator, with the consent of the attorney general to test the right of office or franchise, rests in sound discretion of court to which application is made, even though there is substantial defect in title by which office or franchise is held. State ex rel v Todd, 225 M 91, 29 NW(2d) 810.

Questions involving government must not be determined along technical lines but on the basis that practical and broad consideration should control. Statutes imposing taxes and providing means for collection of the same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose tax laws ought to be given a reasonable construction without bias or prejudice against either taxpayer or the state, in order to carry out the intention of the state legislature and further the important public interests which such statutes subserve. State ex rel v Brandt, 225 M 345, 31 NW(2d) 5.

Where by law an incumbent of one office is ex officio to the incumbent of another office, such incumbent occupies two separate and distinct offices. If the duties of the two official capacities are different in their general nature, and are separate and distinct, so that the incumbent while acting in one capacity is governed by one law, and while acting in the other is governed by a different and independent law; and one who the city council of Minneapolis appointed on the death of city comptroller to the office of "assistant city comptroller," with all powers conferred by the city charter on the city comptroller, and who thereafter discharged duties of the office of city comptroller with public assent, was de facto city comptroller and entitled to serve as a member of the board of tax levy of Hennepin county. State ex rel v Brandt, 225 M 345, 31 NW(2d) 5.

In quo warranto proceedings specifically brought to determine an incumbent's title to an office, a collateral attack may not be made upon such incumbent's title to a separate and distinct office, although the incumbent of the latter office is ex officio the incumbent of the former office. State ex rel v Brandt, 225 M 345, 31 NW(2d) 5.

Respondent, although officially designated as assistant city comptroller, is de facto city comptroller, and clothed with all the powers of that office including the right to sit and act upon the board of tax levy of Hennepin county. State ex rel v Brandt, 225 M 345, 31 NW(2d) 6.

Section 125.03 is not applicable to the special school district of the city of Minneapolis so as to authorize its board of education to fill vacancies on its school board; such power being vested under the provisions of special acts and the home rule charter in the city council of the city of Minneapolis. Through quo warranto proceedings a writ of ouster was issued against the person selected by the board of education of the city of Minneapolis. State ex rel v Salisbury, 228 M 367, 37 NW(2d) 444.

A proceeding in quo warranto by the state, not prohibition, is the proper remedy for testing the title of a judge to his office. State ex rel v Beaudoin, 230 M 186, 40 NW(2d) 885.

A writ of certiorari does not lie to review an order denying a motion for the joinder of additional parties, in that such order is intermediate in its nature, is decisive of no issue upon the merits or any part thereof, and is subject to review upon an appeal from a final judgment on the merits. Chapman v Dorsey, 230 M 279, 41 NW(2d) 438.

A private citizen has no right, except under extraordinary or exceptional circumstances to the use of quo warranto to test the title of an incumbent of a public office. State ex rel v Thuet, 230 M 365, 41 NW(2d) 585.

Where the issuance of a writ of quo warranto is sought by a private individual with the consent of the attorney general, such individual must petition the court for leave to file an information for a writ of quo warranto. The granting or withholding of leave to file an information for a writ of quo warranto at the instance of a private individual, with or without the consent of the attorney general, rests in the sound discretion of the court. When the supreme court permits an information for a writ of quo warranto to be filed and has issued the writ, the court is deemed to have exercised its discretionary power favorably for the relator, and it is immaterial that relator failed to petition the court for leave to file the information upon which the writ was issued. A private person, with the consent of the attorney general and with leave of the supreme court, may file an information for a writ of quo warranto to contest an annexation proceeding by a municipal corporation, and, if successful, is entitled to the issuance of a writ of ouster with respect to the territory sought to be annexed. In the absence of statutory provisions or rules of practice to the

contrary, objections to parties in quo warranto proceedings shall be taken at the time and in the same manner as prescribed for such objections in civil proceedings generally. Quo warranto proceedings instituted to challenge an annexation by a village must be brought against the municipal corporation and its officers and council members—and not against the signers of the petition for annexation. The misjoinder of defendants in a quo warranto proceeding is an irregularity which may be corrected at any time before or after judgment of ouster is entered by striking out the name of the party improperly joined. Until an actual usurpation has occurred, the remedy of quo warranto has no application and may not therefore be used to question the validity of a pending petition for annexation which has not been acted upon by the village council. State v Village of Mound, 234 M 531, 48 NW(2d) 855.

Where the attempted annexation by a city of the fourth class of portions of an organized village was beyond the power of annexation conferred by section 413.14 such proceedings were null and void, and a writ would issue ousting officials of the city from exercising jurisdiction over the territory wholly or partly within the corporate limits of the village. State ex rel v City of Columbia Heights, 237 M 124, 53 NW(2d) 831.

Quo warranto was not an available remedy to question the validity of the assumption by a consolidated school district of the bonded indebtedness of one of the consolidated districts. In the instant case the writ as issued by the supreme court did not raise the question of such indebtedness and the court properly did not decide whether the assumption of the debt was proper. State ex rel v Common School District No. 65, 237 M 150, 54 NW(2d) 130.

480.05 POWER, RULES

HISTORY. RS 1851 c 69 art 1 s 6; 1852 amend p 5 s 3; PS 1858 c 56 s 5; 1862 c 17 s 1; GS 1866 c 63 s 2; GS 1878 c 63 s 2; GS 1894 s 4824; RL 1905 s 73; GS 1913 s 122; 1921 c 297 s 1.

Integration of the bar and judicial responsibility. 32 MLR 1.

The court rule-making power is not subject to overriding legislation. The term "subject to law" as used in the constitutional provision that the supreme court shall, subject to law, make rules governing practice and procedure, does not mean subject to legislation, but means substantive law as distinguished from pleading and practice. Winberry v Salisbury, 74 At(2d) 406.

Proceedings to discipline an attorney are sui generis and not the trial of an action or a suit between adverse parties. It is an inquiry by the court into the conduct of one of its officers for the purpose of determining his fitness to continue as a member of his profession. The referee's findings are generally treated in the same manner as are the findings of a court or jury. In re Rerat 232 M 1, 44 NW(2d) 273.

The test is whether the conduct of the attorney comes up to a standard set by the Canons of Ethics, and proof of wrong doing must be cogent and compelling, although proof beyond a reasonable doubt is not necessary. In the instant case the evidence supported the referee's findings that the attorney was not guilty of organized solicitation. In re Rerat, 232 M 1, 44 NW(2d) 273.

The United States Constitution does not require a state to provide the expenses of an appeal for an indigent defendant in a criminal case, and the Constitution and Statutes of Minnesota neither compel nor authorize such procedure. State v Lorenz, 235 v 221, 50 NW(2d) 270.

A lack of absolute integrity in the handling of a client's funds and in conducting financial transactions with others, whether it stems from the habitual and excessive use of liquor or from an inate weakness of character, disqualifies a lawyer from continuing the practice of his profession. In re Boland, ... M ....., 57 NW(2d) 809.

Where an attorney's record, professional and otherwise, was practically unblemished prior to conviction for criminal negligence in the operation of an automobile, the attorney would not be disbarred but merely suspended from the practice of law for six months. In re Swagler, ... M ....., 58 NW(2d) 272.

In construing the federal constitution the interpretation placed thereon rests exclusively with the United States Supreme Court; but the construction by Minnesota Supreme Court of Minnesota Constitution in the Smiley v Holm case (285 US 355, 52 SC 397) still stands so far as it relates exclusively to Minnesota fundamental law. State ex rel v Mrs. Mike Holm et al, filed in Supreme Court, Jan. 29, 1954.

480.051 REGULATE PLEADING, PRACTICE, AND PROCEDURE

NOTE: The Minnesota Constitution, Article III, Section 1, reads:

"The powers of government shall be divided into three distinct departments—legislative, executive, and judicial; and no person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except in the instances expressly provided in this constitution."

The first sentence of Minnesota Constitution, Article VI, Section 14, reads:

"Legal pleadings and the proceedings in the courts of this state shall be under the direction of the legislature."

The Field Code of Civil Practice was incorporated into the Revised Statutes of the Territory of Minnesota at the second session of the Assembly in 1851, prior to which time the laws in force in the Territory of Wisconsin at the time the territory was created remained in force.

The Civil Practice Act was materially amended in 1852 by an act approved March 6, 1852. During the entire history of the state prior to the enactment of Laws 1947, Chapter 498 (sections 480.051 to 480.058), civil procedure was prescribed by statute. Upon the passage of Chapter 498 all statutes relating to civil procedure in the courts of the state, other than the probate court, became in effect rules of the supreme court. The statute prescribes that they may be modified, superseded, or discontinued by action of the supreme court. Under the statute the court may prescribe new rules and abolish or change existing rules of procedure for civil actions in all courts of the state other than the probate court. The present statutes on procedure remain in effect rules of court until rules are adopted by the supreme court to supersede or modify them. All suggestions for change in procedural rules should be addressed to the supreme court, although the legislature still has the power to enact statutes on the subject. In practice effective operation of Laws 1947, Chapter 498, lies in the energy, ability, and good judgment of the advisory committee.

Discovery procedure. 31 MLR 713.

Depositions. 31 MLR 716.

Power of the supreme court to regulate by rules the pleading, practice, and procedure in civil cases in all the courts of the state. 33 MLR 37.

In constitutional provision that the Supreme Court shall make rules governing the administration of all courts in the state and, "subject to law," the practice and procedure in all such courts, the quoted phrase does not mean subject to legislation, but means substantive law as distinguished from pleading and practice, and therefore the rule-making power of the Supreme Court is not subject to overriding legislation but is confined to practice, procedure, and administration as such. Since the rule-making power of the Supreme Court is not subject to overriding legislation, rules promulgated by the Supreme Court and limiting time for an appeal from a final judgment of the trial division of the Superior Court to the Appellate Division of the Superior Court to 45 days are applicable, rather than statute permitting an appeal within one year after judgment rendered. Winberry v Salisbury, 74 At(2d) 406.

480.057 PROMULGATION

NOTE: Rules of Civil Procedure for the District Courts of Minnesota promulgated June 25, 1951, effective January 1, 1952.

The Minnesota Statutes revolving fund may pay the cost of printing the court rules as a part of the cost of publishing the Minnesota Statutes. OAG Aug. 8, 1951 (500).

480.06 DECISIONS

Judgment of appellate court, like any other judgment is res judicata of questions litigated and decided. Mitchell v City of St. Paul, 228 M 64, 36 NW(2d) 132.

480.07 CLERK; BOND, ASSISTANCE, RECORDS

HISTORY. 1858 c 9 s 1-3; PS 1858 c 5 s 86-89; GS 1866 c 6 s 60-62; GS 1878 c 6 s 62-64; 1881 c 160 s 1; GS 1878 Vol 2 (1888 Supp) c 7 s 1; GS 1894 s 374-377; RL 1905 s 75, 76; GS 1913 s 127, 128; 1921 c 46 s 1.

480.09 STATE LIBRARY

HISTORY. 1903 c 272 s 1-7; RL 1905 s 78-82; GS 1913 s 130-134; 1947 c 365 s 4; 1951 c 3 s 1.

Under the provisions of Laws 1949, Chapter 740, Section 51, during the fiscal years ending June 30, 1950 and 1951, the provisions of section 480.09 were superseded insofar as they related to any receipts of the state library, and all receipts of the state library during those fiscal years were required to be deposited in the state treasury and credited to the general revenue fund. The librarian could turn in old books to apply on the purchase price of new ones. OAG May 22, 1950 (9-A).

480.11 REPORTER

HISTORY. M Const art 6 s 2; RS 1851 c 69 art 1 s 7; 1852 c 38 s 1-3; PS 1858 c 56 s 2; 1865 c 34 s 1-3; GS 1866 c 27 s 1, 2; GS 1878 c 27 s 1, 2; 1881 c 103 s 1, 2; GS 1878 Vol 2 (1888 Supp) c 27 s 5, 6; GS 1894 s 2278-2282; 1895 c 22, 23; 1901 c 3; RL 1905 s 84-86; GS 1913 s 136-138.

480.12 PRINTING MINNESOTA REPORTS

HISTORY. 1865 c 34 s 4; GS 1866 c 27 s 4; GS 1878 c 27 s 4; 1885 c 218 s 1, 2; 1887 c 230 s 1, 2; GS 1878 Vol 2 (1888 Supp) c 27 s 4a, 4b, 13, 14; 1889 c 116 s 1; 1889 c 240 s 1, 2; 1889 c 241 s 1-3; 1893 c 18 s 1, 2; GS 1894 s 2280, 2284-94; RL 1905 s 88, 89; 1913 s 140, 142; 1917 c 407 s 3; 1921 c 509 s 1; GS 1923 c 151-153; 1895 c 22, 23; 1903 c 129; RL 1905 s 87; GS 1913 s 139; 1927 c 379 s 1; 1937 c 81 s 1.

CHAPTER 481

ATTORNEYS AT LAW

481.01 BOARD OF LAW EXAMINERS; EXAMINATIONS

HISTORY. RS 1851 c 93 s 1-4, 8; 1856 c 5; PS 1858 c 82 s 1-4, 8; GS 1866 c 88 s 1-4, 8; 1877 c 123 s 1; GS 1878 c 88 s 1-4, 8; 1883 c 104; 1889 c 93; 1891 c 36 s 1-7; 1893 c 129 s 1; GS 1894 s 6172-6177; RL 1905 s 2278; GS 1913 s 4945; 1921 c 161 s 1; 1953 c 167 s 1.

Integration of the bar and judicial responsibility. 32 MLR 1.

Power to suspend an attorney from practice before an administrative board or agency. 32 MLR 63.

Legal education in the United States. 38 MLR 90.