

# GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN  
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-  
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-  
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

CHAPTER 61 (G. S. ch. 88).

ATTORNEYS AND COUNSELLORS.

*Sections.*  
 4354-4360. Admission.  
 4361-4363. Duties.  
 4364-4366. Authority.  
 4367-4370. Change of.

*Sections.*  
 4371. Lien of.  
 4372-4373. Summary power of court over.  
 4374-4386. Removal and suspension.  
 4387-4389. Consultation with prisoners.

ADMISSION.

SEC. 4354. **Requirements.**— Any person of the age of twenty-one years, of good moral character, who possesses the requisite qualifications of learning and ability,\* and who has read law in the office of a regularly admitted attorney and counsellor at least two years,\* is entitled to admission to practice law in all the courts of this state.

G. S. ch. 88, § 1, as amended 1877, ch. 123 (February 28); 1889, ch. 93. Approved April 24th. Amendment of 1877 struck out the word "male." Acts 1889 inserted matter between \*\*. 32 M. 445; 26 M. 28.

SEC. 4355. **Application.**— 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; second, that he is a person of good moral character,\* and has read law in the office of a regularly admitted attorney and counsellor for at least two years,\* which may be shown by certificate or other evidence satisfactory to the court; † *provided*, that any person who was reading law as above required on the first day of July, A. D., eighteen hundred and eighty-eight, may apply for admission at any time after July first, eighteen hundred and eighty-nine, without further proof as to time of such reading; *provided, further*, that any person having received a diploma from the law department of the University of Minnesota, shall, upon presenting the same to the court, within two years from date thereof, be admitted, as provided in this chapter, to practice in this state without further examination as to his learning, ability and time of reading.

G. S. ch. 88, § 2, as amended 1889, ch. 93. Approved April 24th. Amendment inserted matter between \* \*, and added below †.

SEC. 4356. **Attorneys of other states.**— All persons who shall have been admitted to practice in the supreme court of any other state or territory and who shall have become residents of this state, may be admitted to the bar of all the courts of this state, upon production of their certificates of admission to practice in the courts of such other state or territory.

1883, ch. 104, § 1: "An act in relation to the admission of attorneys and the practice of non-resident attorneys in courts of this state." Approved March 3, 1883.

SEC. 4357. **Same — For special cases.**— Any person who has been so admitted to practice in any other state or territory, wherein he shall be still residing, and who shall, as an attorney or counsellor, attend any term of the supreme court or of any district court of this state, for the purpose of trying or participating in the trial or proceedings of or in any action or special proceeding then and there pending, may, upon motion of any attorney or counsellor of such court, and without examination as to his qualifications be, by an order to be entered upon the minutes of the presiding judge, licensed and ad-

mitted to practice in and for the purposes of such action or special proceeding only.

1883, ch. 104, § 2.

SEC. 4358. **Examination.**— 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.

G. S. ch. 88, § 3.

SEC. 4359. **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 practise as an attorney and counsellor in all the courts of this state; and upon entry of the order, he is entitled to practice as such attorney and counsellor.

G. S. ch. 88, § 4. 32 M. 445; 26 M. 28.

SEC. 4360. **None but attorneys to 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.

G. S. ch. 88, § 8.

#### DUTIES.

SEC. 4361. **General duties.**— It is the duty of any attorney and counsellor:

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 defences, only, as appear to him legal and just, except the defence of a person charged with a public offence;

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 secret of his client;

Sixth. To abstain from all offensive personality, and to advance no fact prejudicial to the honor and 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 defenceless or oppressed.

G. S. ch. 88, § 5.

SEC. 4362. **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.

G. S. ch. 88, § 6.

SEC. 4363. **Use of name by others.**— 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.

G. S. ch. 88, § 7.

**AUTHORITY.**

**SEC. 4364. Generally.**— 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.

G. S. ch. 88, § 9. 6 M. 136; 21 M. 51, 56; 23 M. 518; 33 M. 89; 40 N. W. 254, 263.

**SEC. 4365. Appearance 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.

G. S. ch. 88, § 10. 1 M. 241.

**SEC. 4366. Required to produce 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.

G. S. ch. 88, § 11.

**CHANGE OF ATTORNEY.**

**SEC. 4367. When and how made.**— 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.

G. S. ch. 88, § 12.

**SEC. 4368. Notice of change.**— 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.

G. S. ch. 88, § 13.

**SEC. 4369. Death of attorney.**— 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.

G. S. ch. 88, § 14.

**SEC. 4370. Same — When client non-resident.**—Whenever, by reason of death or otherwise, the attorney for a party to an action ceases to act as such, and said party is absent from and has no known place of residence within the state, service of notice requiring said party to appoint another attorney, or to appear in person in such action, may be made upon said party by filing the same in such action with the clerk of the court in which the action is pending; and in case such party shall neither appoint an attorney, nor appear in person therein, within thirty days, he shall not be entitled to notice of any subsequent proceedings in such action.

1866, ch. 39.

#### LIEN OF ATTORNEYS.

**SEC. 4371. Extent of lien.**—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 proceeding 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 herein, 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.

G. S. ch. 88, § 15 (16). 8 M. 303; 1 M. 270; 21 M. 412; 31 M. 201.

#### SUMMARY POWER OF COURT.

**SEC. 4372. Refusal to pay over moneys, etc.**—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 district court of the county in which such attorney resides, or by the supreme court, to do so within a specified time, or show cause why he should not be punished for contempt.

G. S. ch. 88, § 16 (17), as amended 1877, ch. 35. Amendment inserted "the district court of the county in which such attorney resides." Under similar statutes the courts decided that this power is only invoked when the attorney is guilty of misconduct and not when it is simply a difference of opinion as to the fair amount to be retained for services. But where the attorney withholds the whole sum, or a sum so much exceeding a proper or justifiable charge as to amount to a breach of duty and raise a presumption of bad faith, or the amount charged is so apparent as to amount to misconduct, the order will issue. *Burns v. Allen*, 15 R. I. 32; 2 Am. St. 844; 85 N. Y. 284; 23 Hun, 282; 29 Hun, 459; 6 Daley, 111.

**SEC. 4373. Same — 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,

# MINNESOTA STATUTES 1891

SECS. 4374-4381.]

ATTORNEYS AND COUNSELLORS.

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.

G. S. ch. 88, § 17 (18).

## REMOVAL OR SUSPENSION.

SEC. 4374. **In what cases.**— 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 wilful misconduct in his profession;

Third. For a wilful 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 wilful violation of any of the provisions of section five.

G. S. ch. 88, § 18 (19).

SEC. 4375. **How 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 another.

G. S. ch. 88, § 19 (20). 26 M. 28.

SEC. 4376. **Accusation.**— If the proceeding is upon the information of another, the accusation shall be in writing, and presented to the court.

G. S. ch. 88, § 20 (21).

SEC. 4377. **Same — 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.

G. S. ch. 88, § 21 (22).

SEC. 4378. **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.

G. S. ch. 88, § 22 (23).

SEC. 4379. **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.

G. S. ch. 88, § 23 (24).

SEC. 4380. **Answer.**— The accused may answer the accusation, either by objecting to its sufficiency, or denying its truth.

G. S. ch. 88, § 24 (25).

SEC. 4381. **Objection to sufficiency — Denial.**— 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

# MINNESOTA STATUTES 1891

ATTORNEYS AND COUNSELLORS.

[SECS. 4382-4388.]

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.

G. S. ch. 88, § 25 (26).

**SEC. 4382. When objection overruled.**—If an objection to the sufficiency of the accusation is not sustained, the accused shall answer it forthwith.

G. S. ch. 88, § 26 (27).

**SEC. 4383. Plea of guilty — Denial.**—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.

G. S. ch. 88, § 27 (28).

**SEC. 4384. Judgment of suspension, etc.**—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.

G. S. ch. 88, § 28 (29).

**SEC. 4385. 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.

G. S. ch. 88, § 29 (30).

**SEC. 4386. Suspension by district court, etc.**—Any court, except a justice's court, may suspend an attorney and counsellor from practicing therein, for any of the causes mentioned in section<sup>1</sup> 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.

G. S. ch. 88, § 30 (31). <sup>1</sup>Sec. 4374, *ante*. 3 M. 274; 26 M. 28; 32 M. 445.

## CONSULTATIONS BETWEEN ATTORNEYS AND PRISONERS.

**SEC. 4387. In private.**—That all public officers, sheriffs, coroners, policemen, or other officers or persons, having in custody any person committed, imprisoned or restrained of his liberty for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney-at-law of this state who may have been retained by or in behalf of such person so restrained of his liberty, or whom such person may desire to see or consult, to see such person and consult with him alone and in private, at the jail or other place of custody.

1887, ch. 187, § 1: "An act providing for private consultation between attorneys and prisoners." Approved February 21, 1887.

**SEC. 4388. Officers notify attorney.**—That all public officers or other persons having in custody any person arrested, committed, imprisoned or restrained of his liberty for any alleged cause whatever, shall, upon being re-

quested so to do by such person so restrained of his liberty and before other proceedings shall be had, and as soon as practicable after such request is made, notify any practicing attorney-at-law residing in the town, city or place wherein such person is so restrained of his liberty, that such person desires to see and consult with the attorney so notified.

1887, ch. 187, § 2.

SEC. 4389. **Penalties.**— Any public officer or other person who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail for a period of not less than thirty days, nor more than ninety days, or by such fine and imprisonment, at the discretion of any court of competent jurisdiction; and such officer or other person shall also forfeit and pay to the person aggrieved one hundred dollars, the same to be recovered in a civil action.

1887, ch. 187, § 3.