Chapter 9

Attorneys; Law Libraries

Chapter 9

ATTY. GEN. OPINIONS: Status of bar as state agency, 1952-54, p 246; city license fee imposed on state licensed occupations, (1970) Vol 34, p 1089.

LAW REVIEW CITATIONS: 5 WLJ 226.

9.010

NOTES OF DECISIONS

An attorney is a public officer. State v. Estes, (1898) 34 Or 196, 51 P 77, 52 P 571, 55 P 25; In re Crum, (1922) 103 Or 296, 204 P 948; State v. Goldstein, (1923) 109 Or 497, 220 P 565; Louth v. Woodard, (1925) 114 Or 603, 236 P 480.

Authority to determine who are qualified to become attorneys is vested in the Supreme Court. In re Crum, (1922) 103 Or 296, 204 P 948.

Proceedings for admission to the practice of law are of a judicial character. Id.

The Oregon State Bar is an agency of the state and is authorized to carry out the provisions of the statute by which it was created. In re Glover, (1937) 156 Or 558, 68 P2d 766.

FURTHER CITATIONS: In re Reinmiller, (1958) 213 Or 680, 325 P2d 773; Corvallis Sand & Gravel Co. v. State Land Bd., (1968) 250 Or 319, 439 P2d 575.

ATTY. GEN. OPINIONS: Constitutionality of making Oregon State Bar a state agency, 1942-44, p 131; status of bar as state agency, 1952-54, p 246.

LAW REVIEW CITATIONS: 13 OLR 19; 14 OLR 475; 15 OLR 39; 19 OLR 1.

9.020

ATTY. GEN. OPINIONS: Eligibility of district attorney to serve as member of Board of Governors of the Oregon State Bar, 1934-36, p 401; eligibility of circuit judge to serve as member of Board of Governors of the Oregon State Bar, 1942-44, p 43; status of member of Board of Governors after he is appointed to the circuit court, 1950-52, p 215; election of governors after redistricting, 1964-66, p 350.

9.040

ATTY. GEN. OPINIONS: Election of governors after redistricting, 1964-66, p 350.

9.050

ATTY. GEN. OPINIONS: Status of member of Board of Governors after he is appointed to the circuit court, 1950-52, p 215.

9.060

ATTY. GEN. OPINIONS: Status of member of Board of Governors after he is appointed to the circuit court, 1950-52, p 215.

9.080

NOTES OF DECISIONS

The primary duty of the Oregon State Bar is to see that the lawyers of the state conduct themselves honestly and in accord with approved standards of professional conduct. Ex parte Eastman, (1936) 155 Or 15, 62 P2d 27.

9.160

NOTES OF DECISIONS

The practice of law includes the drafting or selection of documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons being served. Oregon State Bar v. Sec. Escrows, Inc., (1962) 233 Or 80, 377 P2d 334.

Advising prospects as to specific needs in estate planning by drawing upon the law is the practice of law. Oregon State Bar v. John H. Miller & Co., Inc., (1963) 235 Or 341, 385 P2d 181.

FURTHER CITATIONS: Estate of Nelson, (1921) 101 Or 14, 198 P 892; Northerwestern Nat. Ins. Co. v. Averill, (1935) 149 Or 672, 42 P2d 747.

ATTY. GEN. OPINIONS: Effect of section on right of realtors to prepare deeds and mortgages, 1936-38, p 190; appearance by one not an attorney in court for registering birth, 1942-44, p 175; representation by nonlawyer before public agencies, 1962-64, p 52; authority of real estate commissioner to revoke or suspend escrow agency license for alleged unauthorized practice of law, 1966-68, p 43; authorized representative of public employe at hearings before the Civil Service Commission, 1966-68, p 384; representation by nonlawyer before public agencies, (1968) Vol 34, p 91.

LAW REVIEW CITATIONS: 17 OLR 1; 43 OLR 171-177; 7 WLJ 201-206.

9.210

ATTY. GEN. OPINIONS: Same person as legislator and bar examiner, 1960-62, p 170.

9.220

NOTES OF DECISIONS

The applicant must show that he is of good moral character. State v. Winton, (1884) 11 Or 456, 5 P 337, 50 Am Rep 486; State v. Edmunson, (1922) 103 Or 243, 204 P 619; In re Crum, (1922) 103 Or 296, 204 P 948; State v. Estes, (1922) 105 Or 173, 209 P 486.

The burden of proving good moral character is not shifted from an applicant for admission to the bar to the State Board of Bar Examiners by permitting him to take the annual bar examination based upon the formal showing of his qualifications. In re Weinstein, (1935) 150 Or 1, 42 P2d 744; State v. Poyntz, (1936) 152 Or 592, 52 P2d 1141, 54 P2d 1212.

The burden is upon an applicant to prove his good moral character. In re Weinstein, (1935) 150 Or 1, 42 P2d 744; State v. Poyntz, (1936) 152 Or 592, 52 P2d 1141, 54 P2d 1212; In re Jolles, (1963) 235 Or 262, 383 P2d 388.

Before a person can be admitted to the profession, he must show by an examination that he possesses the requisite learning and ability. State v. Winton, (1884) 11 Or 456, 5 P 337, 50 Am Rep 486.

A federal court has no authority to review or reverse the action of the Supreme Court in denying an application for admission to the bar. Keeley v. Evans, (1921) 271 Fed 520.

Subject to constitutional limitations, the legislature has the right to prescribe the qualifications and provide the regulations under which a citizen may engage in the practice of law. In re Crum, (1922) 103 Or 296, 204 P 948.

Proceedings for admission of attorneys are judicial. Id.

An applicant whose right to admission has been challenged is entitled to confront the witnesses against him, subject them to cross-examination, and to invoke rules of evidence. Id.

An applicant for admission as an attorney must apply to the Supreme Court. State v. Edmunson, (1922) 103 Or 243, 204 P 619.

One who knowingly makes a false statement in an affidavit is not fit to be admitted. Id.

When the applicant has made a prima facie showing of good character as provided by a rule of the Supreme Court and has paid the fee and taken the examination, those making objections must offer evidence to support the same and to overcome the prima facie showing thus made. State v. Poyntz, (1936) 152 Or 592, 52 P2d 1141, 54 P2d 1212.

FURTHER CITATIONS: In re Patterson, (1956) 210 Or 495, 302 P2d 227, 318 P2d 907; In re Cheek, (1967) 246 Or. 433, 425 P2d 763; State v. McMaster, (1971) 259 Or 291, 486 P2d 567.

9.240

NOTES OF DECISIONS

A notice of appeal executed by an attorney licensed in another state, but not in Oregon, is invalid and the appeal will be dismissed. In re Nelson's Estate, (1921) 101 Or 14, 198 P 892; Northwestern Nat. Ins. Co. v. Averill, (1935) 149 Or 672, 42 P2d 747.

FURTHER CITATIONS: In re Leonard, (1885) 12 Or 93, 6 P 426, 53 Am Rep 323; Keeley v. Evans, (1921) 271 Fed 520.

9.250

NOTES OF DECISIONS

The order of admission is the judgment of the court that the applicant possesses the necessary qualifications and is fit to be entrusted with the responsible duties of the office. State v. Winton, (1884) 11 Or 456, 5 P 337, 50 Am Rep 486.

An applicant who is found to be qualified must take an oath to support the Constitution and laws of the United States and of this state. State v. Edmunson, (1922) 103 Or 243, 204 P 619.

9.260

NOTES OF DECISIONS

The resignation of an attorney without consent of the court is ineffectual to preclude his disbarment in pending proceedings. Ex parte Thompson, (1898) 32 Or 499, 52 P 570, 40 LRA 194; In re King, (1940) 165 Or 103, 105 P2d 870.

After his resignation is filed, the attorney is not entitled to the rights nor subject to the disabilities or prohibitions incident to that relation. Ex parte Thompson, (1898) 32 Or 499, 52 P 570, 40 LRA 194.

The name of an attorney is not removed from the rolls by his resignation, unless the court approves such action. Id.

Disbarment proceedings were dismissed following the resignation of the attorney. Ex parte Garrigus, (1895) 28 Or 587, 46 P 1118; Ex parte Pilkington, (1895) 28 Or 587, 46 P 1118.

9.310

NOTES OF DECISIONS

An attorney in justice's court acts largely as counsel, and his authority is limited to matters there transpiring. Byers v. Cook, (1886) 13 Or 297, 10 P 417.

This section was intended to recognize and preserve the common-law distinction between a counselor and an attorney at law. Lehman v. Knott, (1921) 100 Or 240, 187 P 1109.

FURTHER CITATIONS: In re Comstock, (1875) 3 Sawy 517, Fed Cas No. 3,080; Walk v. Hibberd, (1913) 65 Or 497, 133 P 95; Scarth v. Scarth, (1957) 211 Or 121, 315 P2d 141.

9.320

NOTES OF DECISIONS

A party who has appeared by attorney in the court below may not sign a notice of appeal in his own name if the record fails to show any change. Poppleton v. Nelson, (1882) 10 Or 437.

A notice of appeal is a "written proceeding" within the meaning of this section. Id.

When an attorney is employed by a party to an action in a court of record and gives notice of his retainer, he stands in the place of his client and should be served with all subsequent papers in the action not required by law to be served upon the party. Byers v. Cook, (1886) 13 Or 297, 10 P 417.

Service of a notice of appeal upon an attorney associated for trial purposes with the party's regular attorneys is sufficient in the absence of anything tending to indicate to the adverse party that his relationship terminated at the end of the trial. Lehman v. Knott, (1921) 100 Or 240, 187 P 1109.

A corporation cannot appear in any suit, action or proceeding except by attorney. State v. Almeda Consol. Mines Co., (1923) 107 Or 18, 212 P 789.

FURTHER CITATIONS: Multnomah Lbr. Co. v. Weston Basket Co., (1909) 54 Or 22, 90 P 1046, 102 P 1; Scarth v. Scarth, (1957) 211 Or 121, 315 P2d 141.

ATTY. GEN. OPINIONS: Appearance at tax hearing by non lawyer representative, (1968) Vol 34, p 91.

LAW REVIEW CITATIONS: 14 OLR 475; 43 OLR 173.

9.330

NOTES OF DECISIONS

1. In general
2. Binding client in proceedings
3. Termination of authority
4. Satisfaction and settlement

1. In general

The appearance of an attorney raises a presumption of his authority. State v. Estes, (1898) 34 Or 196, 51 P 77, 52 P 571, 55 P 25; Louth v. Woodard, (1925) 114 Or 603, 236 P 480.

Where no successor was ever elected or appointed for one who was elected president of a corporation and appointed its managing agent and attorney, he will be presumed to have authority 15 years later to maintain an action in its behalf. Lucky Queen Min. Co. v. Abraham, (1894) 26 Or 282, 38 P 65.

Where the want of authority is questioned, the burden of proof is on the party attacking. (Alaska) Bonnifield v. Thorp, (1896) 71 Fed 924.

An attorney's authority may be challenged by a motion to vacate an order, judgment or decree where the motion depends upon the jurisdiction of the court over the person of the party, acquired solely by appearance by attorney. Id.

An attorney is not liable for negligence in not suing a person on a claim where the client with full knowledge of the facts directed the attorney to sue another. Lord v. Hamilton, (1899) 34 Or 443, 56 P 525.

An attorney is not estopped from showing that money collected did not belong to the principal, and that he paid it to a claimant under a paramount title. Moss Mercantile Co. v. First Nat. Bank, (1905) 47 Or 361, 82 P 8, 8 Am Cas 569, 2 LRA (NS) 657.

The office of an amicus curiae is restricted to making suggestions as to questions apparent upon the record, or matters of practice presenting themselves for determination in course of proceedings in open court; he cannot take upon himself the management of the cause as counsel. State v. McDonald, (1912) 63 Or 467, 128 P 835, Ann Cas 1915A, 201.

2. Binding client in proceedings

Exclusive control of stipulations and agreements by attorneys concerning the conduct and management of the case, is given the attorney. Nightingale v. Ore. Central R. Co., (1873) 2 Sawy 338, Fed Cas No. 10,264.

An attorney cannot bind his principal for the expense of a lock to secure the door of a building containing property attached in such action. Glenn v. Savage, (1887) 14 Or 567, 13 P 442.

A stipulation extending time to answer, if made by a party who is represented in court by an attorney, should be disregarded. (Alaska) Bonnifield v. Thorp, (1896) 71 Fed 924.

The admissions of an attorney, made within the scope of his authority and during the continuance of his employment, bind his client to the same extent as a stipulation. Heywood v. Doernbecher Mfg. Co., (1906) 48 Or 359, 86 P 357, 87 P 530.

A general retainer authorizes an attorney to admit service of process whereby jurisdiction of the person is conferred. Multnomah Lbr. Co. v. Weston Basket Co., (1909) 54 Or 22, 99 P 1046, 102 P 1.

All the proceedings in court to enforce the remedy, to bring the claim, demand, cause of action or subject matter of the suit to hearing, trial, determination, judgment and execution are within exclusive control of the attorney. Cartwright v. Moffett, (1914) 69 Or 368, 136 P 881, 138 P 1076.

3. Termination of authority

The death of party terminates the authority of his attorney and the attorney cannot be served with notice of appeal. Holt v. Idleman, (1898) 34 Or 114, 54 P 278; Oregon Auto-Dispatch v. Cadwell, (1913) 67 Or 301, 135 P 880.

The relationship of attorney and client terminates on entry of judgment against client, but if judgment is favorable it continues for three years to enable supervision of collection. De Vall v. De Vall, (1910) 57 Or 128, 109 P 755, 110 P 705.

When judgment is enforced or satisfied, the attorney's authority ceases absolutely. Kamm v. Starr, (1871) 1 Sawy 547, Fed Cas No. 7,604.

4. Satisfaction and settlement

An attorney cannot accept anything other than money in satisfaction of a judgment, except by special authority. Barr v. Rader, (1897) 31 Or 225, 49 P 962.

An attorney has no implied authority to compromise or settle a client's claim outside of pending litigation, unless under exceptional circumstances. Fleishman v. Meyer, (1905) 46 Or 267, 80 P 209.

A client may compromise a suit independent of his attorney. Snow v. Beard, (1917) 82 Or 518, 162 P 258.

Where client obtains judgment for return of property or for its value, his attorney can satisfy judgment upon payment of assessed value. Davidhizar v. Elgin Forwarding Co., (1918) 89 Or 89, 173 P 893.

On motion to require satisfaction of judgment, service is insufficient where made four years after entry of judgment on attorney therein who ceased to be party's attorney three years prior to motion. Herrick v. Wallace, (1925) 114 Or 520, 236 P 471.

FURTHER CITATIONS: Manning v. Hayden, (1879) 5 Sawy 360, Fed Cas No. 9,043; Walk v. Hibberd, (1913) 65 Or 497, 133 P 95; Caples v. Ditchburn, (1917) 87 Or 264, 169 P 510; Union Central Life Ins. Co. v. Toliver, (1936) 152 Or 185, 52 P2d 1129; Jaeger v. Jaeger, (1960) 224 Or 281, 356 P2d 93.

9.340

NOTES OF DECISIONS

This section applies only where a party challenges an attorney's authority during the progress of the action; it does not apply to a collateral attack four years after an adverse decree was rendered. Louth v. Woodard, (1925) 114 Or 603, 236 P 480.

A defendant by failing to disavow the authority of an attorney employed by his codefendant in conducting a defense, after having knowledge of such employment, ratifies the attorney's acts and is bound by the decree. Id.

FURTHER CITATIONS: Jaeger v. Jaeger, (1960) 224 Or 281, 356 P2d 93.

9.360

NOTES OF DECISIONS

This section relates to the attorney's retaining lien but does not relate to his charging lien. Crawford v. Crane, (1955) 204 Or 60, 282 P2d 348; Lee v. Lee, (1971) 92 Or App 437, 482 P2d 745.

9.370

NOTES OF DECISIONS

This section relates to the attorney's retaining lien but does not relate to his charging lien. Crawford v. Crane, (1955) 204 Or 60, 282 P2d 348.

The procedure provided by subsection (2) is not available to establish a charging lien. Lee v. Lee, (1971) 5 Or App 74, 482 P2d 745.

9.380

NOTES OF DECISIONS

"Final determination" of a suit to enforce the lien of a

mortgage is the order confirming the sale. Manning v. Hayden, (1879) 5 Sawy 360, Fed Cas No. 9,043.

A change of attorney after judgment, decree or final determination is not provided for in the code. Shirley v. Birch, (1888) 16 Or 1, 18 P 344.

The permanent removal from the state of a member of a firm of attorneys does not terminate the remaining partner's rights and duties under a contract of employment of the firm to represent a client in litigation; and so service of notice on remaining partner is equivalent to service on the client. DeVall v. DeVall, (1910) 57 Or 128, 109 P 755, 110 P 705.

Executors may change attorneys with or without cause although will directed executors to select named person as attorney for estate. In re Lachmund's Estate, (1946) 179 Or 420, 170 P2d 748.

FURTHER CITATIONS: Scarth v. Scarth, (1957) 211 Or 121, 315 P2d 141.

9.390

NOTES OF DECISIONS

In proceedings to take and perfect an appeal, the respondent is bound to recognize the attorneys of record in the suit below where no change of attorneys has been made. Poppleton v. Nelson, (1882) 10 Or 437.

A notice of appeal by attorneys other than those who represented appellant below is sufficient, although there has been no substitution of attorneys. Shirley v. Birch, (1888) 16 Or 1, 18 P 344.

Until an attorney notifies the attorney of the adverse party of his retirement from a cause, the service of any notice in the action on him is effectual. DeVall v. DeVall, (1910) 57 Or 128, 109 P 755, 110 P 705.

Plaintiff's motion to dismiss an appeal was denied when made through attorneys other than those who conducted the trial and who had not been substituted. Russell v. Crook County Court, (1915) 75 Or 168, 145 P 653, 146 P 806.

Acceptance of notice of appeal by an associate attorney was sufficient where he held himself out as attorney after the trial, notwithstanding no substitution of attorneys was had. Lehman v. Knott, (1921) 100 Or 240, 187 P 1109.

FURTHER CITATIONS: Scarth v. Scarth, (1957) 211 Or 121, 315 P2d 141.

9.460 to 9.580

LAW REVIEW CITATIONS: 43 OLR 176.

9.460

NOTES OF DECISIONS

The duty of an attorney to maintain inviolate the confidence of his client is declaratory of the common law. State v. Gleason, (1890) 19 Or 159, 23 P 817.

A conviction of misdemeanor involving moral turpitude, such as unlawful sale of intoxicating liquor or crime of libel, establishes wilful violation of duty to uphold laws. State v. Edmunson, (1922) 103 Or 243, 204 P 619.

An attorney who makes a false affidavit to obtain a passport violates his duty to support laws. State v. Woerndle, (1923) 109 Or 461, 209 P 604, 220 P 744.

A brief in the Supreme Court reflecting upon the integrity and motive of the trial judge is an abuse of attorney's duties; the court may strike the brief unless apology is made. Strowbridge v. City of Chiloquin, (1929) 130 Or 444, 277 P 722, 280 P 657.

Attorney disbarred for misrepresenting jurisdictional facts in divorce case and for other violations of ethics. In re Reinmiller, (1958) 213 Or 680, 325 P2d 773.

FURTHER CITATIONS: Bingham v. Salene, (1887) 15 Or 208, 14 P 523, 3 Am St Rep 152; Powell v. Willamette Valley R. Co., (1887) 15 Or 393, 15 P 663; State v. Mannix, (1930) 133 Or 329, 288 P 507, 290 P 745; In re Means, (1956) 207 Or 638, 298 P2d 983; Oregon v. Yates, (1956) 208 Or 491, 302 P2d 719; Toomey v. Moore, (1958) 213 Or 422, 325 P2d 805; In re Heider, (1959) 217 Or 134, 341 P2d 1107; In re Weinstein, (1961) 228 Or 1, 363 P2d 762; In re Farris, (1961) 229 Or 209, 367 P2d 387; In re Reynolds, (1962) 231 Or 159, 372 P2d 188; In re Weinstein, (1965) 240 Or 555, 402 P2d 751; In re Little, (1967) 247 Or 503, 431 P2d 284.

9.480

NOTES OF DECISIONS

1. In general
2. Conduct that would bar admission
3. Felony or misdemeanor
4. Deceit or unprofessional conduct
5. Violation of duty; solicitation

1. In general

The resignation of an attorney without consent of the court is ineffectual to preclude his disbarment, if proceedings therefor are pending. Ex parte Thompson, (1898) 32 Or 499, 52 P 570, 40 LRA 194; In re King, (1940) 165 Or 103, 105 P2d 870.

Resignation was allowed after investigation by bar association committee. Ex parte Garrigus, (1895) 28 Or 587, 46 P 1118.

Resignation was allowed although a proceeding for disbarment was filed with Supreme Court. Ex parte Pilkington, (1895) 28 Or 587, 46 P 1118.

The right to meet witnesses face to face and to cross-examine them is waived by stipulating that the testimony of such persons may be taken by deposition, reserving only questions as to the relevancy, materiality and competency of the evidence. Ex parte Kindt, (1898) 32 Or 474, 52 P 187.

Proceedings for the disbarment of attorneys are not for punishment but for the protection of the court, the proper administration of justice, the dignity and purity of the profession, the public good and the protection of clients. Ex parte Finn, (1898) 32 Or 519, 52 P 756, 67 Am St Rep 550.

In order to warrant disbarment, the conduct of the accused must have been such as to evidence his unfitness for the office or his unworthiness of public confidence. Ex parte Eastham, (1905) 46 Or 475, 80 P 1057.

The Supreme Court has inherent power to disbar attorneys for cause. State v. Edmunson, (1922) 103 Or 243, 204 P 619.

The statute of limitations is no defense to a disbarment proceeding. State v. Mannix, (1930) 133 Or 329, 288 P 507, 290 P 745.

An attorney may be disbarred for acts that are in no way connected with his professional employment. Id.

A proceeding to disbar an attorney for misconduct in his profession is not a criminal proceeding but sui generis. State v. Arnold, (1934) 145 Or 634, 28 P2d 846.

The Supreme Court will review state court orders with reference to disbarment of attorneys where the petitioner makes a substantial allegation that the disbarment proceedings violated the due process or equal protection clause of the U.S. Const., Am 16. Lenske v. Sercombe, (1967) 266 F Supp 609.

Petition for a writ of certorari to the Supreme Court is the exclusive method of review of state court action in disbarment proceedings. Id.

2. Conduct that would bar admission

The misconduct for which a former statute similar to subsection (1) authorized disbarment was not limited to acts committed strictly in a professional character, but

extended to all such misconduct as would have prevented an admission to the bar. State v. Estes, (1922) 105 Or 173, 209 P 486.

A former statute similar to subsection (1) was held to be a statutory declaration of the power inherent in every court to strike the name of an attorney from its roll whenever he is found to be guilty of conduct committed inside or outside of his professional employment which shows him to be corrupt, dishonest or untrustworthy. State v. Woerndle, (1923) 109 Or 461, 209 P 604, 220 P 744.

Suspension or disbarment was warranted under a former statute similar to subsection (1). **Perjury,** State v. Woerndle, (1923) 109 Or 461, 209 P 604, 220 P 744; **testified falsely,** In re Moynihan, (1941) 166 Or 200, 111 P2d 96; **concealed a fugitive,** In re Ankelis, (1940) 164 Or 676, 103 P2d 715; **forged wife's signature on deed and check,** In re McAlear, (1946) 179 Or 265, 170 P2d 763.

3. Felony or misdemeanor

Attorney was disbarred or suspended where guilty of misdemeanor involving moral turpitude. **Criminal libel,** Ex parte Mason, (1896) 29 Or 18, 43 P 651, 54 Am St Rep 772; State v. Edmunson, (1922) 103 Or 243, 204 P 619; **perjury,** Ex parte Tanner, (1907) 49 Or 31, 88 P 301; **sold liquor in violation of prohibition laws,** State v. Edmunson, (1922) 103 Or 243, 204 P 619; **uttering and publishing a forged indorsement on a check,** Ex parte Harcombe, (1940) 164 Or 634, 103 P2d 301.

Where attorney is convicted under federal statute and the crime is felony in this state, a certified copy of conviction is conclusive evidence in disbarment proceedings. Ex parte Biggs, (1908) 52 Or 433, 97 P 713; In re Ankelis, (1940) 164 Or 676, 103 P2d 715.

Although the offense charged is indictable and the accused has not been prosecuted thereon, the court may exercise its summary jurisdiction to disbar an attorney. State v. Winton, (1884) 11 Or 456, 5 P 337, 50 Am Rep 486. **But see** Ex parte Cowing, (1895) 26 Or 572, 38 P 1090.

In absence of criminal conviction an attorney cannot be disbarred for commission of indictable offense when charge is of single criminal act, committed in private capacity and evidence of guilt is conflicting. Ex parte Cowing, (1895) 26 Or 572, 38 P 1090.

Where the attorney was convicted under federal statute of "conspiracy to suborn perjury" which is not crime under state law, such conviction is not conclusive evidence of conviction of a felony. Ex parte Biggs, (1908) 52 Or 433, 97 P 713.

Where conviction of felony in federal court is otherwise conclusive under this section, the fact that petition for writ of certiorari is pending does not prevent disbarment. Ex parte Cohen, (1914) 72 Or 570, 144 P 79.

Attorney's acts, although not substantiated by criminal conviction, may warrant disbarment or suspension if seriously impugning his integrity. State v. Mannix, (1930) 133 Or 329, 288 P 507, 290 P 745.

Concealing a person for whose arrest a warrant had issued under federal laws was not a state felony. In re Ankelis, (1940) 164 Or 676, 103 P2d 715.

Suspension of an attorney was proper when he had been convicted on his plea of guilty of misdemeanor of wilfully and knowingly failing to make and file personal income tax returns, although he may not have acted with corrupt motive. In re McKechnie, (1958) 214 Or 531, 330 P2d 727.

There was no disbarment of accused, who had been convicted of failing to prosecute operators of gambling games carried on to support charity, without proof of corrupt motive. In re Langley, (1959), 217 Or 45, 341 P2d 538.

The facts of each individual case must decide whether or not a violation of the federal income tax law is a misdemeanor involving moral turpitude. In re Walker, (1965) 240 Or 65, 399 P2d 1015.

4. Deceit or unprofessional conduct

Attorney was disbarred or suspended for deceit or misconduct in the profession. **Testified falsely,** In re Glover, (1937) 156 Or 558, 68 P2d 766; In re Illidge, (1939) 162 Or 393, 91 P2d 1100; **converted client's money,** State v. Garland, (1915) 77 Or 92, 150 P 289; State v. Parker, (1927) 120 Or 465, 252 P 711; In re Wells, (1937) 157 Or 385, 69 P2d 945; **converted money obtained by misrepresentation,** State v. Smith, (1914) 73 Or 96, 144 P 424; State v. Tarpley, (1927) 122 Or 479, 259 P 783; **forged checks and converted proceeds,** State v. Arnold, (1934) 145 Or 634, 28 P2d 846; In re McAlear, (1946) 179 Or 265, 170 P2d 763; **forged checks and affidavits,** Ex parte Kindt, (1898) 32 Or 474, 52 P 187; **forged land application and used false notarial certificates,** Ex parte Turner, (1907) 49 Or 227, 89 P 426; **issued worthless checks,** State v. Mannix, (1930) 133 Or 329, 288 P 507, 290 P 745; **obtained loan from client by misrepresentation,** State v. McMenamin, (1934) 146 Or 60, 29 P2d 520; **misrepresented jurisdictional facts in divorce case, mishandled trust funds and allowed excessive delays,** in re Reinmiller, (1958) 213 Or 680, 325 P2d 773.

An attorney is guilty of wilful misconduct in his profession in affixing his official jurat as notary public to purported affidavits which were not in fact sworn to before him, and causing them to be filed for use in an action in which he was attorney for one of the parties. Ex parte Finn, (1898) 32 Or 519, 52 P 756, 67 Am St Rep 550.

Disbarment is not warranted where an attorney buys a claim against client's property with intent to turn it over to client but changes his mind and requires payment of claim after client circulated false and scandalous reports about attorney. Ex parte Eastham, (1905) 46 Or 475, 80 P 1057.

When in handling claims for collection, full payment was offered but attorney writes clients to ascertain least amount acceptable on compromise and converts money paid on claim, he is guilty of deceit and misconduct. State v. Ferrin, (1916) 81 Or 489, 160 P 124.

The receipt by an attorney of full compensation for instituting a divorce proceeding, upon false representation that the proceeding had been instituted, warrants disbarment. In re Johnston, (1936) 154 Or 569, 61 P2d 296.

An attorney who retains the amount of a judgment awarded his client to meet a charge, made without consulting the client, for services rendered on an appeal from the judgment, is properly suspended for a year. In re Irwin, (1939) 162 Or 221, 91 P2d 518.

Attorney was disbarred for unprofessional conduct where he converted client's money and gave a mortgage on his property to appease creditor without informing him of prior mortgages. In re King, (1940) 165 Or 103, 105 P2d 870.

Attorneys were suspended for two years for unprofessional conduct where they received securities as a fee without informing the clients of their materially increased market value. In re Reilly and Kerrigan, (1945) 177 Or 584, 164 P2d 410.

The rule against commingling is a fundamental rule of professional conduct. In re Windsor, (1962) 231 Or 349, 373 P2d 612.

Attorney was suspended for misconduct relating to actions performed in his judicial capacity: Signed a default judgment in favor of his wife; appointed relatives as administrators and appraisers of estates; appointed appraiser for relative's estate; heard cases in which he had a personal interest. In re Jenkins, (1966) 244 Or 554, 419 P2d 618.

An attorney may violate his oath as an attorney and as notary if he fails rigidly to adhere to his duty as notary. In re Walter, (1967) 247 Or 13, 427 P2d 96.

Contingent fee contracts in divorce proceedings are invalid. In re Pedersen and Spencer, (1971) 259 Or 429, 486 P2d 1283.

Borrowing money from a client is the same as a fiduciary

contracting with his beneficiary and is patently improper unless the client is advised to seek independent legal advice upon the advisability of entering into such a contract. In re Staples, (1971) 259 Or 406, 486 P2d 1281.

Attorneys were reprimanded for entering into a contingent fee contract in a divorce proceeding and for miscalculation of the fee. In re Pedersen and Spencer, (1971) 259 Or 429, 486 P2d 1283.

5. Violation of duty; solicitation

Where an attorney filing a petition for appointment of an administrator strikes out the name of one of the appraisers approved by the judge and substitutes the name of another, disbarment is not warranted when the appraiser whose name was stricken was unwilling to serve and such procedure was customary in the county. Ex parte Tongue, (1896) 29 Or 48, 43 P 717.

Omission of an attorney presenting a petition for letters of administration to the judge to inform him that a petition for the probate of a purported will was already on file does not constitute such misconduct as will warrant disbarment. Id.

Attorney, who with intent to cause failure in justice advises execution debtor to leave state contrary to court order requiring her presence for examination, was disbarred. Ex parte Miller, (1900) 37 Or 304, 60 P 999.

Taking active part in mob which forcibly deported two people from town is violation of attorney's duties justifying three months suspension. State v. Graves, (1914) 73 Or 331, 144 P 484, LRA 1915C, 259.

Conviction of making unlawful sales of intoxicating liquor establishes wilful violation of duty to uphold laws and warrants disbarment. State v. Edmunson, (1922) 103 Or 243, 204 P 619.

An attorney who deceives the court, represents himself as acting for a person who was not his client and betrays one who was his client in order to benefit a professional bondsman is properly disbarred. State v. Goldstein, (1923) 109 Or 497, 220 P 565.

A violation of duty to support laws by making false affidavit to obtain passport justifies suspension for six months. State v. Woerndle, (1923) 109 Or 461, 209 P 604, 220 P 744.

When an attorney deceives the court in respect of material facts involved in litigation pending before it, disbarment is warranted. State v. Mannix, (1930) 133 Or 329, 288 P 507, 290 P 745.

Suspension for one year was justified where attorney signed forged name of party to affidavit, compromised claim after instructions to drop proceedings and failed to remit money collected in satisfaction of claim to clients. Ex parte Eastman, (1936) 155 Or 15, 62 P2d 27.

A showing that the accused induced a witness to give false and perjured evidence, prepared a false account for the administrator of an estate and appropriated a fee greatly in excess of that permitted by an Act of Congress fully authorizes suspension for six months and probation for two years. In re Kitchen, (1937) 157 Or 32, 68 P2d 1068.

Attorney's appearance in court in an intoxicated condition to represent a client is generally held to be a ground for disciplinary action against him, at least when such conduct is repeated over a substantial period of time and after warnings of the possible consequences. In re Dibble, (1970) 257 Or 120, 478 P2d 384.

FURTHER CITATIONS: Ex parte Tanner, (1907) 49 Or 31, 88 P 301; State v. Smith, (1914) 73 Or 96, 144 P 424; State v. Prendergast, (1917) 84 Or 307, 164 P 1178; State v. Edmunson, (1922) 103 Or 243, 204 P 619; State v. Arnold, (1934) 145 Or 634, 28 P2d 846; In re Langley, (1952) 230 Or 319, 370 P2d 228; In re Means, (1956) 207 Or 638, 298 P2d 983; In re Johns, (1958) 212 Or 587, 321 P2d 281; In re Corcoran, (1959) 215 Or 660, 337 P2d 307; In re Heider, (1959) 217 Or 134, 341 P2d 1107; In re Moore, (1959) 218 Or 403, 354 P2d 411; In re Fuller, (1960) 223 Or 561, 355 P2d 256; In re Sloniger, (1960) 224 Or 276, 355 P2d 975; In re Morrow, (1961) 227 Or 430, 362 P2d 755; In re Clark, (1961) 228 Or 9, 363 P2d 206; In re McKee, (1961) 229 Or 67, 365 P2d 120; In re Bengtson, (1962) 230 Or 369, 370 P2d 239; In re Tomlinson, (1962) 231 Or 636, 373 P2d 666; In re Mathews, (1962) 233 Or 172, 377 P2d 160; In re Dobson, (1962) 233 Or 176, 377 P2d 160; In re Kneeland, (1963) 233 Or 241, 377 P2d 861; In re Windsor, (1964) 238 Or 200, 394 P2d 430; In re Kraus, (1964) 238 Or 482, 395 P2d 446; In re Bassett, (1965), 240 Or 283, 401 P2d 33; In re Collier, (1965) 240 Or 617, 403 P2d 380; In re McMahon, (1965) 241 Or 281, 405 P2d 371; In re Smith, (1965) 241 Or 542, 407 P2d 643; In re Brant, (1966) 242 Or 562, 410 P2d 824; In re Haberlin, (1966) 242 Or 564, 410 P2d 1022; In re Lewelling, (1966) 244 Or 282, 417 P2d 1019; In re Anderson, (1966) 244 Or 347, 418 P2d 498; In re Puckett, (1967) 248 Or 127, 432 P2d 511; In re Milton O. Brown, (1970) 255 Or 628, 469 P2d 763; In re Alley, (1970) 256 Or 51, 470 P2d 943; In re Lundeen, (1970) 257 Or 75, 476 P2d 180.

ATTY. GEN. OPINIONS: Construing "felony" in insurance licensing law, 1964-66, p 332.

LAW REVIEW CITATIONS: 14 OLR 288.

9.490

NOTES OF DECISIONS

Rules promulgated by the court concerning professional and judicial ethics are not merely pious exhortations but create rights corresponding to duties imposed. In re Hannon, (1958) 214 Or 51, 324 P2d 753.

Rules of professional conduct, including judicial conduct, are binding on judges. Jenkins v. Oregon State Bar, (1965) 241 Or 283, 405 P2d 525.

FURTHER CITATIONS: Ex parte Eastman, (1936) 155 Or 15, 62 P2d 27; In re Glover, (1936) 156 Or 558, 68 P2d 766; In re Wells, (1937) 157 Or 385, 69 P2d 945; In re Venn, (1963) 235 Or 73, 383 P2d 774; Ainsworth v. Dunham, (1963) 235 Or 225, 384 P2d 14; In re Sussman and Tanner, (1965) 241 Or 246, 405 P2d 355.

ATTY. GEN. OPINIONS: Conflict of interest when district attorney prosecutes assessor's appeal from board of equalization decision, (1971) Vol 35, p 448.

9.500

NOTES OF DECISIONS

The meaning of "solicit" is clear and unambiguous. In re Farris, (1961) 229 Or 209, 367 P2d 387.

FURTHER CITATIONS: In re Kitchen, (1937) 157 Or 32, 68 P2d 1068; In re Clark, (1961) 228 Or 9, 363 P2d 206; In re Lee, (1965) 242 Or 302, 409 P2d 337.

9.510

NOTES OF DECISIONS

The presence of a financial transaction in the solicitation of law business may tend to aggravate the offense. In re McKee, (1961) 229 Or 67, 365 P2d 1063.

The solicitation of law business is the offense, whether or not compensation is involved. Id.

The meaning of "solicit" is clear and unambiguous. In re Farris, (1961) 229 Or 209, 367 P2d 387.

FURTHER CITATIONS: In re Clark, (1961) 228 Or 9, 363 P2d 206; In re Ruben, (1961) 228 Or 5, 363 P2d 773.

9.540

NOTES OF DECISIONS

The Supreme Court may either affirm, modify or reverse the recommendation of the board. Ex parte Eastman, (1936) 155 Or 15, 62 P2d 27; In re Glover, (1937) 156 Or 558, 68 P2d 766.

The statute of limitations and the doctrine of laches are not a bar to prosecution of disbarment proceedings. In re Farris, (1961) 229 Or 209, 367 P2d 387; In re Weinstein, (1969) 254 Or 392, 459 P2d 548, cert. denied, 398 US 903.

This section authorizes a hearing for any of the statutory causes warranting disbarment or suspension, or for any breach of the rules of professional conduct. In re Johnston, (1936) 154 Or 569, 61 P2d 296.

When the Supreme Court acts upon a recommendation of the Oregon State Bar, the proceedings are in the nature of a trial de novo. In re Kitchen, (1937) 157 Or 32, 68 P2d 1068.

The mere fact that the board failed to find that certain charges against the accused were established by a preponderance of the evidence does not preclude the Supreme Court from considering the entire record in the case. Id.

Although it is the duty of the board to notify the defendant of its decision and to file the documents immediately, tardiness does not necessarily render orders of the board invalid. In re Koken, (1953) 198 Or 659, 258 P2d 779, cert. denied, 346 US 902, 98 L Ed 153, 74 S Ct 231.

A disciplinary proceeding is not an adversary proceeding either criminal or civil. In re Clark, (1961) 228 Or 9, 363 P2d 206.

The degree of proof need not be beyond a reasonable doubt, but it must be clear and convincing, something more than a mere preponderance. In re Farris, (1961) 229 Or 209, 367 P2d 387; In re Lenske, (1971) 259 Or 228, 485 P2d 419.

Objection to the trial committee findings because one member died before the findings were completed and signed is without merit. In re Gavin, (1962) 230 Or 187, 369 P2d 133.

Although rules of evidence are more flexible in disciplinary proceedings than in criminal prosecutions, the use of unlawfully obtained evidence in disciplinary proceedings would be inconsistent with public policy. In re Langley, (1962) 230 Or 319, 370 P2d 228.

The court cannot discharge its disciplinary responsibility unless it is in possession of all the relevant facts. In re Gronnert, (1964) 242 Or 233, 391 P2d 772.

The court has jurisdiction in a proper proceeding to entertain proceedings for the disbarment of a judge. Jenkins v. Oregon State Bar, (1965) 241 Or 283, 405 P2d 525.

The primary purpose of the proceedings is to protect the public. In re Weinstein, (1969) 254 Or 392, 459 P2d 548, cert. denied, 398 US 903.

FURTHER CITATIONS: In re Irwin, (1939) 162 Or 221, 91 P2d 518; In re Schmalz, (1942) 169 Or 518, 129 P2d 825; In re Smith, (1943) 171 Or 151, 134 P2d 956; In re Morrow, (1958) 214 Or 250, 329 P2d 482; In re Wheelock, (1963) 233 Or 236, 377 P2d 858; In re Walter, (1967) 247 Or 13, 427 P2d 96; In re Scott, (1970) 255 Or 77, 464 P2d 318.

9.550

NOTES OF DECISIONS

Prior to the 1961 amendment, that portion of subsection (2) evincing an intent to limit the privilege of complainants was an unconstitutional invasion of separation of powers. Ramstead v. Morgan, (1959) 219 Or 383, 347 P2d 594, 77 ALR2d 481.

FURTHER CITATIONS: In re Walker, (1965) 240 Or 65, 399 P2d 1015.

LAW REVIEW CITATIONS: 40 OLR 270, 271, 297; 7 WLJ 204.

9.560

NOTES OF DECISIONS

This section authorizes a hearing for any of the statutory causes warranting disbarment or suspension, or for any breach of the rules of professional conduct. In re Johnston, (1936) 154 Or 569, 61 P2d 296.

9.570

NOTES OF DECISIONS

The imprisonment of an attorney did not prevent institution of proceedings against him nor require postponement of the hearing. In re Ankelis, (1940) 164 Or 676, 103 P2d 715.

There is no constitutional provision, federal or state, giving an attorney the right to be present in person in disbarment proceedings. Id.

9.580

NOTES OF DECISIONS

On review the Supreme Court denied a motion to strike from the transcript testimony elicited by the board after the trial committee had recommended dismissal. In re Reilly and Kerrigan, (1945) 177 Or 584, 164 P2d 410.

Rules 25 & 32 provided for all the essential ingredients of due process. In re Farris, (1961) 229 Or 209, 367 P2d 387.

9.615 to 9.665

NOTES OF DECISIONS

Authorizing only attorneys to establish a client security fund is not an unreasonable classification in violation of Ore. Const. Art. IV, §20. Bennett v. Oregon State Bar, (1970) 256 Or 37, 470 P2d 945.

9.625

NOTES OF DECISIONS

Action of bar committees and State Bar Association amounted to a plan as required by this section, and assessing of fee by the Board of Governors constituted an adoption of the plan. Bennett v. Oregon State Bar, (1970) 256 Or 37, 470 P2d 945.

9.645

NOTES OF DECISIONS

Compelling payment to client security fund as a condition of membership in the bar did not violate due process and equal protection requirements of federal constitution. Bennett v. Oregon State Bar, (1970) 256 Or 37, 470 P2d 945.

This section appears to allow the Board of Governors to make an annual levy to maintain a client security fund independently of the date of adoption of the plan. Id.

9.850

ATTY. GEN. OPINIONS: Authority of county court to purchase law library, 1938-40, p 464.