

CHAPTER L.

OF ATTORNEYS AND COUNSELLORS.*

(This Chapter is Chapter LXXXVII. of the Statutes of 1866.)

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SECTION 1. *What persons are entitled to admission to practice.*—Any male person of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, is entitled to admission to practice in all the courts of this state.

SEC. 2. *Application for admission, how made.*—For the purpose of admission, he shall apply to the supreme court or any district court when in session, and shall show first, that he is of the age of twenty-one years, which proof may be made by his own affidavit; and second, that he is a person of good moral character, which may be proved by certificate or other evidence satisfactory to the court.

SEC. 3. *Applicant shall be examined.*—The applicant shall also be examined in open court, as to his qualifications of learning and ability, by the judges, or under their direction, at the term at which application for admission is made.

SEC. 4. *Order of admission.*—If, upon the examination, he is found duly qualified, the court shall direct an order to be entered, to the effect that the applicant is a citizen of the United States, of the age of twenty-one years, of good moral character, and possesses the requisite qualifications of learning and ability to practice as an attorney and counsellor in all the courts of this state; and upon the entry of the order, he is entitled to practice as such attorney and counsellor.

SEC. 5. *General duties of attorneys.*—It is the duty of any attorney and counsellor:

* Liability of attorney for authorizing levy on property of stranger, *vide Barry v. McGrade et al.*, 14 Minn. 163. Stipulation between attorneys, when set aside, *Bingham v. Board of Supervisors, Winona Co.*, 6 Minn. 136.

First. To support the constitution and laws of the United States, and of this state ;

Second. To maintain the respect due to the courts of justice and judicial officers ;

Third. To counsel or maintain such actions, proceedings, or defenses only, as appear to him legal and just, except the defense of a person charged with a public offense ;

Fourth. To employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law ;

Fifth. To maintain inviolate the confidence, and at every peril to himself to preserve the secrets of his client ;

Sixth. To abstain from all offensive personality, and to advance no fact prejudicial to the honour or reputation of a party or witness, unless required by the justice of the cause with which he is charged ;

Seventh. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest ; and,

Eighth. Never to reject, for any consideration personal to himself, the cause of the defenseless or oppressed.

SEC. 6. *Penalty for deceit or collusion.*—An attorney or counsellor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or a party to an action or judicial proceeding, is punishable for a misdemeanor, and shall also forfeit to the party injured treble damages, recoverable in a civil action.

SEC. 7. *Penalty for permitting person to sue out process, etc., in his name.*—If an attorney and counsellor knowingly permits a person not his general law partner to sue out process, or to prosecute or defend an action or proceeding in his name, he and every person who so uses his name, shall severally forfeit to the party against whom the process was issued, or the action or proceeding prosecuted or defended, the sum of fifty dollars, recoverable in a civil action.

SEC. 8. *Person not an attorney shall not appear in actions.*—No person shall appear in any action or proceeding, in the supreme or district court, to maintain or defend the same, unless previously admitted to practice, as herein provided.

SEC. 9. *Authority of attorney.*—An attorney and counsellor has authority :

First. To bind his client in any of the proceedings in an action or special proceeding by his agreement duly made or entered upon the minutes of the court ; but such agreement or stipulation shall be disregarded unless made in open court, or in presence of the clerk, and entered in the minutes by him, or in writing and signed by the party against whom the same is alleged, or his attorney.

Second. To receive money claimed by his client in an action or special proceeding during the pendency thereof, or within two years after judgment, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

But this section does not prevent a party employing a new attorney to issue an execution upon a judgment, or to take other proceedings prescribed by the statute for its enforcement ; and when he does so, the authority of the former attorney ceases.

Has power to admit service of original process on client, *Masterson et al. v. Le Claire*, 4 Minn.

163. Has power to bind client until final notice of substitution. Statute is imperative,

McFarland v. Butler, 11 Minn. 72. May bind client by admission, Rogers v. Greenwood, 14 Minn. 333.

It is not to be presumed that attorney acts without authority, Gemmell v. Rice et al., 13 Minn. 400.

SEC. 10. *Proceedings when attorney appears without authority.*—If it is alleged by a party for whom an attorney appears, that he does so without authority, the court may at any stage of the proceedings relieve the party for whom the attorney has assumed to appear from the consequences of his acts; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his assumption of authority.

SEC. 11. *Court may require attorney to produce or prove his authority.*—The court or a judge may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear.

CHANGE OF ATTORNEY.

SEC. 12. *Attorney in an action or proceeding, how changed.*—The attorney in an action or special proceeding, may be changed at any time before judgment or final determination, as follows:

First. Upon his own consent, filed with the clerk or entered upon the minutes; or,

Second. Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney are paid by the party asking such change to be made.

Attorney may be changed after judgment, Hinckley et al. v. St Anthony Falls Water Power Co., 9 Minn. 55.

SEC. 13. *Notice of change to be given.*—When an attorney is changed, as provided in the last section, written notice of the change, and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party; until then, he is bound to recognize the former attorney.

SEC. 14. *If attorney of one party dies, the other party shall require another attorney to be appointed—notice, how served.* When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney shall, at least thirty days before any further proceedings against him, be required by the adverse party, by written notice, to appoint another attorney: provided, that if such party is dead or absent from the state, such notice shall be served by filing the same with the clerk of the court where the action is pending.

LIEN OF ATTORNEYS.

SEC. 15. *Lien of attorneys.*—An attorney has a lien for his compensation, whether specially agreed upon or implied, as provided herein:

First. Upon the papers of his client, which have come into his possession in the course of his professional employment.

Second. Upon money in his hands belonging to his client.

Third. Upon money in the hands of the adverse party in an action or proceed-

ing, in which the attorney was employed from the time of giving notice of the lien to that party.

Fourth. Upon a judgment to the extent of the costs included therein, or if there is a special agreement, to the extent of the compensation specially agreed on, from the time of giving notice to the party against whom the judgment is recovered. This lien is, however, subordinate to the rights existing between the parties to the action or proceeding.

Attorney's lien merged by assignment of judgment, *Dodd v. Brott*, 1 Minn. 270. No lien in absence of agreement for compensation, *Forbush v. Leonard et al.*, 8 Minn. 303.

SUMMARY POWER OF THE COURT OVER ATTORNEYS.

SEC. 16. *Power of the court over attorneys.*—When an attorney refuses to deliver over money or papers to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of the supreme court, to do so within a specified time, or show cause why he should not be punished for a contempt.

SEC. 17. *Proceedings when attorney claims lien.*—If, however, the attorney claims a lien upon the money or papers, under the provisions of this chapter, the court may :

First. Impose as a condition of making the order, that the client give security in a form and amount to be directed to satisfy the lien when determined in an action ; or,

Second. Summarily inquire into the facts on which the claim of a lien is founded, and determine the same ; or,

Third. Direct the trial of the controversy by a jury, or refer it, and upon the verdict or report, determine the same, as in other cases.

REMOVAL OR SUSPENSION OF ATTORNEYS AND COUNSELLORS.

SEC. 18. *Supreme court may suspend or remove attorney—causes of suspension or removal.*—An attorney and counsellor may be removed or suspended by the supreme court, at a general term thereof, for either of the following causes, arising after his admission to practice :

First. Upon his being convicted of felony, or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence.

Second. Upon its being shown to the satisfaction of the court, that he has knowingly signed a frivolous pleading, or has been guilty of any other deceit or willful misconduct in his profession.

Third. For a willful disobedience or violation of the order of court, requiring him to do or forbear an act connected with or in the course of his profession.

Fourth. For a willful violation of any of the provisions of section five.

SEC. 19. *Proceedings, by whom instituted.*—The proceedings to remove or suspend an attorney and counsellor, as provided in the last section, may be taken by the court of its own motion for matter within its knowledge, or upon the information of naother.

SEC. 20. *Accusation to be in writing, when.*—If the proceeding is upon the information of another, the accusation shall be in writing, and presented to the court.

SEC. 21. *Accusation to be verified.*—The accusation shall state the matter charged, and be verified by the oath of the person making it, or of some other person, to the effect that the charges therein contained are true.

SEC. 22. *Court may order accused to appear and answer.*—After receiving the accusation, the court shall, if in its opinion the case requires it, make an order requiring the accused to appear and answer the accusation at a specified time in the same or a subsequent term, and cause a copy of the order and of the accusation to be served upon the accused, within a prescribed time before the day appointed in the order.

SEC. 23. *Appearance and answer of accused—proceedings on default.*—The accused shall appear at the time appointed in the order, and answer the accusation, unless for sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed and determine the accusation in his absence.

SEC. 24. *Answer to contain, what.*—The accused may answer the accusation, either by objecting to its sufficiency, or denying its truth.

SEC. 25. *Objection to sufficiency of accusation, how made.*—If he objects to the sufficiency of the accusation, the objection shall be in writing, but need not be in any specified form, it being sufficient if it presents intelligibly the grounds of the objection. If he denies the truth of the accusation, the denial may be oral and without oath, and shall be entered upon the minutes.

SEC. 26. *Objection overruled, accused shall answer.*—If an objection to the sufficiency of the accusation is not sustained, the accused shall answer it forthwith.

SEC. 27. *Proceedings on plea of guilty or upon issue joined.*—If the accused pleads guilty, or refuses to answer the accusation, the court shall proceed to judgment of removal or suspension. If he denies the matter charged, the court shall immediately, or at such time as it may appoint, proceed to try the accusation.

SEC. 28. *On judgment of suspension or removal, accused may make case.*—In case of a judgment of suspension or removal, the accused may within ten days after it is pronounced, make a case setting forth the evidence, and other proceedings in the matter upon the hearing thereof, which shall be settled by the court in the same manner as a case in a civil action; when settled it shall be filed by the clerk of the court by which the judgment was given.

SEC. 29. *What papers constitute judgment roll.*—The following papers shall be annexed together, and filed by the clerk within two days after the filing of the case, or within such further time as the court or judge thereof may prescribe:

First. The accusation.

Second. The objections or answers thereto.

Third. The case mentioned in the last section.

Fourth. A copy of the entries upon the minutes of the court, relating to the accusation and the proceedings thereon, including the order of suspension or removal.

SEC. 30. *Power of courts (except justice's court) over attorneys—order of suspension to state, what.*—Any court, except a justice's court, may suspend an attorney

and counsellor from practising therein, for any of the causes mentioned in section eighteen, for a period not beyond the adjournment of the next general term of the supreme court ; the order of suspension shall state the cause thereof, and be entered upon the minutes, and a certified copy thereof transmitted by the court by which it is made to the next general term of the supreme court which may proceed thereon against the person suspended, in the manner provided in this chapter.

Ex parte Curtis, 3 Minn. 274.