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The Work of the Louisiana Supreme Court for the 1952-1953 Term
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General: The Legal Profession

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TABLE XII

TIME ELAPSED BETWEEN DISPOSITION OF 1952-1953 REPORTED CASES AND DATE OF FILING IN THE SUPREME COURT

Time elapsed divided into periods of 6 months	Number of cases	Percentage
6 months or less	86	29.86
12 months but more than 6 months	80	27.77
18 months but more than 12 months	53	18.40
24 months but more than 18 months	23	8.00
30 months but more than 24 months	12	4.13
36 months but more than 30 months	6	2.08
42 months but more than 36 months	5	1.74
48 months but more than 42 months	7	2.43
54 months but more than 48 months	3	1.04
60 months but more than 54 months	2	.70
66 months but more than 60 months	1	.35
72 months but more than 66 months	2	.70
78 months but more than 72 months	2	.70
84 months but more than 78 months	..	..
90 months but more than 84 months	1	.35
96 months but more than 90 months	1	.35
102 months but more than 96 months	1	.35
108 months but more than 102 months	1	.35
114 months but more than 108 months	..	..
120 months but more than 114 months	1	.35
338 months	1	.35
Totals	288	100.00

THE LEGAL PROFESSION

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DISBARMENT PROCEEDINGS

Important decisions by the Supreme Court in two disbarment proceedings of widespread interest were rendered during the 1952-53 term. In *Louisiana State Bar Association v. Cawthorn*,[1] the respondent attorney had been convicted in the United States District Court for the Eastern District of Louisiana under an indictment charging him with conspiracy to corruptly influence, obstruct and impede the due administration of justice in a crim-

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1. 67 So. 2d 165 (La. 1953). The significance of the case is discussed in Schillin, Highlights of the Recent Cawthorn Decision, 1 La. Bar J. 28-30 (1953).

inal prosecution for income tax evasion brought against his client. The indictment charged the defendant and his alleged co-conspirators with attempting to influence prospective jurors in the tax evasion case. Following affirmance of the respondent's conviction and sentence by the United States Circuit Court of Appeals[2] disbarment proceedings were filed against him in the Supreme Court under Section 12, Article XIII, of the Act of Incorporation of the Louisiana State Bar Association based upon the felony conviction in the federal court.[3] The mentioned rule provides that whenever a member of the bar is finally convicted of a felony, the Committee on Professional Ethics and Grievances

> ". . . may present to the Supreme Court a certified or exemplified copy of the judgment of such conviction, and thereupon the court may, without further evidence, if in its opinion the case warrants such action, enter an order striking the name of the person so convicted from the roll of attorneys and concelling his license to practise law in the State of Louisiana. . . ."

After exceptions filed by the respondent were overruled at his request, a commissioner was appointed to take testimony. The commissioner recommended respondent's suspension from the practice for a period of five years. The matter was before the court on exceptions by the committee to the commissioner's report and on oppositions by the respondent to the report. In a well-reasoned opinion by Associate Justice LeBlanc, the suspension recommendation was rejected and the respondent was disbarred. It was held that the commissioner had erred in practically retrying on the merits the charges made against the attorney in the federal court proceedings. The majority of the court reaffirmed the holdings in the two *Connolly* cases[4] and concluded that the commissioner should have held himself bound by those holdings. In the language of the court:

> "What the decisions in those cases stand for, as far as is pertinent to the present discussion, is that the conviction of an attorney, of a felony, in either a State or Federal Court,

2. See Burton v. United States, 175 F. 2d 960, 176 F. 2d 865 (5th Cir. 1949); cert. denied Burton v. United States, 338 U.S. 909 (1950).

3. Section 12 of Article XIII of the Act of Incorporation is found in the Rules of the Supreme Court, 21 West's La. Stat. Ann. 1950, 387-388 (following 37:218).

4. Louisiana State Bar Association v. Connolly, 201 La. 342, 9 So. 2d 582 (1942) and Louisiana State Bar Association v. Connolly, 206 La. 883, 20 So. 2d 168 (1944).

> may set out a prima facie case of misconduct authorizing disbarment and that the rule of this Court so providing in substance, is one of evidence affecting the burden of proof which is then placed on the defendant to go forward with evidence at a hearing before the Commissioner and show that he, notwithstanding the judgment of conviction, has not been guilty of such misconduct or transgression as to warrant his suspension or disbarment. As far as the conviction is concerned, there is nothing which this Court can do to set it aside. However, while it is conclusive of the attorney's conviction, it is not conclusive as to the misconduct on which he is sought to be suspended or disbarred. With regard to misconduct, the conviction only gives rise to a rebuttable presumption and the Court is then called on to decide whether the presumption thus created, if not rebutted, is one which convicts the defendant of such misconduct as to justify his suspension or disbarment."[5]

After considering at length the issues of fact raised by the respondent to support his contention that he was convicted on perjured testimony, the court held that the respondent had failed to sustain the burden of rebutting the prima facie case of misconduct which arose out of his conviction. As to the commissioner's recommendation for a five year suspension, Justice LeBlanc's opinion concluded:

> "We cannot agree with this recommendation. This misconduct growing out of the felony for which respondent was convicted, and which he has not refuted, is of a most serious nature and one which strikes at the very foundation of our judicial system. It involves the grossest sort of moral turpitude. A lawyer, more than any other citizen, should set the example and be the leader in upholding the proper administration of justice in our courts and any lawyer who transgresses the law by obstructing our judicial processes is unworthy of the dignity of the profession. He merits nothing less than disbarment."

In a separate opinion, Chief Justice Fournet expressed the view that the circumstances of the case required that there be an examination of the record on which the conviction was based. In the view of the Chief Justice, the proper exercise of the original and constitutional jurisdiction of the Supreme Court involv-

5. 67 So. 2d 165, 168 (La. 1953).

ing misconduct of members of the bar exacts such examination.[6] The Chief Justice did not agree that the court was limited to a determination of the question of whether sufficient testimony had been introduced to overcome the presumption of misconduct evidenced by the conviction. He construed the *Connolly* cases as authorizing disbarment without further evidence *after an examiation of the record in the conviction* and expressed the view that such analysis was especially important in a case in which the attorney continued to maintain strenuously that he was convicted on perjured testimony. The dissent also pointed out that, unlike the situation in the *Connolly* case in which a plea of *nolo contendere* was filed, respondent was convicted by a jury. The Chief Justice concluded that the majority opinion was virtually a substitution of the judgment of the jury for the determination the Supreme Court should make as to whether there was misconduct justifying disbarment.

When one considers the importance to society of maintaining public confidence in the legal profession, the wisdom of the majority opinion in placing so much weight upon the *prima facie* presumption of misconduct resulting from a felony conviction becomes apparent. Conviction of an attorney of a serious crime undermines public confidence in the attorney and reflects unfavorably upon the legal profession. As the committee pointed out in its original brief, the average citizen would indeed find it incongruous if an attorney adjudged guilty and deserving of criminal punishment should be adjudged innocent in a disbarment proceeding and held entitled to retain his membership in the legal profession.[7] Moreover, proof beyond a reasonable doubt is required in the criminal proceedings, while the normal standard of proof in a disbarment proceeding is merely a preponderance of evidence to support the charges of misconduct. There is much merit, therefore, in the rule sanctioned in the *Cawthorn* case. It affords a convicted lawyer a reasonable and fair opportunity of showing lack of misconduct by rebutting the *prima facie* evidence of misbehavior which results from the judgment of conviction. At the same time it permits the court to give full effect to an attorney's conviction while retaining the power to prevent mis-

6. La. Const. of 1921, Art. VII, § 10.

7. Perhaps the height of incongruity from the layman's point of view is reflected in such decisions as In re Jones, 202 La. 729, 12 So. 2d 795 (1943) and In re Meraux, 202 La. 736, 12 So. 2d 798 (1943) in which it has been held that a district judge removed from office by the Supreme Court for misconduct while in office cannot subsequently be disbarred from the practice of law because of such misconduct.

carriage of justice in an appropriate case in which the presumption is rebutted. Such an instance was the second *Connolly* case[8] in which the court decided that the respondent's evidence had successfully rebutted the *prima facie* case of misconduct made out as a result of the conviction in evidence in that case. There, however, the conviction was based on a plea of *nolo contendere*. As the court had previously sustained the constitutionality of Section 12 of Article XIII of the Act of Incorporation of the State Bar Association above quoted,[9] respondent must have been presumed to have acted with the established jurisprudence before him. The result reached by the court in imputing the effect of the conviction to respondent did not, therefore, operate unfairly. The Chief Justice's dissent was consistent with his previous dissents on the constitutional issues involved.[10]

In *Louisiana State Bar Association v. Theard*[11] disbarment proceedings were filed against the respondent charging professional misconduct. The substance of the charges was that the respondent attorney had in 1935, while engaged in the active practice of law, forged and uttered certain mortgage notes with intent to defraud. The committee charged that respondent "had wilfully transgressed the rules of professional ethics to such an extent that he was morally unfit to continue the practice of law." The court overruled respondent's exceptions to the petition and affirmed the validity of the present procedures for disciplinary action against members of the bar. It was held that the proceeding was properly brought in the name of the Louisiana State Bar Association through the Committee on Professional Ethics and Grievances without special authority from the Board of Governors and the petition was not defective though it lacked the signature of an officer of plaintiff association. As disbarment proceedings in the form here brought are authorized by Rules of the Supreme Court no additional authority was necessary.[12]

The contention was urged by the respondent that he had adduced proof of his insanity at the time of the misconduct

8. 206 La. 883, 20 So. 2d 168 (1944).

9. Louisiana State Bar Association v. Leche, 201 La. 293, 9 So. 2d 566 (1942); Louisiana State Bar Association v. Connolly, 201 La. 342, 9 So. 2d 582 (1942).

10. In the *Leche* and *Connolly* cases, cited in note 9 supra, Justices Higgins and Fournet both dissented.

11. 222 La. 328, 62 So. 2d 501 (1952).

12. See Rule XVII of the Supreme Court and Article XIII of the Articles of Incorporation of the Louisiana State Bar Association, Sections 4 and 11, 21 West's La. Stat. Ann. 1950, 380, 387.

charged and that the incapacity alleged to have resulted from such mental illness ousted the power of the court to hear the case. This contention was rejected, the court holding that insanity is no defense to a disbarment proceeding. Justice McCaleb in an excellent opinion pointed out that while insanity may render a defendant exempt from criminal responsibility and in some cases from civil responsibility, it does not follow that insanity exonerates a lawyer from the consequences of his professional misconduct. A good moral character is exacted of those admitted to the bar and the court concluded that it mattered not whether dishonest conduct in a lawyer stems from an incapacity to distinguish between right and wrong or was due to a specific criminal intent. Protection to the public served by the legal profession requires such result.[13] Additional exceptions of the respondent based on prescription, laches and estoppel were disposed of as being entirely without merit. The decision in the *Cawthorn* and *Theard* cases are eminently correct and merit the approval and support of the organized bar.

Bar Admissions

Requirements for admission to the bar were altered in two important respects by an amendment to Section 7, Article XII, of the Articles of Incorporation of the Louisiana State Bar Association promulgated by Rule of Court on June 2, 1953. One of the amendments, raising the general qualifications for admission to the bar, will have a salutary effect. The other change was the backward step of suspending the bar examination requirement previously exacted of graduates of accredited Louisiana law schools. The result is the reinstatement of the "diploma privilege."

Prior to the amendment, Louisiana was one of five states with the low general educational requirement of a high school education or its equivalent. The Louisiana State Bar Association has for years been working for the adoption of the American Bar Association's recommended pre-legal requirement which was increased to three years of college work effective September 1, 1952.[14] The amended Louisiana rule adopts the requirement of three years of college work. To have the new rule operate without undue hardship to registrants who do not have the higher

13. Cited with approval was In re Patlak, 368 Ill. 547, 15 N.E. 2d 309, 116 A.L.R. 627 (1938).

14. See Report of the Committee on Legal Education and Admission to the Bar, Reports of the Louisiana State Bar Association for 1952, 43-47 (1952).

qualifications and who are presently studying under the direction of an attorney, the rule makes the effective date October 1, 1956. After that date all applicants must have the new general requirement of three years' college education. This represents a marked stiffening of bar admission requirements in Louisiana. With the increased opportunities now available for college work the new rule will not act as a hardship on any one and it reflects a growing appreciation of the importance of the role of the lawyer. The skills exacted of the lawyer require a broad educational background and the new rule reflects this viewpoint. With law office study of three years still permitted as an avenue to the bar, the new educational requirement is an important safeguard. The profession will generally approve of the court's action in this respect.

Reinstatement of the "diploma privilege" was effected over the strenuous opposition of the law schools of Loyola, Tulane and Louisiana State Universities, as well as over the opposition of the Louisiana State Bar Association. The proposal to eliminate the bar examination originated with the court. Associate Justices Hawthorne and McCaleb dissented from the order on the ground that such a change should come only upon a request from the bar as a whole, speaking through the Bar Association. In a brief filed with the court the law schools urged the retention of the bar examination as an independent determination by public authority of the professional competency of applicants for admission to the bar. Since 1921, the American Bar Association standards have opposed the diploma privilege[15] and one of the recently published studies in the *Survey of the Legal Profession* has pointed out that the American Bar Association's policy has been responsible for the abolition of the diploma privilege in all but a few states.[16] Among the states recently abolishing the "diploma privilege" are Arkansas, South Carolina and Florida.[17] The Louisiana Supreme Court's action thus runs directly counter to the trend in other states.

The argument has been advanced that suspension of the bar examination will eliminate a discriminatory situation in which veterans, including those serving in the Korean War, were not

15. Law Schools and Bar Admission Requirements in the United States—1952 Review of Legal Education 26 (Published by the American Bar Ass'n).

16. Survey of the Legal Profession, Bar Examinations and Requirements for Admission to the Bar 36 (1952).

17. See Sturgis, Abolition of the Diploma Privilege, 4 U. of Fla. L. Rev. 370-381 (1951).

required to take the examination while non-veterans were forced to take the examination. The number of veterans admitted on motion without the necessity of taking the bar examination has been steadily decreasing and the liberality that has been shown to Louisiana's veterans hardly justifies the present order broadening the "diploma privilege." In fact the normal situation of a bar examination for all law school graduates was approaching a reality and the existence of discrimination is recognized at a rather late date considering the many years during and since World War II in which the discrimination was much more marked. The diploma privilege for veterans has been more liberally applied in Louisiana than elsewhere. Mistakes of policy in that regard should not now be utilized to undermine the entire structure of the bar examination. It is also said that Louisiana has good law schools, and, hence, the bar examination is unnecessary and only serves to subject law graduates to mental pressure over the possible stigma of failure. Certainly those who cannot successfully cope with the pressures of a three day bar examination will be hard put to withstand the constant rush, tension and conditions under which the lawyer must work. Moreover, the present system of legal education in this state has been fashioned since 1924 with the bar examination viewed as a part of the final educational process to which the law graduate is subjected. There are many values in the bar examination system. Comprehensive review is an important part of professional preparation. The Louisiana law schools have relied upon the bar examination to provide that comprehensive review for which there is not adequate time at the conclusion of the three year law school course. Abolition of the bar examination has at least the following effects: it eliminates a check by duly constituted public authority (the Supreme Court Examining Committee) on the competency of a large number of persons to be admitted to the profession; it delegates full responsibility for professional competency to the law schools when it should be the joint responsibility of the legal profession, the court and the law schools; it fails to take cognizance of the efficiently working bar examination system that has been developed through the years by the work of the Admissions Committee of the Supreme Court and the Bar Admissions Advisory Committee, representing the law schools; it eliminates the presence of a constant stimulus to greater effort on the part of the students who know they must pass a bar examination as well as pass the course of Professor X; it

eliminates a device whereby legal education is appraised practically through the eyes of members of the bar; it returns to the situation existing prior to 1924 when the Legislature was constrained as a matter of policy to enact a statute making the bar examination a requirement; and, finally, it rejects the considered views of professional groups who have studied the problem of bar admissions that are involved in a "diploma privilege" and who, on the basis of experience, have concluded that a bar examination for law school graduates is desirable. It would be unthinkable to allow medical school graduates to practice medicine without passing the examination conducted by the Louisiana State Board of Medical Examiners.[18] The legal profession merits similar safeguards despite the fact that Louisiana is fortunate in the quality of work done by students in its law schools. The broadening of the diploma privilege is, in the opinion of the writer, a serious mistake. It should be rectified as quickly as possible by action of the Supreme Court or through the reenactment of legislation similar to Act 113 of 1924. Otherwise the "diploma privilege" will become so imbedded as to be difficult to remove. Under the jurisprudence such legislation would constitute a valid exercise of the police power.[19]

Public Law

ADMINISTRATIVE LAW

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During the past term the court had occasion to interpret in *Roussel v. Digby*[1] the provision of the conservation laws pursuant to which a person adversely affected by an order made by the commissioner may pursue judicial review thereof. As

18. As to the requirement of examination see La. R.S. 1950, 37:1269, 1270, 1271, 1272.

19. Ex parte Steckler, 179 La. 410, 154 So. 41 (1934); In re Mundy, 202 La. 41, 11 So. 2d 398 (1942) both hold that the Legislature may, in the exercise of its police power, and in the performance of its duty to protect the public against imposition or incompetence on the part of persons professing to be qualified to practice the so-called learned professions, fix minimum qualifications or standards for admission to the bar. The exercise of that power by the Legislature does not limit the inherent judicial power to prescribe maximum qualifications.

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1. Roussel v. Digby, Commissioner of Conservation, 222 La. 779, 64 So. 2d 1 (1953).