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During 1967, the California courts made decisions dealing with admission to the bar, discipline, the statute of limitations in legal malpractice, and just compensation. The legislature also affected the legal profession by expanding the power of local government to employ private counsel,[1] by changing the rules governing admission of out-of-state attorneys to the bar,[2] and by changing certain fee provisions.[3]

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1. See Cal. Water Code § 71758; Cal. Ed. Code § 1016.5.

2. § 6062 of the Cal. Bus. & Prof. Code was amended to add the provision that an applicant "may demonstrate to the satisfaction of the examining committee that his experience and qualifications qualify him to take an examination." This allows applicants an alternative to the previous requirement of spending four of the previous six years in the practice of law in another state.

3. See Cal. Code Civ. Proc. § 284.

The California Supreme Court decided several important bar admission cases. In *Hallinan v. Committee of Bar Examiners*[4] and *March v. Committee of Bar Examiners*,[5] the Committee of Bar Examiners made value judgments and, in effect, by refusing certification, attempted to punish past conduct of the applicants.

In *Hallinan* the committee refused to certify petitioner who had graduated from an accredited California law school and had passed the California Bar examination. The committee found petitioner did not possess the good moral character necessary for admission, since he had been convicted of such misdemeanors as unlawful assembly, trespass to obstruct lawful business, and unlawful entry, all in connection with civil disobedience. Also noted and discussed by the court was the petitioner's proclivity for settling disputes with fisticuffs. The court noted that out of nine incidents, six were "youthful indiscretions," and that the three most recent fights were satisfactorily explained.

The court indicated that the state bar did not have a right to judge an applicant's philosophy. Hallinan had told the commission that he advocated extralegal means (such as peaceful sit-ins) to achieve a desired end if, and only if, all legal means had been unsuccessfully exhausted. The court held that if it were to deny the right to enter a licensed profession to every person who had engaged in a sit-in or other form of non-violent civil disobedience, it would deprive the community of the services of many highly qualified persons of the highest moral courage. It further held that the committee could not consider past actions of an applicant unless those actions had a direct bearing on the applicant's moral qualifications to practice law. The court found that Hallinan's acts were not necessarily incompatible with the truthfulness, faithfulness, and integrity required to practice law. The issue as stated by the court was not whether the petitioner's conduct should be condoned, but whether the conduct exhibited should deny him admission to practice. Based upon this reasoning,

4. 65 Cal.2d 447, 55 Cal. Rptr. 228, 421 P.2d 76 (1966).

5. 67 Cal.2d 731, 63 Cal. Rptr. 399, 433 P.2d 191 (1967).

the court held that Hallinan should be admitted to the California Bar, thereby reversing the action of the committee.

In reaching its conclusion the court blurred a distinction that it had previously made between application for admission and disciplinary proceedings. In the case of *In re Wells,*[6] it had been held that the court could refuse admission even if the proof of conduct found would not be sufficient cause for disbarment. In *Hallinan,* although the court admitted that there may be some distinctions between refusal of admission and disbarment, it held that "insofar as the scope of inquiry is concerned, the distinction between admission and disciplinary proceedings is today more apparent than real."[7] The court further stated that in admission proceedings, as in disciplinary proceedings, the court must examine and weigh the evidence, and pass upon its sufficiency, resolving any reasonable doubts in favor of the accused. The court stated that:

> Fundamentally, the question involved in both situations is the same—is the applicant for admission or the attorney sought to be disciplined a fit and proper person to be permitted to practice law, and that usually turns upon whether he has committed or is likely to continue to commit acts of moral turpitude. At the time of oral argument the attorney for respondent frankly conceded that the test for admission and for discipline is and should be the same. We agree with this concession.[8]

In *March,* the California Supreme Court also reversed the committee's refusal to certify the petitioner. The petitioner had testified falsely under oath before the Dies Committee, the former House Committee on Un-American Activities. Subsequently, he had made numerous false statements, not under oath, to a union trial committee, and in a later appeal, to executives of the union. The Committee of Bar Examiners made clear that March not only had committed these acts, but also had not mentioned them either on his registration

6. 174 Cal. 467, 163 P. 657 (1917).

7. 65 Cal.2d at 452, 55 Cal. Rptr. at 233, 421 P.2d at 81.

8. 65 Cal.2d at 453, 55 Cal. Rptr. at 233, 421 P.2d at 81.

form as a law student or on his application for examination and admission to practice law. Petitioner March admitted the false testimony, but said that his attendance at law school had effected a change in his outlook. In dealing with the allegation of omissions in the registration forms, the court noted that the petitioner had stated therein that he was a former member of the Young Communist League and the Communist Party, that he had been summoned before the Dies Committee in 1939, and that he had been before the union on charges of being a communist.

> "While it is true that he did not state unequivocally he had made false statements on the occasions in question, his answers on the application, when viewed as a whole, establish that he was not guilty of deliberate concealment."[9]

The court avoided the basic question of whether petitioner's false statements before the Dies Committee and in the union proceedings should justify the conclusion that he was not a fit person to practice law. It determined that since petitioner had convincingly demonstrated his rehabilitation, it was not necessary to decide whether the prior acts constituted moral turpitude. As in *Hallinan,* the court stressed the great weight to be given to recommendations written on petitioner's behalf by an unusually large number of attorneys. As was stated in *Hallinan* "[T]he law looks with favor upon rewarding, with the opportunity to serve, one who had achieved 'reformation and regeneration.' "[10]

A third situation involving admission to practice law was adjudicated in *Chaney v. State Bar.*[11] This case dealt with a rather unique test of the committee's power. An applicant for admission to the bar had twice failed the examination and then brought suit in the United States District Court under the Civil Rights Act of 1871,[12] seeking an injunction and damages for lack of certification. Chaney named the

9. 67 Cal.2d at 743, 63 Cal. Rptr. at 407, 433 P.2d at 199.

10. 65 Cal.2d at 462, 55 Cal. Rptr. at 239, 421 P.2d at 87.

11. 386 F.2d 962 (9th Cir. [1967]).

12. 42 U.S.C. § 1983.

state bar, members of its Board of Governors, and members of its Committee of Bar Examiners as defendants. Appellant contended that the essay type of examination was fundamentally unfair and that it was used "to control competition" since only about one-half of those taking the examination passed. The Court of Appeals for the Ninth Circuit affirmed the trial court's dismissal. Because the failure to pass an essay type of examination was not a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States, the applicant had no cause of action under the Civil Rights Act of 1871.

The court indicated that California had a right to require high standards of qualification for admission to its bar, so long as the standards were equal and fair. The court further held that, under California law, the Committee of Bar Examiners merely acts as an instrumentality of the California Supreme Court for the purpose of assisting in matters of admission, and that only the California Supreme Court has authority to permit an applicant to practice law. The court reiterated that it would look into any situation where an applicant could show that the committee had failed him on the bar examination because of fraud, imposition, or coercion. However, since no appeal along these lines had been made through the state courts, the matter was not ripe for federal action.

We turn next to traditional concepts of disciplinary proceedings: contempt and disbarment. In *Miller v. Municipal Court*,[13] the court of appeal reversed a contempt conviction. It held that a deputy public defender was not in direct contempt for failing to appear in the courtroom at a designated time as a consultant to a defendant, who was appearing *in propria persona*. The deputy's delay had not left the defendant in court without a legal adviser, since another deputy public defender was present. The deputy against whom the contempt proceedings were brought had been delayed because, at the public defender's request, he had been attending to other matters connected with the defendant's case. Care had

13. 249 Cal. App.2d 531, 57 Cal. Rptr. 578 (1967).

been taken to notify the judge that the deputy would be late. The court distinguished this case from *Lyons v. Superior Court*[14] and *Arthur v. Superior Court,*[15] where the failure of the respective attorneys to appear had made it impossible for the trials to continue, and where the court had not been advised in either case that the attorney would not be present.

In *Vaughn v. Municipal Court,*[16] also decided this year, counsel was held in contempt both for misrepresentation of facts to the court in a successful attempt to obtain a continuance in a criminal trial, and for failing to appear at the ordered time of the continuance. Vaughn had informed the court that a continuance of his Los Angeles appearance was required because he had a trial in another city on that day; in fact he had no such trial. Vaughn then failed to appear on the new date. The court reiterated from *Miller* that willful failure to appear at a trial at the appointed time constitutes direct contempt. Regarding the element of misrepresentation, the court stated the "conduct denounced . . . is not the act of an attorney by which he successfully misleads the court, but the presentation of a statement of fact, known by him to be false, which tends to do so."[17] The court, in rejecting the attorney's exception to the failure of the judge to disqualify himself, stated that with the commission of a direct contempt, the judge in whose presence the contempt is committed has the constitutional power to punish the offender summarily, since the necessities of the case will require that the affronted judge preside. Furthermore, the court, in summarily rejecting the attorney's claim that due process was violated by failure to inform him of his constitutional rights under *Escobedo*[18] and *Dorado,*[19] stated:

> How can an experienced lawyer, under these circumstances, who considered himself well enough qualified

14. 43 Cal.2d 755, 278 P.2d 681 (1955).

15. 62 Cal.2d 404, 42 Cal. Rptr. 441, 398 P.2d 777 (1965).

16. 252 Cal. App.2d 348, 60 Cal. Rptr. 575 (1967).

17. 252 Cal. App.2d at 358, 60 Cal. Rptr. at 581.

18. Escobedo v. State of Illinois, 378 U.S. 478, 12 L.Ed.2d 977, 84 S.Ct. 1758 (1964).

19. People v. Dorado, 62 Cal.2d 338, 42 Cal. Rptr. 169, 398 P.2d 361 (1965).

> to represent literally hundreds of persons charged with a variety of serious felonies (murder, burglary, assault with a deadly weapon . . .) now, in good faith, make the claim that . . . he did not know of his constitutional rights.[20]

It was also pointed out that the attorney had had ample opportunity to obtain counsel for himself, and that he had elected not to do so.

In the three disciplinary proceedings for misappropriation in 1967, the court meted out punishment ranging from suspension from practice and probation to disbarment. In *In re Urias,*[1] counsel had been convicted of grand larceny. Urias was not disbarred, because consideration was given to his subsequent rehabilitation from the alcoholism which had caused the financial hardship under which he had operated at the time of the theft.

Although extenuating circumstances were taken into consideration in *Urias,*[2] nevertheless, in *Simmons v. State Bar*[3] the court reiterated that misappropriation of funds entrusted to an attorney is a serious breach of professional ethics and morality, and is deserving of disbarment in the absence of extenuating and mitigating circumstances. Failing to find such extenuating or mitigating circumstances in this case, the court upheld a two-year suspension recommended by the State Bar.

In *Grove v. State Bar,*[4] two proceedings, one for suspension and one for disbarment, were consolidated for hearing. The court determined that petitioner should be disbarred, and did not consider the suspension. Grove had been charged not only with taking money from clients, but with nonperformance

20. 252 Cal. App.2d at 365–366, 60 Cal. Rptr. at 586.

1. 65 Cal.2d 258, 53 Cal. Rptr. 881, 418 P.2d 849 (1966).

2. "Prior to 1955 petitioner's conviction of grand theft would have resulted in automatic disbarment (Stats. 1939, ch. 34, p. 357), and the vast majority of grand theft convictions of attorneys since that date have resulted in disbarment or resignation with prejudice." 65 Cal.2d at 262, 53 Cal. Rptr. at 883, n. 5, 418 P.2d at 851, n. 5 (1966).

3. 65 Cal.2d 281, 54 Cal. Rptr. 97, 419 P.2d 161 (1966).

4. 66 Cal.2d 680, 58 Cal. Rptr. 564, 427 P.2d 164 (1967).

of promised legal action. He had a history of allowing the statute of limitations to run, failing to appear in court, and failing to return documents and records of various clients. In each instance, he had refused to answer letters and telephone calls from clients concerning these matters. The only evidence his defense offered in mitigation was a report furnished by a psychiatrist indicating that Grove was neurotic. The court held that although one count would not be grounds for disbarment, the ten incidents which were before the court indicated that his persistent failure to perform services for which he had been engaged was willful and deliberate. Although the court appreciated the petitioner's frankness in recognizing his problem, it felt obligated to disbar the attorney to protect the public, and stated:

> In this area our duty lies in the assurance that the public will be protected in the performance of the high duties of the attorney rather than in an analysis of the reasons for his delinquency. Our primary concern must be the fulfillment of proper professional standards, whatever the unfortunate cause, emotional or otherwise, for the attorney's failure to do so.[5]

Turning to the area of the statute of limitations involving actions for legal malpractice, there were two cases decided in 1967. In *Fazio v. Hayhurst*,[6] the client, in reliance on negligent advice of counsel, had elected to take under her husband's will rather than to take her intestate share. The attorney also negligently prepared and filed the order settling the final account, wherein he listed all of the estate as separate property rather than community property. The client thereby lost approximately $47,000. The election was signed on October 23, 1962, more than two years before the action for malpractice was brought. However, the decree of distribution was entered within the two-year period prior to the bringing of the action. The court held that the client had not *irrevocably* acted upon the advice of her counsel until the final decree of distribution was entered, inasmuch as her right to

5. 66 Cal.2d at 685, 58 Cal. Rptr. at 567, 427 P.2d at 167.

6. 247 Cal. App.2d 200, 55 Cal. Rptr. 370 (1966).

change her election was preserved until that time. Thus, the two-year statute commenced running at the time of the final distribution, rather than at the time of the signing of the election.

In *Eckert v. Schaal,*[7] a group of co-adventurers purchased property, formed a corporation, and sold the property to the corporation at an undisclosed profit. One year and six months after the sale had been completed, the clients were sued by other shareholders for the undisclosed profits, and seven months later the clients cross-complained in that action against their attorney for malpractice in having failed to advise them that the profits should have been disclosed to the corporation at the time of the sale. In sustaining the demurrer to the cross-complaint on the grounds that the statute of limitations had run, the court distinguished *Fazio,* since there the election to take under the will could have been revoked up until the time of distribution of assets of the estate, whereas once the corporate sale in *Eckert* had been made at an undisclosed profit, the action could not be revoked or reversed.

A number of cases this year dealt with the problem of just compensation for attorneys. In *Estate of Morinini,*[8] the court held the granting of attorney's fees to be an abuse of discretion in the absence of a valid contest for letters of administration. In this case, decedent owned property in Monterey County and his family resided in Switzerland. Prior to filing his petition for letters of administration, the Public Administrator of Monterey County had contacted the surviving wife's sister. The sister had approved of his filing the petition, but she was subsequently requested by the decedent's wife in Switzerland to act as administratrix and consequently filed a petition. The public administrator was so notified, but did not withdraw his petition. The superior court granted letters of administration to the sister and awarded attorney's fees to the public administrator. In holding this to be an abuse of discretion, the court stated that employing an attorney for a petition for letters of administration is a contract made

7. 251 Cal. App.2d 1, 58 Cal. Rptr. 817 (1967).

8. 252 Cal. App.2d 852, 60 Cal. Rptr. 813 (1967).

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in advance of any authority over the estate. Whether the application is successful or not, in the absence of special circumstances, the estate is not to be charged therefor.

Spencer v. Taylor[9] involved a retaining lien arising from a divorce proceeding wherein a trust account had been created for the husband and wife by their respective counsel. The wife thereafter discharged her attorney and agreed that all the money in the trust account belonged to her husband. When the husband sought to acquire the money, the wife's former attorney refused to release it and claimed a lien thereon for his fee. At the same time, the attorneys sought to recover the fees directly from the wife. The main issue on appeal was whether a common-law retaining lien existed. While reiterating that a lien on behalf of an attorney for fees may be created as a result of a specific agreement therefor, the court indicated that California law is unclear as to whether a retaining lien, in fact, exists in California.[10] The court went on to say:

> In any event, we do not find it necessary to resolve the perplexing question of whether a common-law retaining lien exists in this state . . . because respondents did not and could not acquire such a lien under the facts of this case.
>
> To hold that an attorney may acquire a retaining lien . . . on property which he acquired . . . with the duty which he voluntarily assumed as a trustee . . . would be repugnant to the high professional standard which the attorney must maintain during all phases of litigation. . . .[11]

By holding that a common-law retaining lien would not apply in this case, the court avoided determining whether such a lien exists in California.

9. 252 Cal. App.2d 735, 60 Cal. Rptr. 747 (1967).

10. 252 Cal. App.2d at 744, 60 Cal. Rptr. at 754.

11. 252 Cal. App.2d at 744–745, 60 Cal. Rptr. at 754.

McCafferty v. Gilbank[12] dealt with another aspect of liens in California. Here the former wife of the plaintiff in a personal injury action had obtained a judgment against him for back alimony and child support. Their respective attorneys had entered into an agreement whereby the ex-wife was to receive one-half of the proceeds of the plaintiff's personal injury action in settlement of her judgment. Upon its receipt by plaintiff and his attorney, the check was cashed. No funds were furnished to the ex-wife. In reversing a non-suit granted in an action for conversion against the attorney, the court held that it was the attorney's duty to see that plaintiff's ex-wife was paid, pursuant to his agreement with her attorney, despite the fact that there was no actual lien attached to the funds.

An attorney's duty was discussed in *Gold v. Greenwald.*[13] This case dealt with duty to a long-time client who became a business partner. Here the attorney sued the client for termination of an oral joint venture and for an accounting. The court ruled that although the joint venture would have been fair between two non-lawyers, there is a presumption of undue influence if the attorney does not advise his client as if the client were a third party, or advise the client to seek independent counsel. The attorney had failed to warn the client of the dangers inherent in the joint venture and the dangers of dealing with him. The court, in affirming the decision of the trial court, held that the joint venture was therefore unenforceable against the defendant-client.

The court of appeal also considered the necessity of a judge's impartiality. In the judiciary, a conflict of interest generally results in the disqualification of the judge.[14] In *Tatum v. Southern Pacific Company*,[15] the judge disqualified himself when he learned that he was trustee of 400 shares in the defendant corporation. However, this was not until after the liability aspect of the case had been tried. After

12. 249 Cal. App.2d 569, 57 Cal. Rptr. 695 (1967).

13. 247 Cal. App.2d 296, 55 Cal. Rptr. 660 (1966).

14. The pertinent California statutes are §§ 170 and 170a of the Cal. Code Civ. Proc.

15. 250 Cal. App.2d 40, 58 Cal. Rptr. 238 (1967).

verdict for the defendant, plaintiff made a motion for a new trial on the grounds of error of law and insufficiency of the evidence. On the motion, the lower court vacated the judgment and granted a new trial on the sole ground of disqualification. The appellate court admitted that a judgment against defendant would have had no effect on the value of the stock; that the judge had not been aware of his holding of the stock before he rendered the verdict; and that no error had been shown in the trial itself. However, under the terms of section 170 of the Code of Civil Procedure, designed to encourage faith in the fairness of courts, the disqualification of an interested judge is absolute; the statute is inflexible and leaves the judge with no jurisdiction to proceed, regardless of the degree of such interest.[16] Counsel for defendant queried whether, if such a judgment is absolutely void and no statute of limitations applies, the discovery of interest many years after judgment might not cause serious problems. The court avoided this argument by pointing out that it is based on mere possibility and is inapplicable here. The case points out that any act of a disqualified judge in violation of section 170 of the Code of Civil Procedure[17] is absolutely void wherever brought in question; that consent of the parties cannot impart validity to the proceedings; and that a party to the action is not estopped from attacking it by the fact that he attended the trial without raising the objection. Therefore it is well established that, under the California rules, ownership by the judge of a single share of stock of a corporate party to the litigation disqualifies the judge from proceeding in the action.[18]

Major developments in the matter of professional responsibility have been created outside the courts and the legislature, at least in California, in the past year. The American Bar

16. Lindsay-Strathmore Irr. Dist. v. Superior Court, 182 Cal. 315, 187 P. 1056 (1920).

17. Cal. Code Civ. Proc. § 170(2) states that "No justice or judge shall sit or act as such in any action or proceeding . . . in which he is interested as a holder or owner of any capital stock of a corporation, or of any bond, note or other security issued by a corporation; . . ."

18. This is not so on the federal side, as illustrated by the case of **Lampert v.** Hollis Music, 105 F. Supp. 3 (**E.D. N.Y.** [1952]).

Association and the California Bar Association are giving a hard look at the canons of ethics and rules of professional conduct, with an eye towards specialization. The *United Mine Workers v. Illinois Bar Association*[19] case has brought the question of group legal services before the bar and the public once more. The neighborhood legal centers, whatever their sponsorship, have raised questions such as who shall control these centers and who shall decide what cases are to be taken. The centers have been remarkably active in the past year. Many of the cases handled by these centers have brought a new emphasis to the legal profession in the fields of debtor remedies, landlord-tenant, welfare, and uninsured motorist. Out of this may come an entirely new area of instruction in the subject of poverty law, both in the law schools[20] and by the Continuing Education of the Bar of California. It has been proposed that a group of lawyers working for the Office of Economic Opportunity legal service centers be formed into a separate staff of research attorneys whose primary function would be to further law reform and social change, with the neighborhood centers instructed to keep an eye out for certain fact situations involving clients who come to the centers.[1]

To end on a pleasant note, a recent article in the *Wall Street Journal* stated that a certain New York law firm was prepared to offer $15,000 per year to attorneys who have just passed the bar. It would seem that one reason for the necessity of paying this unusually high stipend to new lawyers is the scarcity to established law firms of available recruits created by the number of lawyers choosing to enter such legal aid programs as those just discussed.

19. 389 U.S. 217, 19 L.Ed.2d 426, 88 S.Ct. 353 (1967).

20. CEB Legal Ser. Gazette, Vol. I, No. 11, p. 135.

1. CEB Legal Ser. Gazette, Vol. II, No. 3, p. 61.