

Louisiana Law Review

Volume 15 | Number 2

*The Work of the Louisiana Supreme Court for the
1953-1954 Term
February 1955*

General - The Legal Profession

Paul M. Hebert

Repository Citation

Paul M. Hebert, *General - The Legal Profession*, 15 La. L. Rev. (1955)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol15/iss2/4>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

TABLE XII
 TIME ELAPSED BETWEEN DISPOSITION OF 1953-1954 REPORTED CASES
 AND DATE OF FILING IN THE SUPREME COURT

Time elapsed divided into periods of six months	Number of cases	Percentage
6 months or less	80	32.52
6-12 months	83	33.74
12-18 months	37	15.04
18-24 months	19	7.72
24-30 months	8	3.25
30-36 months	4	1.62
36-42 months	6	2.44
42-48 months	6	2.44
48-54 months	1	.41
54-60 months	—	—
60-66 months	1	.41
66-72 months	1	.41
Totals	246	100.00

THE LEGAL PROFESSION

*Paul M. Hebert**

Disbarment

In *Louisiana State Bar Association v. Theard*¹ the court entered an order disbaring the respondent attorney, thus disposing on the merits of proceedings considered on exceptions during the 1952-1953 term.² The respondent attorney had forged and sold a mortgage note in 1935. In 1936 interdiction proceedings were begun and he was actually under interdiction until 1948 when he resumed the practice of law. The principal defense urged on behalf of the respondent attorney was his mental illness at the time of his admitted misconduct. It was urged by the respondent that he could be guilty of no intentional wrong because of his mental incapacity. The court rejected these contentions stating:

“When a lawyer has committed peculations, forgeries and breaches of trust, he violates the oath he has taken to

* Dean and Professor of Law, Louisiana State University.

1. 225 La. 98, 72 So.2d 310 (1954).

2. Louisiana State Bar Ass'n v. Theard, 222 La. 328, 62 So.2d 501 (1952), discussed in *The Work of the Louisiana Supreme Court for the 1952-1953 Term—The Legal Profession*, 14 LOUISIANA LAW REVIEW 74, 78-79 (1953).

demean himself honestly in his practice and the good character he possessed no longer exists. And it will not do for respondent to say that he was suffering from a mental aberration or amnesia depriving him of the ability to distinguish between right and wrong. In disbarment, unlike criminal prosecution or a civil suit for recovery of money based on an offense or quasi offense, consideration of the interest and safety of the public is of the utmost importance for, whereas it may not be humane to punish by confinement to prison one who labored under the inability to understand the nature of his wrongful acts, it is quite another matter to permit such a person to continue as an officer of the court and to pursue the privilege of engaging in the honorable profession of counsellor-at-law when he, by his misconduct, has exhibited a lack of integrity and common honesty. *And in our opinion it matters not whether the dishonest conduct stems from an incapacity to discern between right and wrong or was engendered by a specific criminal intent.*"³

Additional contentions founded upon alleged constitutional rights of the attorney were dismissed as having no merit. Again, the court gave expression to the familiar doctrine that the license to practice law is not a natural right or a constitutionally granted right, but is a privilege that may be withdrawn after notification and opportunity to be heard are given.⁴ Under the admitted and notorious facts involved in this proceeding no other decree than that of disbarment would have been possible. The long delay that was involved in having the attorney's name stricken in this case (six years from the restoration of capacity or nineteen years from the date of the commission of the offense) does not reflect creditably upon the ability of the legal profession to purge itself expeditiously of unworthy members through the disbarment process.

Attorneys Fees

Estimating the value of an attorney's work presents delicate questions of considerable difficulty. General principles on fixing the amount of the fee as set forth in the Canons of Professional Ethics are of considerable assistance, but still allow wide range

3. 72 So.2d 310, 312 (La. 1954), quoting with approval from the earlier case of Louisiana State Bar Ass'n v. Theard, 222 La. 328, 335, 62 So.2d 501, 503 (1953).

4. *Ex parte* Garland, 4 Wall. 333 (U.S. 1866); *Ex parte* Robinson, 19 Wall. 505 (U.S. 1873).

for differences of opinion on the question of whether a particular fee is reasonable or unreasonable.⁵ In *Peiser v. Grand Isle, Inc.*⁶ the plaintiffs, owners of two percent of the stock of the defendant corporation, unsuccessfully sought the appointment of a receiver for the defendant corporation.⁷ Under the authority of a special statutory provision⁸ the defendant corporation moved to assess attorneys' fees in the amount of \$20,000 against the plaintiffs. The facts showed that the entire matter had been concluded in a period of five months. The three attorneys who worked on the case testified that they worked for two and one-half months almost exclusively on the matter, which included an appeal to the Supreme Court and which involved extensive research into financial records and operations of the corporation. The lower court fixed the fees of the attorneys at \$12,500 and the Supreme Court by a four to three decision affirmed. The majority opinion stated that in estimating the value of an attorney's work, the court will take into consideration the responsibility incurred, the importance of the litigation, the amount involved, the extent and character of the labor performed, and the legal knowledge, attainments and skill of counsel. The conclusion of the majority found support in the testimony of three disinterested leaders of the New Orleans bar who testified as experts that an award between \$10,000 and \$20,000 or between \$15,000 and \$20,000 would be reasonable. In his dissenting opinion, Chief Justice Fournet expressed strongly his views that \$5,000 would amply compensate the attorneys for the services rendered. In his view the value of the expert testimony was tempered by the consideration that members of the same profession are not likely to underestimate the value of professional services when testifying as experts.⁹ To this reviewer, it appears clear that the

5. See *Canons of Professional Ethics, Articles of Incorporation of the Louisiana State Bar Association*, Article XVI, Canon 12, 21 WEST'S LA. R.S. 393 (1950).

6. 224 La. 299, 69 So.2d 51 (1953).

7. *Peiser v. Grand Isle, Inc.*, 221 La. 585, 60 So.2d 1 (1952).

8. LA. R.S. 12:753(C) (1950) provides: "If the minority shareholder unsuccessfully prosecutes his cause for the appointment of a receiver, he shall not only be condemned to pay the cost of the proceedings, but shall be further condemned to pay reasonable counsel fees, and other reasonable expenses to the corporation. . . ."

9. The Chief Justice quoted from *Peltier v. Thibodaux*, 175 La. 1026, 1031-1032, 144 So. 903, 904 (1932); "The opinion of eminent lawyers as to the value of services rendered by members of their profession in any given case is helpful, and should always be considered. At the same time courts should and do keep in mind that there is an esprit de corps among men of the same profession which restrains them from underestimating the value of their own services."

expert testimony in this case was eminently fair and met the high standards that are exacted by a leading authority who has written on this problem.¹⁰

Contempt Proceedings

*Gautreau v. Gautreau*¹¹ involved a proceeding to review the validity of a contempt finding against the relator who, as an attorney, had been found in contempt for failing to obey an order of the court that he remain for the reading of a pleading relator had filed on behalf of the defendant in a divorce case, urging a change of venue. The court recalled the supervisory writs, finding no merit in the defendant's contentions that the motion for a change of venue was not properly before the trial court. There is indication from this decision that the Supreme Court will not interfere with the district court's findings in matters of contempt unless there is a clear abuse of discretion.¹²

"Visiting Attorney"

In *Perkins v. Perkins*¹³ the court was asked to pass upon the petition of a member of the Mississippi bar for a judgment declaring that he could appear before a Louisiana court as a "visiting attorney." It was shown and admitted by the petitioner that he had been a resident of the City of Baton Rouge for thirty years and was a qualified voter of that city. The court held under these facts that he could not be considered a "visiting attorney" under Louisiana's reciprocity statute. The limited reciprocity statute involved was so clear in its provisions that it was virtually an imposition on the courts to request a judicial interpretation in this case.¹⁴

10. DRINKER, *LEGAL ETHICS* 197 (1953): "Difficult and delicate problems not infrequently arise in connection with requests by other lawyers to testify as to the reasonableness or unreasonableness of fees in dispute, opinions of other lawyers experienced in matters of the nature involved being obviously of impressive significance in such cases. While considerations of courtesy and fraternity should not deter a lawyer from so testifying as an expert, it will be found that those of the highest standing and experience are usually the least apt to be dogmatic as to the precise amount which would be proper. Fortified for cross-examination with a precise prior understanding of all the circumstances surrounding the case and, if possible, with the amounts charged by him and by others in similar matters, he can say with assurance what he himself would charge in the particular case."

11. 225 La. 254, 72 So.2d 497 (1954).

12. Said the court: "This Court, in reviewing contempt proceedings under its supervisory jurisdiction, will examine only those matters relating to the jurisdiction or power of the court and the regularity of the proceedings." 72 So.2d at 499.

13. 224 La. 1034, 71 So.2d 558 (1954).

14. La. R.S. 37:214 (1950).