Case Files, General Index, and Briefs of the Supreme Court and the Court of Appeals

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Version 3
August 20, 2018

No. Sp. Supreme Court Per Curiam

In Re Jerome Daly

No. 42174

STATE OF MINNESOTA
SS
COUNTY OF RAMSEY

Jerome Daly, being first duly sworn deposes and states as follows:

1. That I am appearing specially and not generally herein and reserve my objections to the jurisdiction of this Court over the subject matter herein and over my person because of a total failure of due process of Law, procedural and substantive.

2. That because I have already conducted an investigation, have been retained, and was involved as Attorney for clients in the following litigation:

State of Minnesota vs. James H. Stafford Henn Co. Municipal
State of Minnesota vs. Wayne A..en Krul, Henn Co. Junevile
State of Minnesota vs. Richard Soderberg, Henn Co. Municipal
State of Minn. vs. Louis Evans, Dakota County Criminal
Charter Investment Co. Vs. Village of Burnsville, Dak. Co.
Marti Irmen vs. Thunderbird Motel and R. Wallace, Dak. Co.
Herbert Hauer vs. Cargill Inc. and Travelers Ins Co. Ind Comm.
State vs. Robert Leo Mahoney, Hastings Municipal Court
Carolyn A. Nelson vs. City of Bloomington, et al, Henn Co.649437
Calvert vs. Calvert, Dak. Co.
Donald Poupard vs. Robert Nagele Sr. and Robert Nagele Jr. and Lord Fletcher's
Robert O. Naegele Jr., vs. ~~Lord Fletcher~~ Donald Poupard. Hen Co.
Carl Lidberg vs. A & H Machinery et al, Henn Co. 637151
USA vs. Wilbur Milton, et al and Carl Lidberg,
Rose M. Green vs. Kenneth Hageback, et al, Henn Co.647064
Oscar Husby vs. Carl R. Anderson, A & J. Builders et al, Dak.Co.65865
A & J. Builders vs. Oliver Harms, Dak. Co. and Supreme Court of Minn.

That to avoid unnecessary expense to clients and to avoid any further delay and at the request of my clients I appear to and before the Court and petition the Court to make exception to the suspension Order of September 5,1969 and that I be granted permission to appear for my clients in the above entitled actions.

Subscribed and sworn to before
me this 13th day of October,1969

Jerome Daly
Jerome DAly

John McCarthy
Clerk of Supreme Court

ORDER

Upon the foregoing petition and upon application of Jerome Dalym

IT IS HEREBY ORDERED, That Jerome Daly be, and hereby is authorized to appear and represent his clients as their Attorney at Law in the above refered to litigation now pending.

BY THE COURT

JUSTICE

Dated October 13th, 1969

(9)

42174

SUPREME COURT
FILED
OCT 13 1969
JOHN McCARTHY
CLERK

Petition and order granting
Jerome Daly permission
to represent certain
clients in pending litigation

10/9

STATE OF MINNESOTA

IN SUPREME COURT

In Re Jerome Daly, No. 42174

PETITION AND SPECIAL APPEARANCE

STATE OF MINNESOTA
SS
COUNTY OF RAMSEY

Jerome Daly, being first duly sworn deposes and states as follows:

1. That I am appearing specially herein and not generally and reserve my objections to the jurisdiction of this Court over the subject matter herein and over my person because of a total failure of due process of law, procedural and substantive.

2. For the purpose of protecting my client, CArl R. Anderson at his request, the undersigned respectfully petitions the Court to make an exception to the Order of temporary suspension of September 5,1969 in the case of Oscar Husby, et al., vs Carl R. Anderson, et al pending in the Dakota County, Minnesota, First Judicial Distrfic Court, File No. 65865 which Jerome Daly has been counsel for Carl R. Anderson since April of 1968, and which case is still pending for trial there.

Subscribed and sworn to before me
this 9th day of October,1969.

Jerome Daly

John McCarthy
Clerk of Supreme Court

Order

Upon the foregoing petition, IT IS HEREBY ORDERED, THAT, Jerome Daly, be and hereby is authorized to represent CArl R. Anderson in the above refered to litigation now pending in the Dakota County District Court.

BY THE COURT

Chief JUSTICE

October 9,1969

(7)

42174

SUPREME COURT
FILED
OCT 9 1969
JOHN McCARTHY
CLERK

Petition and
Special
Appearance

between the parties is concerned only with a trifle,[2] or an abuse of legal process is inherent in the case.[3]

§ 94. Jurisdiction as dependent on application by party for relief.

The general rule is that a court cannot undertake to adjudicate a controversy on its own motion; it can do this only when the controversy is presented to it by a party,[4] and only if it is presented to it in the form of a proper pleading.[5] A court has no power either to investigate facts or to initiate proceedings.[6] Before it may act there must be some appropriate application invoking the judicial power of the court in respect to the matter sought to be litigated. Where a statute prescribes a mode of acquiring jurisdiction, that mode must be followed or the proceedings[7] and resulting judgment[8] will be null and void and the judgment subject to collateral attack.[9]

§ 95. Objections to jurisdiction; waiver of, or estoppel to assert, objection.

It is generally settled that there can be no valid waiver of an objection that a court lacks jurisdiction over the subject matter,[10] and that there can be no estoppel to object on this ground.[11] On the other hand, it appears never to

2. Gale v Nickerson, 151 Mass 428, 24 NE 400 (court of equity will not extend its aid for recovery of a legacy the amount of which is only $20); Paul v Slason, 22 Vt 231.

Compare Montgomery Light & Traction Co. v Avant, 202 Ala 404, 80 So 497, 3 ALR 384 (stating, in an action involving the construction of a municipal ordinance, that the fact that the subject matter of the suit is of small value does not deprive the court of jurisdiction, because the maxim "de minimis non curat lex" does not apply); Smith v Ashcraft, 25 Ga 132 (reversing a decision which dismissed a bill in equity to compel the payment of the amount of $28 on the ground that to adjudicate such a small matter would be below the dignity of a court of equity); Wartman v Swindell, 54 NJL 589, 25 A 356 (holding that the right to maintain an action for the value of property, however small, of which the owner is wrongfully deprived, is never denied).

3. Le Clair v Shell Oil Co. (DC Ill) 183 F Supp 255; Board of Home Missions v Maughan, 35 Utah 516, 101 P 581.

4. Roberts v Seaboard Surety Co. 158 Fla 686, 29 So 2d 743; State v Muench, 217 Mo 124, 117 SW 25; State ex rel. Clark v Allaman, 154 Ohio St 296, 43 Ohio Ops 190, 95 NE2d 753.

5. United States v Choate (CA5) 276 F2d 724, 86 ALR2d 1337 (before federal jurisdiction attaches in particular case, there must be suit instituted in regular course of judicial procedure); Swing v St. Louis Refrigerator & W. G. Co. 78 Ark 246, 93 SW 978 (jurisdiction of a court may be called into action only by party in some mode recognized by law); Roberts v Seaboard Surety Co. 158 Fla 686, 29 So 2d 743; Union Coal Co. v La Salle, 136 Ill 119, 26 NE 506; State ex rel. Clark v Allaman, 154 Ohio St 296, 43 Ohio Ops 190, 95 NE2d 753.

6. Sale v Railroad Com. 15 Cal 2d 612, 104 P2d 38.

7. State ex rel. Cowan v District Court of First Judicial Dist. 131 Mont 502, 312 P2d 119.

8. In an adoption case, the certification of a cause from the probate court to the juvenile court did not constitute a complaint against the child's parents that the child was dependent, delinquent, or neglected; hence a judgment by the juvenile court that the child was dependent, delinquent, or neglected was void for lack of jurisdiction. State ex rel. Clark v Allaman, 154 Ohio St 296, 43 Ohio Ops 190, 95 NE2d 753.

9. State ex rel. Clark v Allaman, supra.

10. Green v Obergfell, 73 App DC 298, 121 F2d 46, 138 ALR 258, cert den 314 US 637, 86 L ed 511, 62 S Ct 72; State v Albritton, 251 Ala 422, 37 So 2d 640; King v King, 203 Ga 811, 48 SE2d 465, 2 ALR2d 1181; Toman v Park Castles Apartment Bldg. Corp. 375 Ill 293, 31 NE2d 299; Hersey v Hersey, 271 Mass 545, 171 NE 815, 70 ALR 518; Jacobson v Jones, 236 Miss 640, 111 So 2d 408; Re Buckles, 331 Mo 405, 53 SW2d 1055; Bryan v Miller, 73 ND 487, 16 NW2d 275; Re Griffin, 199 Okla 676, 189 P2d 933; Garner v Garner, 182 Or 549, 189 P2d 397; Re 1632 South Broad St., Philadelphia, 372 Pa 557, 94 A2d 772; American Agricultural Chemical Co. v Thomas, 206 SC 355, 34 SE2d 592, 160 ALR 594; Conant v Deep Creek & C. Valley Irrig. Co. 23 Utah 627, 66 P 188.

11. Re Freshour's Estate, 177 Kan 492, 280 P2d 642; Pulley v Pulley, 255 NC 423, 121 SE2d 876; Hart v Thomasville Motors, Inc. 244 NC 84, 92 SE2d 673; Jolley v Martin Bros. Box Co. 158 Ohio St 416, 109 NE2d 652; Lucas v Biller, 204 Va 309, 130 SE2d 582.

where the fee is imposed for the purpose of regulation, and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper, imposed by virtue of the police power; but where it is exacted solely for revenue purposes and its payment gives the right to carry on the business without any further conditions, it is a tax.[12] In this respect, the amount of the license fee or tax[13] is important and is to be considered in determining whether the exaction is one for regulation merely, or for revenue,[14] the reason being that the amount of the fee might in some cases be so large as to suggest of itself, considering the character of the business to which it was applied, that it was in fact a tax for revenue.[15] A legislative enactment under the police power cannot, however, be condemned as a taxing measure and out of harmony with the constitutional rule of uniformity in that regard unless the fees exacted are so clearly excessive that the legislature could not reasonably have had in contemplation an equivalent for the mere expense of executing the law.[16]

III. VALIDITY AND CONSTITUTIONALITY, IN GENERAL

§ 20. Generally; Due Process of Law.—The object of this subdivision is to treat generally of the validity and constitutionality of license laws and exactions. Elsewhere in this article are treated the validity of such laws and exactions from the standpoint of the power to require the same;[17] their validity in respect of interstate commerce,[18] the equal protection and equality and uniformity of such laws,[19] and the privileges and immunities of citizens.[20] The validity and constitutionality of license laws in respect of particular trades, occupations, or professions are also discussed in the specific articles dealing with the same,[1] and the validity and constitutionality of municipal license laws and exactions are treated in the article upon municipal corporations.[2]

The acceptance of a license under a state law does not impose on the licensee an obligation to respect or to comply with any provisions of the statute, or any regulations prescribed by state authorities, that are repugnant to the Constitution of the United States,[3] and when the fundamental principles of law are violated by license laws and exactions to the extent of depriving a citizen of his constitutional rights, the courts may be availed of in his behalf.[4] The manner and method provided for the enforcement of license laws

v. Anderson, 144 Tenn 564, 234 SW 768, 19 ALR 180; Ex parte Cramer, 62 Tex Crim Rep 11, 136 SW 61, 36 LRA(NS) 78, Ann Cas 1913C 588.

Anno: 4 LRA 809.

12 Tarver v. Albany, 160 Ga 251, 127 SE 856, citing RCL; Schmidt v. Indianapolis, 168 Ind 631, 80 NE 632, 14 LRA(NS) 787, 120 Am St Rep 385; State ex rel. Bozeman v. Police Ct. 68 Mont 435, 219 P 810, citing RCL; State ex rel. School Dist. v. Boyd, 63 Neb 829, 89 NW 417, 58 LRA 108; Chambers v. Higgins, 169 Va 345, 193 SE 531, citing RCL; Phœbus v. Manhattan Social Club, 105 Va 144, 52 SE 839, 8 Ann Cas 667.

13 See infra, §§ 41 et seq.

14 Van Hook v. Selma, 70 Ala 361, 45 Am Rep 85; Atkins v. Phillips, 26 Fla 281, 8 So 429, 10 LRA 158; Ottumwa v. Zekind, 95 Iowa 622, 64 NW 646, 29 LRA 734, 58 Am St Rep 447; Youngblood v. Sexton, 32 Mich 406, 20 Am Rep 654; Haller Baking Co. v. Rochester, 118 Pa Super Ct 501, 180 A 108, citing RCL.

15 Atkins v. Phillips, 26 Fla 281, 8 So 429, 10 LRA 158; Kinderman v. Philadelphia, 19 Pa D & C 71, citing RCL.

A fee for a license to conduct an occupation, substantially in excess of the sum necessary to cover the cost of issuing the license, is a tax and not a license. Ellis v. Frazier, 38 Or 462, 63 P 642, 53 LRA 454.

16 Wadhams Oil Co. v. Tracy, 141 Wis 150, 123 NW 785, 18 Ann Cas 779.

17 See supra, §§ 7 et seq.

18 See infra, §§ 25 et seq.

19 See infra, §§ 30 et seq.

20 See infra, § 35.

1 See supra, § 1.

2 See MUNICIPAL CORPORATIONS [Also 19 RCL p. 950, §§ 251 et seq.]

3 W. W. Cargill Co. v. Minnesota, 180 US 452, 45 L ed 619, 21 S Ct 423.

4 Ex parte Whitwell, 98 Cal 73, 32 P 870, 19 LRA 727, 35 Am St Rep 152; Jackson-

The right of home rule by cities has been established in a number of states by constitutional provision.[19] A home-rule city is protected by the due process guaranty.[20]

The constitutional protection of the Fourteenth Amendment against state action does not extend to the mere interest of an official, as such, who has not been deprived of his property without due process of law or denied the equal protection of the laws.[1]

C. Notice

§ 560. Necessity.[2]

One of the essentials of due process is notice.[3] This is especially true in

19. See Municipal Corporations (1st ed § 103).

20. State ex rel. Missoula v Holmes, 100 **Mont** 256, 47 P2d 624, 100 ALR 581, holding that a statute making it compulsory upon cities and towns to insure their public buildings and property in a state insurance fund violates the due process and home-rule provisions of the state constitution.

Annotation: 100 ALR 600.

1. Columbus & G. R. Co. v Miller, 283 US 96, 75 L ed 861, 51 S Ct 392.

2. As to instances in which notice is not required, see §§ 567 and 568, infra.

3. There are numberless cases which support the principle. The following are a small representation thereof: Anderson Nat. Bank v Luckett, 321 US 233, 88 L ed 692, 64 S Ct 599, 151 ALR 824; Voeller v Neilston Warehouse Co. 311 US 531, 85 L ed 322, 61 S Ct 376; Snyder v Massachusetts, 291 US 97, 78 L ed 674, 54 S Ct 330, 90 ALR 575; Alabama Alcohol Beverage Control Board v State, 247 **Ala** 469, 25 So 2d 30; Campbell v State, 242 **Ala** 215, 5 So 2d 466; Frahn v Greyling Realization Corp. 239 **Ala** 580, 195 So 758; Phoenix Metals Corp. v Roth, 79 **Ariz** 106, 284 P2d 645; Meserve v Edmonds, 223 **Ark** 297, 265 SW2d 704; Pierce v Superior Ct. of Los Angeles County, 1 **Cal** 2d 759, 37 P2d 460, 453, 96 ALR 1020; Gray v Hall, 203 **Cal** 306, 265 P 246; Re Buchman's Estate, 123 **Cal** App 2d 546, 267 P2d 73, 47 ALR2d 291; Great West Min. Co. v Woodmas of Alston Min. Co. 12 **Colo** 46, 20 P 771; State v Rose, 33 **Del** 168, 132 A 864, 45 ALR 85 (forfeiture of property used unlawfully); Boone v Wachovia Bank & T. Co. 82 App **DC** 317, 163 F2d 809, 173 ALR 1285; State ex rel. Munch v Davis, 143 **Fla** 236, 196 So 491; Coral Gables v Certain Lands, 110 **Fla** 189, 149 So 36; McDaniel v McElvy, 91 **Fla** 770, 108 So 820, 51 ALR 731; Frank v State, 142 **Ga** 741, 83 SE 645, error den 235 US 694, 59 L ed 429, 35 S Ct 208; Anderson v Great Northern R. Co. 25 **Idaho** 433, 138 P 127; Barnett v Cook County, 373 **Ill** 516, 26 NE2d 862; Griffin v Cook County, 369 **Ill** 380, 16 NE 2d 906, 118 ALR 1157; Chicago v Cohn, 326 **Ill** 372, 158 NE 118, 55 ALR 196; Harmon v Bolley, 187 **Ind** 511, 120 NE 33, 2 ALR 609; Parks v State, 159 **Ind** 211, 64 NE 862; Davidson v Henry L. Doherty & Co. 214 **Iowa** 739, 241 NW 700, 91 ALR 1308; Carrigg v Anderson, 167 **Kan** 238, 205 P2d 1004, 9 ALR2d 545; Motor Equipment Co. v Winters, 146 **Kan** 127, 69 P2d 23; Wichita Council, S. B. A. v Security Ben. Asso. 138 **Kan** 841, 28 P2d 976, 94 ALR 629; Morgan County v Governor of Kentucky, 288 **Ky** 532, 156 SW2d 498; Levee Comrs. v Johnson, 178 **Ky** 287, 199 SW 8; Charles Tolmas, Inc. v Police Jury of Jefferson Parish, 231 **La** 1, 90 So 2d 65; Mongogna v O'Dwyer, 204 **La** 1030, 16 So 2d 829, 152 ALR 162; Kramer v Linneus, 144 **Me** 239, 67 A2d 536; Randall v Patch, 118 **Me** 303, 108 A 97, 8 ALR 65; Rassner v Federal Collateral Soc. 299 **Mich** 206, 300 NW 45; Grand Rapids v Powers, 89 **Mich** 94, 50 NW 661; Juster Bros. v Christgau, 214 **Minn** 108, 7 NW2d 501; Mixed Local of Hotel & R. E. U. v Hotel & R. E. International Alliance, etc. 212 **Minn** 587, 4 NW2d 771; Dimke v Finke, 209 **Minn** 29, 295 NW 75; Dunn v Love, 172 **Miss** 342, 155 So 331, 92 ALR 1323, affd Doty v Love, 295 US 64, 79 L ed 1303, 55 S Ct 558, 96 ALR 1438; Sinquefield v Valentine, 159 **Miss** 144, 132 So 81, 76 ALR 238; Albert J. Hoppe, Inc. v St. Louis Public Serv. Co. 361 **Mo** 402, 235 SW2d 347, 23 ALR2d 846; Re Moynihan, 332 **Mo** 1022, 62 SW2d 410, 91 ALR 74; Stone v Jefferson, 317 **Mo** 1, 293 SW 780, 52 ALR 879; State v Zied, 116 **NJL** 234, 183 A 210; Gutierrez v Middle Rio Grande Conservancy Dist. 34 **NM** 346, 282 P 1, 70 ALR 1261, cert den 280 US 610, 74 L ed 653, 50 S Ct 158; Lacey v Lemmons, 22 **NM** 54, 159 P 949; Collins v North Carolina State Highway & Public Works Com. 237 **NC** 277, 74 SE2d 709; State v Gordon, 225 **NC** 241, 34 SE2d 414; Brewer v Valk, 204 **NC** 186, 167 SE 638, 87 ALR 237; Baird v Ellison, 70 **ND** 261, 293 NW 794; Darling & Co. v Burchard, 69 **ND** 212, 284 NW 856; Muskogee Iron Works v Bason, 176 **Okla** 298, 55 P 68; Cordrey v The Bee, 102 **Or** 636, 201 P 202, 20 ALR 1079; Com. v O'Keefe, 298 **Pa** 169, 148 A 73; Com. v Gryctko, 22 **Pa** D & C 462; Bowers v Smith, 14 **Pa** D & C 220; Koester v Citizens' Pub. Co. 154 **SC** 154, 151 SE 452; Ex parte Renfro, 115 **Tex** 82, 273 SW 813, 40 ALR 900; National Farmers

AMENDMENT 14, U.S.CONSTITUTION

"No State shall make or enforce any Law which shall:
1) which shall abrdige the immunities of Citizens of the United States.
2) which shall abridge the Priviledges of Citizens of the United States.
No State shall deprive any person of life, liberty or property without Due Process of Law".

The State of Minnesota cannot ad to or subtract from the Common Law Rights of Citizens and free men as they existed on July 2,1776.

It is respectfully submitted that the Judgment of the trial Court be affirmed

January 3,1969

Jerome Daly
Respondens Attorney
28 East Minnesota Street
Savage,Minnesota

proceedings of a judicial nature affecting the property rights of citizens.[4] One must be informed that the matter is pending so that he can choose for himself what action he will take in reference to it.[5] The notice essential to due process of law in such proceedings is original notice whereby the court acquires original jurisdiction, and not notice of the time when jurisdiction already completely vested will be exercised.[6]

It has been held that the requirement of notice as a matter of right in accordance with due process of law is satisfied by a statute which either expressly or by necessary implication confers such right.[7] But the view has also been taken that the statute itself must, to be constitutional, specifically require notice, since, in the absence of such a requirement, it will be deemed to authorize proceedings without notice.[8] Thus, it is said that a law providing for proceedings which may effect a deprivation of life, liberty, or property must require notice or it will be unconstitutional, it being insufficient that the person affected may, by chance, have notice.[9]

A person is not precluded from complaining that the taking of his property conformably to state legislation to satisfy an alleged debt or obligation was without the notice essential under the due process clause, merely because in his particular case due process of law would lead to the same result, since he had no adequate defense on the merits.[10]

Union Property & Gas Co. v Thompson, 4 **Utah** 2d 7, 286 P2d 249, 61 ALR2d 635; Fuller-Toponce Truck Co. v Public Service Com. 99 **Utah** 28, 96 P2d 722; Emerson v Hughes, 117 **Vt** 270, 90 A2d 910, 34 ALR2d 539; Buck v Bell, 143 **Va** 310, 130 SE 516, 51 ALR 855, affd 274 **US** 200, 71 L ed 1000, 47 S Ct 584; Com. v Atlantic Coast Line R. Co. 106 **Va** 61, 55 SE 572; State ex rel. Adams v Superior Court of Pierce County, 36 **Wash** 2d 868, 220 P2d 1081; Re Hendrickson, 12 **Wash** 2d 600, 123 P2d 322; Simpson v Stanton, 119 **W Va** 235, 193 SE 64; Lacher v Venus, 177 **Wis** 558, 188 NW 613, 24 ALR 403; Sterritt v Young, 14 **Wyo** 146, 82 P 946.

Annotation: 42 L ed 865.

Notice is of the essence of due process of law. Warren v Norwood, 138 **Me** 180, 24 A2d 229.

4. Re Buchman's Estate, 123 **Cal** App 2d 546, 267 P2d 73, 47 ALR2d 291; Loesch v Koehler, 144 **Ind** 278, 41 NE 326, 43 NE 129; Levee Comrs. v Johnson, 178 **Ky** 287, 199 SW 8; Baker v Baker, E. & Co. 162 **Ky** 683, 173 SW 109, affd 242 **US** 394, 61 L ed 386, 31 S Ct 152; Riley v Pearson, 120 **Minn** 210, 139 NW 361; Davis v St. Louis County, 65 **Minn** 310, 67 NW 997; State ex rel. Ferrocarriles Nacionales v Rutledge, 331 **Mo** 1015, 56 SW2d 28, 85 ALR 1378; Jones v Williams, 155 **NC** 179, 71 SE 222; Davies v Thompson, 61 **Okla** 21, 160 P 75; National Farmers Union Property & Gas Co. v Thompson, 4 **Utah** 2d 7, 286 P2d 249, 61 ALR2d 635; State ex rel. Anderton v Sommers, 242 **Wis** 484, 8 NW2d 263, 145 ALR 1324; Pinney v Providence Loan & Invest. Co. 106 **Wis** 396, 82 NW 308.

5. Blauvelt v Beck, 162 **Neb** 576, 76 NW2d 738.

6. Collins v North Carolina State Highway & Public Works Com. 237 **NC** 277, 74 SE2d 709.

As to process generally, see PROCESS (1st ed §§ 3 et seq.).

7. Re Lutker (**Okla** Crim) 274 P2d 786.

A statute is not invalid merely by reason of the fact that it does not expressly provide for notice and hearing; it may be implied by the courts, unless the language of the statute excludes the theory that notice and hearing are necessary. Tatlow v Bacon, 101 **Kan** 26, 165 P 835, 14 ALR 269, error dismd 251 **US** 537, 64 L ed 402, 40 S Ct 55.

Where a statute does not expressly provide for notice and a hearing, other statutes must be looked to and the process authorized under them should be had before a decree or judgment can be entered. The legislature cannot dispense with such notice. The court in all cases must proceed upon notice and inquiry; it must hear before it can adjudge, and it must give an opportunity to persons affected by the judgment to be heard before it is rendered, since otherwise the judgment does not affect them. Sinquefield v Valentine, 159 **Miss** 144, 132 So 81, 76 ALR 238.

8. Farnow v Department 1 of Eighth Judicial Dist. Court, 64 **Nev** 109, 178 P2d 371 (refusing to adopt contrary view).

9. Pulaski County v Commercial Nat. Bank, 210 **Ark** 124, 194 SW2d 883; Beveridge v Baer, 59 **SD** 563, 241 NW 727, 84 ALR 189.

10. Coe v Armour Fertilizer Works, 237 **US** 413, 59 L ed 1027, 35 S Ct 625.

A guaranty that notice shall be actually received is not, it seems, involved in due process if provision is made for notice.[11]

§ 561. — As to steps subsequent to initiation of proceedings.

After a person has been brought into a proceeding by notice, due process does not require notice of all subsequent steps in the proceeding.[12] After a hearing before judgment, with full opportunity to present all evidence and arguments, no further notice and hearing need be given after a decision in order to constitute due process of law.[13] It has been suggested, however, that entry of judgment without notice may be a denial of due process, even where there is jurisdiction over the person and subject matter.[14]

Permitting an administrative board which acts only by consent of the parties interested to take testimony without notice to either party and to give notices by mail does not deprive the parties of due process of law.[15]

On the other hand, after a judgment of dismissal of the action has been rendered, the action cannot, without motion or proceedings to vacate the judgment and without notice, be reinstated after the term or the rule day, which under the local practice is equivalent to the end of the term, and a personal judgment be rendered.[16] And if in the course of a proceeding, amendments are made which materially enlarge or change the action, an additional notice is necessary, although the defendant can, of course, waive the notice by appearance in the proceeding.[17]

11. Miedreich v Lauenstein, 232 **US** 236, 58 L ed 584, 34 S Ct 309.

Upholding a sale under a decree for the foreclosure of a mortgage against an attack based on the ground that the owner was not served with process in the foreclosure proceedings does not deprive him of his property without due process of law where the state had made provision for the service of process and the original party in the foreclosure proceeding did all that the law required in the issuance of, and attempt to serve, process, and the sheriff made a return to the court, contrary to fact, that the service had been duly made, although under the circumstances the recovery upon the sheriff's bond authorized by the state law may not have been an adequate remedy. Miedreich v Lauenstein, supra.

12. Elk River Coal & Lumber Co. v Funk, 222 **Iowa** 1222, 271 NW 204, 110 ALR 1415 (administrative board); Griggs v Hanson, 86 **Kan** 632, 121 P 1094. See State ex rel. Public Service Com. v Boone Circuit Court, 236 **Ind** 202, 138 NE2d 4, 139 NE2d 552.

A judgment debtor is not entitled, under the constitutional guaranty of due process of law, to notice before the issuance of execution. Endicott-Johnson Corp. v Smith, 266 US 291, 69 L ed 293, 45 S Ct 63; Endicott-Johnson Corp. v Encyclopedia Press, 266 US 285, 69 L ed 288, 45 S Ct 61.

Creditors of a bankrupt are not deprived of their property without due process of law because the Bankruptcy Act does not require personal service of notice of the application for the discharge in voluntary proceedings. Hanover Nat. Bank v Moyses, 186 **US** 181, 46 L ed 1113, 22 S Ct 857.

13. Pittsburg, C. C. & St. L. R. Co. v Backus, 154 **US** 421, 38 L ed 1031, 14 S Ct 1114.

A statute providing for constructive notice only of the institution and pendency of a writ of error proceeding, by making a record in the minute book of the court a substitute for personal service, does not violate the constitutional provision against deprivation of property without due process of law. State ex rel. Andreu v Canfield, 40 **Fla** 36, 23 So 591.

14. American Surety Co. v Baldwin, 287 **US** 156, 77 L ed 231, 53 S Ct 98, 86 ALR 298.

15. Borgnis v Falk Co. 147 **Wis** 327, 133 NW 209.

16. Wetmore v Karrick, 205 **US** 141, 51 L ed 745, 27 S Ct 434.

17. Laing v Rigney, 160 **US** 531, 40 L ed 525, 16 S Ct 366, holding that an opportunity to be heard, sufficient to prevent the claim of a denial of due process of law in a decree rendered upon a supplemental bill personally served outside the state, appears where the defendant had been served under the original bill within the jurisdiction and, after a default as to the supplemental bill, appeared by counsel and procured a modification of the decree.

§ 562. Character.[18]

To meet the requirements of due process, the notice must be reasonable and adequate for the purpose, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it.[19] It must give sufficient notice of the pendency of the action or proceeding and a reasonable opportunity to a defendant to appear and assert his rights before a tribunal legally constituted to adjudicate such rights.[20] It has been said that to satisfy the constitutional requirement of due process, the notice afforded should be such as is likely to be received and plain to understand.[1]

18. As to the character of notice which must be given foreign corporations against which suit is brought, see FOREIGN CORPORATIONS (1st ed §§ 487 et seq.).

19. Dohany v Rogers, 281 US 362, 74 L ed 904, 50 S Ct 299, 68 ALR 434; Missouri ex rel. Hurwitz v North, 271 US 40, 70 L ed 818, 46 S Ct 384; Standard Oil Co. v Missouri, 224 US 270, 56 L ed 760, 32 S Ct 406; Roller v Holly, 176 US 398, 44 L ed 520, 20 S Ct 410; Boone v Wachovia Bank & T. Co. 82 App DC 317, 163 F2d 809, 173 ALR 1285; McDaniel v McElvy, 91 Fla 770, 108 So 820, 51 ALR 731; Gutierrez v Middle Rio Grande Conservancy Dist. 34 NM 346, 282 P 1, 70 ALR 1261, cert den 280 US 610, 74 L ed 653, 50 S Ct 158; Tennessee Cent. R. Co. v Pharr, 183 Tenn 658, 194 SW2d 486; Re Bergman's Survivorship, 60 Wyo 355, 151 P2d 360.

The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the rights for which the constitutional protection is invoked. Link v Wabash R. Co. 370 US 626, 8 L ed 2d 734, 82 S Ct 1386.

The notice must be of such nature as reasonably to convey the required information. Mullane v Central Hanover Bank & Trust Co. 339 US 306, 94 L ed 865, 70 S Ct 652.

That notice to the claimants of a dormant bank deposit, which the state is seeking to compel the bank to turn over to it, is required to be made in the county containing the state capitol rather than in that county wherein the bank is located, is not so unreasonable that it will fail to constitute due process of law, where the bank has been required to publish in the local paper a statement of the facts relating to the account each year for 9 years prior to the time fixed for state proceedings. Security Sav. Bank v California, 263 US 282, 68 L ed 301, 44 S Ct 108, 31 ALR 391.

For detailed discussion of the sufficiency of various forms of notice of particular types of legal proceedings, see PROCESS.

20. Covey v Somers, 351 US 141, 100 L ed 1021, 76 S Ct 724; Blauvelt v Beck, 162 Neb 576, 76 NW2d 738; Straub v Lyman Land & Invest. Co. 30 SD 310, 138 NW 957, affd on reh 31 SD 571, 141 NW 979; Mexia Independent School Dist. v Mexia, 134 Tex 95, 133 SW2d 118, 134 ALR 1277.

And see § 580, infra.

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Schroeder v New York City, 371 US 208, 9 L ed 2d 255, 83 S Ct 279, 89 ALR2d 1398; Mullane v Central Hanover Bank & Trust Co. 339 US 306, 94 L ed 865, 70 S Ct 652 (in which the court said that the reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than others of the feasible and customary substitutes).

The notice must be sufficient to make it reasonably probable that the party proceeded against is apprised of what is going on and given an opportunity to defend. Re Bergman's Survivorship, 60 Wyo 355, 151 P2d 360.

An order adjudging a person incompetent and appointing a committee of his person and estate is not wanting in due process of law where, at each stage in the proceedings leading up to such order, the alleged incompetent, then under commitment to a private hospital, was personally served with notice and was given an opportunity to be heard. Chaloner v Sherman, 242 US 455, 61 L ed 427, 37 S Ct 136.

A state cannot exercise through its courts judicial jurisdiction over a person, although he is subject to the jurisdiction of the state, unless a method of notification is employed which is reasonably calculated to give him knowledge of the attempted exercise of jurisdiction and an opportunity to be heard. Restatement, CONFLICT OF LAWS § 75, Comment b, which points out that under the Fourteenth Amendment the rendition of a judgment by the courts of a state without any reasonable form of notification is invalid even in the state in which it is rendered. A provision to the same effect relating to exercise of judicial jurisdiction over a thing appears in Restatement, CONFLICT OF LAWS § 100.

1. Griffin v Cook County, 369 Ill 380, 16 NE2d 906, 118 ALR 1157.

The means employed to give notice must be such as one desirous of actually informing the person to be notified might reasonably adopt to accomplish it.[2] The fundamental test is whether the notice is fair and just to the parties involved.[3] The adequacy of notice respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which the circumstances show such party may be assumed to have with respect to the consequences of his own conduct.[4]

Actual knowledge cannot operate as a substitute for notice required by due process of law;[5] hence, extraofficial or casual notice is not sufficient.[6] Special proceedings which are applicable to the specified subject matter and conformable to the rules requiring notice and the acquisition of jurisdiction, and which affect all persons alike whose property or rights come within the lawful scope of the proceedings, are prosecuted with "due process of law."[7] If the form sanctioned by the state law gives notice and affords an opportunity to be heard, the mere question whether it is by a motion or ordinary action is not material.[8]

The legislature may prescribe what notice shall be given to parties whose rights are to be affected by judicial proceedings, subject to the condition that the notice prescribed shall afford an opportunity to be heard.[9] The criterion is not whether any injury to an individual is possible, but whether the requirement as to notice and opportunity to protect property rights affected is just and reasonable.[10] The due process of law clause does not impose an unattainable standard of accuracy. If a defendant within the jurisdiction is served personally with process in which his name is misspelled, he cannot safely ignore it on account of the misnomer.[11]

Actual personal notice is not necessary in all proceedings. There may be, and must be, some form of constructive service,[12] especially when actual service is impracticable.[13] A statute authorizing a ministerial officer to issue orders

2. Covey v Somers, 351 US 141, 100 L ed 1021, 76 S Ct 724; Mullane v Central Hanover Bank & Trust Co. 339 US 306, 94 L ed 865, 70 S Ct 652.

3. Re Bergman's Survivorship, 60 Wyo 355, 151 P2d 360.

4. Link v Wabash R. Co. 370 US 626, 8 L ed 2d 734, 82 S Ct 1386.

5. Watkins v Dodson, 159 Neb 745, 68 NW2d 508.

6. Coe v Armour Fertilizer Works, 237 US 413, 59 L ed 1027, 35 S Ct 625.

7. Burlington, C. R. & N. R. Co. v Dey, 82 Iowa 312, 48 NW 98.

8. Iowa C. R. Co. v Iowa, 160 US 389, 40 L ed 467, 16 S Ct 344.

A rule upon the incumbent of a public office to show cause why he refuses to surrender his office, providing for service of the rule upon him, issued in pursuance of a state statute, may be a full compliance with the requirements as to due process of law. Kennard v Louisiana, 92 US 480, 23 L ed 478.

9. Gutierrez v Middle Rio Grande Conservancy Dist. 34 NM 346, 282 P 1, 70 ALR 1261, cert den 280 US 610, 74 L ed 653, 50 S Ct 158.

10. McDaniel v McElvy, 91 Fla 770, 108 So 820, 51 ALR 731.

11. Grannis v Ordean, 234 US 385, 58 L ed 1363, 34 S Ct 779, holding that a person is not deprived of his property without due process of law where a judgment in a previous suit against the person to whose interest he succeeded, based upon constructive service, in which such person, whose true name is "Albert B. Geilfuss, assignee," was named as "Albert Guilfuss, assignee," is sustained as valid against a collateral attack.

12. Jacob v Roberts, 223 US 261, 56 L ed 429, 32 S Ct 303; Ballard v Hunter, 204 US 241, 51 L ed 461, 27 S Ct 261.

13. State v Guilbert, 56 Ohio St 575, 47 NE 551.

And see PROCESS (1st ed §§ 57 et seq.).

In cases where the statute authorizes the court to determine the question of title and decree it to the rightful owner, and where personal service cannot be effected after due diligence, the decree is valid and binding without personal service or appearance, if the statute has provided a reasonable method of

unimportant.[16] Thus, one who actually appears and makes a defense in an action to which he was not technically a party cannot contend that when he was brought in by rule to show cause after the judgment was rendered and was condemned to pay it, he was denied due process of law because all right to defend had been cut off by the previous judgment, if he offered no defense which the court did not entertain.[17]

A state may, without violence to the due process clause of the Fourteenth Amendment, declare that one who voluntarily enters one of its courts to contest any question in an action there pending shall be deemed to have submitted himself to the jurisdiction of the court for all purposes of the action, and may attach consequences of this character even to a special appearance entered for the purpose of objecting that the trial court has not acquired jurisdiction over the person of the defendant.[18]

D. Hearing

1. In General

§ 569. Necessity.[19]

An opportunity for hearing is one of the essential elements of due process,[20]

16. Doty v Love, 295 US 64, 79 L ed 1303, 55 S Ct 558, 96 ALR 1438 (opening of closed bank); Kryger v Wilson, 242 US 171, 61 L ed 229, 37 S Ct 34; Williams v Eggleston, 170 US 304, 42 L ed 1047, 18 S Ct 617; Chicago, B. & Q. R. Co. v Nebraska, 170 US 57, 42 L ed 948, 18 S Ct 513; State ex rel. Berland Shoe Stores v Haney, 208 Minn 105, 292 NW 748.

If the party having the right to notice and hearing is accorded a full and fair hearing in which he participates without objection, it is thereafter too late for him to attack the whole proceeding and its result, otherwise unchallenged, upon the ground that he was entitled to notice. State ex rel. Berland Shoe Stores v Haney, supra.

17. Louisville & N. R. Co. v Schmidt, 177 US 230, 44 L ed 747, 20 S Ct 620.

18. Western Life Indem. Co. v Rupp, 235 US 261, 59 L ed 220, 35 S Ct 37.

19. As to instances in which a hearing is not required, see § 577, infra.

20. The following are representative of the myriad decisions supporting this principle: Shields v Utah Idaho C. R. Co. 305 US 177, 83 L ed 111, 59 S Ct 160; Powell v Alabama, 287 US 45, 77 L ed 158, 53 S Ct 55, 84 ALR 527; Blackmer v United States, 284 US 421, 76 L ed 375, 52 S Ct 252; Baker v Baker, E. & Co. 242 US 394, 61 L ed 386, 37 S Ct 152; Riverside & D. River Cotton Mills v Menefee, 237 US 189, 59 L ed 910, 35 S Ct 579; Boone v Wachovia Bank & T. Co. 82 App DC 317, 163 F2d 809, 173 ALR 1285; Alabama Alcohol Beverage Control Board v State, 247 Ala 469, 25 So 2d 30; Frahn v Greyling Realization Corp. 239 Ala 580, 195 So 758; Fowler v Nash, 225 Ala 613, 144 So 831; Phoenix Metals Corp. v Roth, 79 Ariz 106, 284 P2d 645; Meserve v Edmonds, 223 Ark 297, 265 SW2d 704; Gray v Hall, 203 Cal 306, 265 P 246; San Christina Invest. Co. v San Francisco, 167 Cal 762, 141 P 384; Re Buchman's Estate, 123 Cal App 2d 546, 267 P2d 73, 47 ALR2d 291; State v Rose, 33 Del 168, 132 A 864, 45 ALR 85 (forfeiture of property used unlawfully); State ex rel. Munch v Davis, 143 Fla 236, 196 So 491; Coral Gables v Certain Lands, 110 Fla 189, 149 So 36; McDaniel v McElvy, 91 Fla 770, 108 So 820, 51 ALR 731; Frank v State, 142 Ga 741, 83 SE 645, error den 235 US 694, 59 L ed 429, 35 S Ct 208; Hedlund v Miner, 395 Ill 217, 69 NE2d 862, 170 ALR 1306; Barnett v Cook County, 373 Ill 516, 26 NE2d 862; Griffin v Cook County, 369 Ill 380, 16 NE2d 906, 118 ALR 1157; Chicago v Cohn, 326 Ill 372, 158 NE 118, 55 ALR 196; Harmon v Bolley, 187 Ind 511, 120 NE 33, 2 ALR 609; Davidson v Henry L. Doherty & Co. 214 Iowa 739, 241 NW 700, 91 ALR 1308; Carrigg v Anderson, 167 Kan 238, 205 P2d 1004, 9 ALR2d 545; Motor Equipment Co. v Winters, 146 Kan 127, 69 P2d 23; Wichita Council, S. B. A. v Security Ben. Asso. 138 Kan 841, 28 P2d 976, 94 ALR 629; Morgan County v Governor of Kentucky, 288 Ky 532, 156 SW2d 498; Levee Comrs. v Johnson, 178 Ky 287, 199 SW 8; Jones v Caldwell, 176 Ky 15, 195 SW 122; Charles Tolmas, Inc. v Police Jury of Parish of Jefferson, 231 La 1, 90 So 2d 65; Mongogna v O'Dwyer, 204 La 1030, 16 So 2d 829, 152 ALR 162; Randall v Patch, 118 Me 303, 108 A 97, 8 ALR 65; Rassner v Federal Collateral Soc. 299 Mich 206, 300 NW 45; State v Sax, 231 Minn 1, 42 NW2d 680, 18 ALR2d 929; Juster Bros. v Christgau, 214 Minn 108, 7 NW2d 501; Mixed Local of Hotel & R. E. Union v Hotel & Restaurant Employees, 212 Minn 587, 4 NW2d 771; Butler v State, 217 Miss 40, 63 So 2d 779; Dunn

the taking of his property conformably to state legislation, to satisfy an alleged debt or obligation, was without the hearing essential under the due process guaranty, because in his particular case due process of law would lead to the same result, since he had no adequate defense on the merits.[7]

The required hearing is a matter of right; a hearing granted as a matter of favor or discretion in proceedings for the taking of one's property, to satisfy his alleged debt or obligation, is not a substantial substitute for due process of law.[8] The requirement of a hearing as a matter of right is satisfied by a statute which either expressly or by necessary implication confers such right.[9]

Although it has been said that not every order entered without notice and a preliminary adversary hearing offends due process,[10] the general rule that due process of law implies a hearing before condemnation or the reaching of a judgment through what is ordinarily understood to be judicial process is subject to an exception only in extreme cases or emergencies, as where the preservation and repose of society or the protection of the property rights of a large class of the community absolutely require a departure from the usual course of procedure.[11]

If reasonable opportunity[12] for hearing is afforded a person sought to be affected by a proceeding, then he has had due process.[13] The fact that external circumstances may prevent a defendant from availing himself of the opportunity to defend does not render a summary judgment law unconstitutional as denying due process.[14] Nor does the fact that opportunity for a hearing was lost because misapprehension as to the appropriate remedy was not removed by judicial decision until it was too late to rectify the error furnish the basis for a claim that due process of law has been denied.[15]

Where the right to a hearing is denied, the mere giving of a notice is ineffectual for any purpose within the meaning of the constitutional guaranty. The denial to a party in such a case of the right to appear is in legal effect the recall of the citation to him.[16]

§ 570. — Conditions and restrictions.

Reasonable conditions may be imposed as a condition of a hearing.[17] That a rule of procedure may work particular hardship on a particular defendant

or evidence, to know the nature and contents of all evidence adduced in the matter, and to present any relevant contentions and evidence the parties may have; in other words, the party must have his day in court. Juster Bros. v Christgau, 214 Minn 108, 7 NW2d 501.

7. Coe v Armour Fertilizer Works, 237 US 413, 59 L ed 1027, 35 S Ct 625.

8. Coe v Armour Fertilizer Works, supra; Pulaski County v Commercial Nat. Bank, 210 Ark 124, 194 SW2d 883.

9. Re Lutker (Okla Crim) 274 P2d 786.

10. Link v Wabash R. Co. 370 US 626, 8 L ed 2d 734, 82 S Ct 1386.

11. The Apollon, 9 Wheat (US) 362, 6 L ed 111; Grainger v Douglas Park Jockey Club (CA6) 148 F 513; Varden v Mount, 78 Ky 86; Shafer v Mumma, 17 Md 331; Lovell v Seeback, 45 Minn 465, 48 NW 23; Neer v State Live Stock Sanitary Bd. 40 ND 340, 168 NW 601; Jenkins v Ballantyne, 8 Utah 245, 30 P 760.

12. The opportunity to be heard must be reasonable. Tennessee Cent. R. Co. v Pharr, 183 Tenn 658, 194 SW2d 486.

13. Lynde v Lynde, 181 US 183, 45 L ed 810, 21 S Ct 555; People's Wayne County Bank v Wolverine Box Co. 250 Mich 273, 230 NW 170, 69 ALR 1024.

14. People's Wayne County Bank v Wolverine Box Co., supra.

15. American Surety Co. v Baldwin, 287 US 156, 77 L ed 231, 53 S Ct 98, 86 ALR 298.

16. Windsor v McVeigh, 93 US 274, 23 L ed 914.

17. Ownbey v Morgan, 256 US 94, 65 L ed 837, 41 S Ct 433, 17 ALR 873 (holding that a statute which affords a nonresident individual defendant in a suit begun by foreign attachment an opportunity to appear and de-

compasses freedom to remain silent, it has been said that there is justification for the view that the two freedoms are separate, and that freedom to remain silent is a freedom of privacy, different in characteristics and governed by different considerations from the constitutionally protected freedom of speech.[19] It has been pointed out that the public policy which supports freedom of speech is that the safety of democratic government lies in open discussion, while the public interest in privacy is premised upon the individual's right to the pursuit of happiness.[20]

§ 352. Freedom of legislative debate; parliamentary freedom.

In some of the states provisions are contained in the Bills of Rights specially guaranteeing the freedom of deliberation, speech, and debate in legislative assemblies.[1] The privileges of members of the British Parliament of having their debates unquestioned, although it was at first denied by the Crown and its exercise was often attended by actual punishment, became in the course of time generally conceded; and even though speeches made in Parliament by a member are to the prejudice of any other person, or calumnious, or hazardous to the public peace, that member must enjoy complete immunity. In the United States this principle is universally recognized, and a speech or debate in either house of the national or of any state legislature cannot be the foundation of any accusation or prosecution, action, or complaint in any court or place whatsoever.[2] Constitutional provisions securing freedom of debate should be construed liberally, so that their full design may be answered. They should be extended to every act resulting from the nature of the member's office, and done in the execution of it, and should exempt him from a liability for everything said or done by him as a representative, whether according to the rules of the house or not; such freedom is particularly the privilege of the individual members rather than of the house as an organized body, and being derived from the will of the people, the individual members are entitled to this privilege, even against the will of the house.[3]

3. Right to Assemble Peaceably and to Petition Government; Right of Free Association

§ 353. Generally.

The First Amendment to the Federal Constitution provides that Congress shall make no law abridging the right of the people peaceably to assemble and to petition the government for a redress of grievances.[4] Although the First Amendment itself is merely a limitation against federal abridgment of the right,[5] the express guaranty that the right shall not be abridged by Congress does not argue exclusion of abridgment of the power by the states. The due process clause of the Fourteenth Amendment prevents any denial of the right

19. Barsky v United States, 83 App DC 127, 167 F2d 241, cert den 334 US 843, 92 L ed 1767, 68 S Ct 1541, reh den 339 US 971, 94 L ed 1379, 70 S Ct 1001.

20. Barsky v United States, supra.

1. Coffin v Coffin, 4 Mass 1.

2. Kilbourn v Thompson, 103 US 168, 26 L ed 377.

3. Coffin v Coffin, 4 Mass 1.

4. De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255; United States v Cruikshank, 92 US 542, 23 L ed 588; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

Practice Aids. — Allegation as to unconstitutionality in denial of right of assembly. 6 Am Jur Pl & Pr Forms 6:316.

5. Presser v Illinois, 116 US 252, 29 L ed 615, 6 S Ct 580; United States v Cruikshank, 92 US 542, 23 L ed 588; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

by the states.[6] Moreover, in the Bills of Rights of many of the states are also found provisions asserting the right of the people to assemble and to consult together for the common good and to petition the government for redress of grievances.[7] Freedom of association is included in the bundle of First Amendment rights made applicable to the states by the due process clause of the Fourteenth Amendment.[8] It is an inseparable aspect of the liberty assured by the due process clause.[9]

§ 354. Nature of right.

The right of the people so to assemble for the purpose of petitioning Congress for a redress of grievances or for anything else connected with the powers or the duties of the National Government is an attribute of national citizenship,[10] and thus a right and privilege secured to citizens of the United States by the Constitution.[11] It is a right cognate to those of free speech and free press and is equally fundamental.[12]

6. Hague v CIO, 307 US 496, 83 L ed 1423, 59 S Ct 954; Herndon v Lowry, 301 US 242, 81 L ed 1066, 57 S Ct 732; De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255.

The due process clause of the Fourteenth Amendment makes applicable to states freedom of speech and freedom of press guaranteed by the First Amendment, as well as the right of peaceable assembly without which speech would be unduly trammeled. Palko v Connecticut, 302 US 319, 82 L ed 288, 58 S Ct 149.

7. Britton v Election Comrs. 129 Cal 337, 61 P 1115; State v Sinchuk, 96 Conn 605, 115 A 33, 20 ALR 1515; Thomas v Indianapolis, 195 Ind 440, 145 NE 550, 35 ALR 1194; Yancey v Commonwealth, 135 Ky 207, 122 SW 123; Commonwealth v Surridge, 265 Mass 425, 164 NE 480, 62 ALR 402; Wheelock v Lowell, 196 Mass 220, 81 NE 977; State v Junkin, 85 Neb 1, 122 NW 473; State v Butterworth, 104 NJL 579, 142 A 57, 58 ALR 744; Spayd v Ringing Rock Lodge, 270 Pa 67, 113 A 70, 14 ALR 1443; McKee v Hughes, 133 Tenn 455, 181 SW 930; Love v Wilcox, 119 Tex 256, 28 SW2d 515, 70 ALR 1484; State ex rel. La Follette v Kohler, 200 Wis 518, 228 NW 895, 69 ALR 348; Re Stolen, 193 Wis 602, 214 NW 379, 216 NW 127, 55 ALR 1355; State ex rel. Van Alstine v Frear, 142 Wis 320, 125 NW 961; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

8. Louisiana ex rel. Gremillion v NAACP, 366 US 293, 6 L ed 2d 301, 81 S Ct 1333; Bates v Little Rock, 361 US 516, 4 L ed 2d 480, 80 S Ct 412.

9. Gibson v Florida Legislative Investigation Committee, 372 US 539, 9 L ed 2d 929, 83 S Ct 889.

10. Maxwell v Dow, 176 US 581, 44 L ed 597, 20 S Ct 448, 494; Presser v Illinois, 116 US 252, 29 L ed 615, 6 S Ct 580; United States v Cruikshank, 92 US 542, 28 L ed 588; Slaughter-House Cases, 16 Wall (US) 36, 21 L ed 394; Spriggs v Clark, 45 Wyo 62, 14 P2d 667, 83 ALR 1364.

It is of course apparent that the purpose of the assembly should have some proper reference to the National Government. Twining v New Jersey, 211 US 78, 53 L ed 97, 29 S Ct 14.

There is some modicum of freedom of thought, speech, and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no state, nor all together, nor the nation itself, can prohibit, restrain, or impede. Thomas v Collins, 323 US 516, 89 L ed 430, 65 S Ct 315, reh den 323 US 819, 89 L ed 650, 65 S Ct 557.

11. Maxwell v Dow, 176 US 581, 44 L ed 597, 20 S Ct 448, 494; Re Quarles, 158 US 532, 39 L ed 1080, 15 S Ct 959; Slaughter-House Cases, 16 Wall (US) 36, 21 L ed 394.

All citizens have the constitutional right to peaceably assemble and organize for any purpose, to speak freely, and to present their views and desires to any public officer or legislative body. Springfield v Clouse, 356 Mo 1239, 206 SW2d 539.

An expression of opinion by the electors of a state upon the question whether a provision of the Federal Constitution shall be repealed is an exercise of the right to petition guaranteed by the Federal Constitution. Spriggs v Clark, 45 Wyo 62, 14 P2d 767, 83 ALR 1364.

12. De Jonge v Oregon, 299 US 353, 81 L ed 278, 57 S Ct 255; State ex rel. La Follette v Kohler, 200 Wis 518, 228 NW 895, 69 ALR 348.

It was not by accident or coincidence that the rights to freedom of speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances, all these being, though not identical, inseparable. Thomas v Collins, 323 US 516, 89 L ed 430, 65 S Ct 315, reh den 323 US 819, 89 L ed 650, 65 S Ct 557.

"The principles governing the right of assembly and the right of free speech are the

(6)

42174

SUPREME COURT
FILED
OCT 9 1969
JOHN McCARTHY,
CLERK

Petition to Vacate
Opinion of 9-5-69
and
Additional Petition

9/5

No. Sp. Supreme Court Per Curiam

In re Jerome Daly.

42174

Re: Endorsed
Filed September 5,1969
John McCarthy, Clerk
Minnesota Supreme Court

TO THE ABOVE COURT AND THE JUSTICES THEREOF:
SIRS:

JEROME DALY, PETITIONER

WHEREAS, it being made to appear, that the Constitution of the

United States provides specifically as follows:

Article 2 Section 4. " The President, Vice President and all civil Officers of the United States shall be removed from Office on impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Article VI. "All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

.....all judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."

Article I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right oft the people peaceable to assemble and to petition the Government for a redress of grievances."

Article IX. "The enumeration of the Constitution, or certain rights, shall not be construed to deny or disparage others retained by the people."

Article XIV. Section 1."All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Minnesota Constitution Article I. Section 2. "No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law oft the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State otherwise than the punishment of crime, whereof the party shall have been duly convicted."

Minnesota Constitution Article IV. Section 14 "The House of Representatives shall have the sole power of impeachment, through a concurrence of a majority of all the members elected to the seats therein. All impeachments shall be tried by the Senate; and when sitting for that purpose the senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members present."

NOW THEREFORE, pursuant to the Declaration of Independence, The Northwest Ordinance of July 13,1787, The Constitution of the United States of America, The Lousiania Purchase Treaty of April 30, 1803 and the Constitution of the State of Minnesota, your Petitioner, Jerome Daly, humbly petitions the Court to vacate, set aside and expunge from the record that certain Opinion and Disposition made and entered herein on September 5,1969 upon the following grounds.

1. The Court is without jurisdiction. See 20 Am Jur 2d Section 94. "Jurisdiction as dependent on application by party for relief" Before a Court may act there must be some appropriate application invoking the judicial power of the Court in respect to the matter sought to be litigated.

2. The Court is without jurisdiction to proceed in this manner as An Attorney is an officer of the Court. An Attorney has to be an agent of the State as the Court derived its Judicial Power from the Constitution and the People who established and ordained it. The 14th amendment makes the entire Constitution of the United States applicable to and binding upon the State of Minnesota as though the Constitution of the United States was set out therein in full. The 14th amendment cannot be construed any other way without doing violence to it and the Constitution of the United States. A Judge sworn to support the Constitutions is a Federal Judge first and a State Judge secondly. A Lawyer admitted to practice and granted a license to practice Law in the Federal and State Courts is a Federal Officer first and a State Officer secondly. A license to practice law that is exercised without blemish for 16 years is a license coupled with an interest. See Article 2 Section 4 and Amendment 14 of the United States Constitution above. "(a Lawyer) "shall be removed from Office on impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." A Lawyer is an Officer of the Judicial Branch of the

Government of the United States and of the States. A Lawyer can only be removed from office pursuant to the procedure set out in the United States Constitution and more particularly Article 2 Section 4.

See also In re Rerat, 232 Minnesota 1. Due Process of Law must be followed. See also 481 .06 of MSA. General Duties of an Attorney. M.S.A. 481.15 "Removal or Suspension", in so far as it conflicts with Article 2 Section 4 and Amendment 14 of the U.S.Constitution it is unconstitutional and void

I therefore, respectfully request the Court to set a time and place for hearing of this Petition and grant the relief requested, and to consider the attached exhibits in support of this petition.

Respectfully submitted,

Jerome Daly

Jerome Daly
28 East Minnesota Street
Savage,Minnesota

Dated at Savage,Minnesota
September 16,1969

ADITIONAL PETITION

There is a defect of parties in this proceeding. There are no parties listed at all except Jerome Daly. MSA 540.02 requires that every action must be prosecuted by the real party in interest. This is fundamental. In this case the State of Minnesota is the only real party in interest. See the petition filed by the Bar Association. Therein in the only ones who the Bar Association pretends to be complaining are Lawyers, Judges and Bankers.

See 33 Am Jur Section 20 Attached hereto on Licenses. The acdeptance of a license under a State Law does not impose on the licensee an obligation to respect or to comply with any provisions of a statute or regulations prescribed by State authorities that are repugnant to the Constitution of the United States, and when the fundamental principles of law are violated by license Laws and exactions to the extent of depriving a citizen of his constitutional rights, the Courts may be availed of in his behalf.

In Supreme Court File No. 42088 and 42117 the Orders signed were not a Writ of Prohibition, in the alternative or otherwise. The Order was in the nature of an Injunction.See 585.01. The Order does not comply with the Issuance of a Temporary Injunction. It did not comply with ~~585~~ 585.02 and 585.03 in that no Temporary Injunction was issued and no hearing was granted and it was supported by no Affidavit. 585.04 requires that a Bond shall be given in the sum of at least $250.00 before the Writ of Injunction issues.

The Order was fatally defective in that it did not provide for a hearing before the Court at some stage in the proceedings. It expressly excluded a hearing at all. See 16 Am Jur 2d Section 569. The requirement of Notice and Hearing cannot be dispensed with. If no notice and hearing is provided for then Due Process of Law Constitutional mandates are violated and the Order is null and Void. In this case I received no Notice and Hearing in the application for prohibition. Thus there can be no contempt.

See 17 Am Jur 2d Sections 42, and 43, on Contempt. It is a general rule that a person cannot be punished in a contempt proceedings for disregarding an injunction that is void for want of Jurisdiction in the Court. When a Court issues a Temporary Injunction without proper Bond having been given as required by Statute it does so without jurisdiction and cannot punish as for contempt a violation of the injunction. In this case the Order complained to be violated did not follow the procedural statutes for Writs of Prohibitions or Injunctions. Whether a violation of the Order constituted a Contempt or not as being repugnant to Constitutional and Statutory Law is certainly a reasonable debatable question. It did not require that Jerome Daly be suspended from the practice of Law without trial, Notice Hearing or being apprised of the charges or that the real purpose and net effect of the proceeding was not prohibition at all but entrapment to give some conjured up grounds to suspend my license to protect my life, liberty and property and the life, liberty and property of others here in the State of Minnesota and in cases I am engaged in in 10 other States in the Union.

It is certainly a deprivation of rights to free speech, Right to peaceably assemble before the Judicial branches of the various State and National Governments and to Petition the Government for a redress of grievances and the right to Free Association for that purpose. Where is the right to peaceable assemble more valuable than in the Courts. That is the one department of Gov. it can be most effectively made use of. See 16 Am Jur 2d Sections 353 and 354, on Constitutional Law.

In Conclusion. In the practice of Law, I will obey an Oral Order to Halt any where at any time or place provided I an Notified by some one from the Supreme Court and then given an opportunity to be heard and be present. I do not know whether it ever occured to the members of the Court or not, but

it is more often than not, beneficial to myself and also to client to appear before the Court and have the aid and benefit of the thinking of the members of the Court. I would also think that it would be beneficial to the Court in its investigation into the Law and the Facts of each case to be able to make inquiry of each side as to what theory or theories that the litagents are proceeding upon.

I respectfully request that the Court vacate its Order of suspension.

Respectfully submitted,

Jerome Daly

Jerome Daly
On his own behalf
28 East Minnesota Street
Savage, Minnesota

October 7, 1969

JEROME DALY REHEARING ON CONTEMPT -- October 8, 1969

Introduction: This is Wednesday, October 8, at 2 o'clock and we are about to record a petition, Jerome Daly, for reinstatement to the bar and for a rescission of his suspension from practice.

Mr. Daly: This appearance was set. I am not making a general appearance, I am making a special appearance, and if this court orders that I cannot participate in this matter by making a special appearance, then that's it.

Chief Justice Knutson: This a fairly informal hearing, Mr. Daly, but we want you to know that what is said is being recorded so that you are familiar with that.

Mr. Daly: All right. Well, I filed a petition here today. I only filed an original and four copies.

Chief Justice Knutson: We have all read your petition.

Mr. Daly: You have. Well,

Chief Justice Knutson: We haven't read all the attachments, but we have read the petition.

Mr. Daly: Well, here's the way I look at it. If I am wrong about this, I can't afford to argue, and if I'm right, why, what's the use--unless the court has some questions. (not audible) I know blame well I'll be ordered to halt, but I mean I would like, I think not to and prefer a hearing.

Chief Justice Knutson: You had a hearing when we served notice on you before. You had a full-scale hearing in this court where we issued our verdict.

Mr. Daly: Now, which order are you referring to?

Chief Justice Knutson: The order suspending you.

Mr. Daly: Well, I know, but I had no idea that the purpose of that was to suspend me.

Chief Justice Knutson: Well,

Mr. Daly (interrupting): In the practice of law.

Chief Justice Knutson: The idea was to determine whether you were guilty of contempt of this court.

Mr. Daly: Well, I understand that.

Chief Justice Knutson: Because you were.

Mr. Daly: I understand the finding of the court. Of course, I don't agree with it, but that isn't going to do me any good at this stage of the proceeding, but--

Chief Justice Knutson: Well, what is it you're asking for now?

Mr. Daly: Well, I don't think, Number 1, I don't think the court has acquired jurisdiction because there is no (inaudible) , and I wasn't asking that it be set aside; that the--

Chief Justice Knutson: Why didn't we have jurisdiction? We served a notice on both you and the justice of the peace of the hearing.

Mr. Daly: I'm talking about in the suspension proceeding.

Chief Justice Knutson: Well, you were here in answer to our citation in that proceeding.

Mr. Daly: Yes, but there's nothing--the--the order to show cause didn't show cause why I shouldn't be suspended.

Chief Justice Knutson: It showed cause why you should be held guilty of contempt; the suspension followed a finding that you were.

Mr. Daly: Well, I know, but the suspension wasn't before the court at that time. Well, I mean, frankly, it appears to me that it was something like you would suspend a driver's license. About the same thing. Now, if you can do that, then you can stop a lawyer in the middle of his argument before the court. You could say, "You're all done."

Chief Justice Knutson: We didn't say you were done; we said you were suspended until we could make further investigation.

Mr. Daly: Well, what does that--

Chief Justice Knutson: Right now pending before the referee (inaudible) committee, you will have all the opportunity in the world to be heard.

Justice Otis: In any event, Mr. Daly, you appear and have an opportunity to tell us why you don't (inaudible) .

Mr. Daly: Well, I don't think I should be suspended because I don't think I was guilty of contempt. Number 1, the procedural statutes were followed in no respect, and number 2, the justice was not notified, and number 3, the order across the bottom which stated that no oral argument would be allowed. Well, at some point in the proceeding I believe we are entitled to oral argument or a chance to appear before the court. I was never notified of any application for a writ of prohibition. There was no writ of prohibition made out, and it was an order in the form of an injunction but it still didn't provide for a hearing.

Chief Justice Knutson: (inaudible) what you admitted you violated when you were here last time. You admitted in this court that--

Mr. Daly (interrupting): I admitted that we--

Chief Justice Knutson: You absolutely violated that order.

Mr. Daly: I admitted that we--not the order. There was no question about it. As a matter of fact, I was not served with the order. But, I don't think it makes any difference, as a practical matter.

Justice Rogosheske: Jerome, I can't understand from your petition now what you really are trying to do--have a new hearing on the proceedings which resulted in a finding of contempt--is that what you are trying to do? Or are you trying also to ask for some

modification from that suspension so you can carry on pending the proceedings before the referee?

Mr. Daly: Well, that's right.

Justice Rogosheske: Which of the two are you trying to do? Both?

Mr. Daly: Well, I would like some modification of it. After all, I'm defending people charged with serious crimes, not only in this state but several other states, and it kind of puts you in a bad spot as far as they are concerned.

Justice Rogosheske: Lots of the decisions said, in recognition of the fact that it would be sudden suspension and your clients might be hurt by it, but I would think that it would be rather fruitless to stand here and try to have a rehearing on whether your conduct justified a finding of contempt. (inaudible) should you remain suspended?

Mr. Daly: Let's assume that I was guilty of contempt. Now the prohibition statutes provide for (I think it is 587.04 or .05) provide for, if a writ of prohibition is granted, setting aside any proceedings that had been entered into. What I was really trying to do was to get them to amend their papers so that the issue was squarely before the court so I could really get a determination on it. And they didn't.

Chief Justice Knutson: A determination on what?

Mr. Daly: Whether or not the justice of the peace had jurisdiction pursuant to the constitution.

Chief Justice Knutson: You don't know where you could find the justice of the peace has jurisdiction to overrule this court?

Mr. Daly: Well, we might be in disagreement on it, but the client could then appeal to the next higher court if he wasn't satisfied.

The right to dissent--you can't deny me the right to take a position that I wish to pursuant to the Constitution of the United States.

Chief Justice Knutson: Is that really your point--that the justice of the peace is a superior court to this one?

Mr. Daly: I never said that at any time. Never have I said that.

Chief Justice Knutson: Or ignore the orders of this court?

Mr. Daly: I never said that.

Chief Justice Knutson: Well, that is what you said last time you were here. You said you intentionally ignored it.

Mr. Daly: Well, I said that the court was without jurisdiction.

Chief Justice Knutson: And speaking for the justice of the peace, you said he intentionally ignored it.

Mr. Daly: Well, if there were just one thing wrong with the order I don't think we would have ignored it. But it didn't comply with the law in any respect, out of all due respect for Justice Peterson, it did not comply with it in any respect--the procedural statutes. If, assuming that it did comply with it, is the single instance of contempt, is that sufficient to go to that length to suspend my right to make a livelihood and practice law?

Chief Justice Knutson: I don't know how else we are going to stop you.

Mr. Daly: Well, I never thought I was that hard to talk to.

Chief Justice Knutson: If you are going to stand here and say, "I intentionally ignored the orders of this court," how else are we going to stop you except this?

Mr. Daly: Well, let's face it now. I suppose I might as well be frank about it. It maybe was tactical error, but sometimes in the heat of the battle or the heat of the fight, you get rode hard by judges for--like General Miles Lord, for instance, for 30 days--it kind of gets under your skin after while.

Justice Otis: To date, how many judges have you filed affidavits of prejudice against in Minnesota?

Mr. Daly: How many judges? Oh, there have been quite a number of them.

Justice Otis: Haven't you really filed affidavits against most of the judges of this state?

Mr. Daly: No, I have not.

Chief Justice Knutson: You have most of the judges of this locality--all of them from Minneapolis, all of them personally.

Mr. Daly: No, not all of them from Minneapolis, and I think there is, yeah, well, but--so what? I sued Lord over there and the next day after he got sued I appeared before him. I never appeared before the man when he was more---he behaved better, and we never had a better hearing. So what difference does it make? I filed one against Flynn down there one time. The next hearing 2 days later I went before him. We cleared the air and got it squared away and got along fine after that. So, what difference does that make? I don't think that really makes any difference. Sometimes it helps to clear the air. In the natural sequence of events there's bound to be a dispute. You can't avoid it. That's human nature.

Justice Otis: Haven't you filed affidavits against other Federal judges--as well as this whole court, I guess, at one time?

Mr. Daly: Did I? No, I think I excluded Justice Peterson in that. But, what difference does it make? I filed one against

the Federal judge there at St. Joseph, Missouri, because I thought that the client couldn't get a fair trial before him. went down and But Don tried the case before him. Got an acquittal on four counts. I don't see what difference it makes. I think that is the right of the lawyer or citizens (inaudible). If the court wants to honor it or dishonor it, well that's a question of judicial discretion. It's a matter of law; it's a question of law. I don't think a judge has any more right to consider, when an affidavit of prejudice is filed, he has no more right to consider than the juror that the lawyer strikes off the jury for one cause or another. There isn't nothing personal in it--except sometimes with the judges it does help to clear the air. Like I said. But I don't think that--I never felt that I was that hard to talk to. But, when the order ignored wasn't served on Mahoney at all, Ed don't notice it. Nobody likes to be ignored. So that's--I don't know--I thought that it was quite drastic. I didn't think that, well, I'm asking the court to temper it. I think that's about --

Justice Rogosheske: Have you obeyed it up to now?

Mr. Daly: Have I obeyed it up to now?

Justice Rogosheske: Yes. Since October first when it went into effect, have you not practiced law since that time?

Mr. Daly: Well--well, I mean I have had my office open. I have handled cases in other states. I've attended to work in other states. I've had to. I mean I just can't drop these people.

Justice Rogosheske: Have you tried to appear in any Minnesota courts since October first?

Mr. Daly: On the first of October I (inaudible) before the juvenile court in Minneapolis and had a case, and the judge wouldn't let me appear. I was before the municipal court and disposed of two traffic matters where the judge did let me appear.

Justice Rogosheske: Who was the trial judge?

Mr. Daly: Well, I don't believe--I mean, are you going to--well, I don't want to--I don't think the man was (inaudible) in chambers--Judge Riley--he had a pretrial on the plea before and brought my client in and disposed of it the first.

Chief Justice Knutson: Okay. We gave you the right in the order of suspension to petition the court for leave to continue to finish any cases you had pending. We've had no such petition.

Mr. Daly: Well, now, what do you mean by that? Do you mean that I can just finish the cases that are pending before the court and then that's it?

Chief Justice Knutson: The cases you had pending before the suspension order went into effect. We don't want to prejudice the rights of your clients if you have something pending that you have to finish. I can't accept your idea this court has no jurisdiction. Well, as to the fact that you were given a hearing--we heard you out here--you admitted you intentionally violated our order. I don't know how you can be more in contempt than that. And that you advised the justice of the peace to ignore it. That's all a matter of record.

Mr. Daly: Well, I mean it's the truth. That's all there's to it. I'm not going to stand up here and lie to the court about what I did. If I did it, I did it, and that's all there's to it.

Justice Peterson: Have you taken on any new matters since October first? Or clients?

Mr. Daly: Not in this state.

Justice Peterson: On what basis do you appear in other states? By motion of local counsel?

Mr. Daly: Power of attorney signed by my clients pursuant to the First, Fifth, and the Fourteenth Amendments of the Constitution of the United States.

Justice Rogosheske: You think one could practice law under a power of attorney signed by a client?

Mr. Daly: I do, yes. I say that if a client has the right to appear for and represent himself, that that's the client's prerogative to select the agent upon whom he relies and I'm backed up in that by a recent Federal decision out in New York where--

Chief Justice Knutson: That's irrelevant to suspension since, if that is true, you don't have to be admitted to practice.

Mr. Daly: Well, I just wonder if--if--if I would have--I mean I just wonder whether the right to practice law--I frankly think that I got a right to practice law without a license--under the First Amendment. In other words, if a client--and the Federal Court has held that--the client had a right to select who he--

Chief Justice Knutson: You mean, we're going through all this business of examining students and admitting them to practice for nothing?

Mr. Daly: It could very well be.

Chief Justice Knutson: And then anybody can practice law, whether they're admitted or not?

Mr. Daly: I say that that is the--that is the right of the citizen. A citizen can come here and represent himself.

Chief Justice Knutson: That's right, but he can't represent somebody else.

Mr. Daly: Well, if a citizen can represent himself, then a citizen should be able to appoint his own agent whom he has confidence in.

Chief Justice Knutson: He can't have confidence in him not to practice law.

Mr. Daly: Now, lemme give you--

Justice Otis: In the practice of medicine, he can't appoint a layman to be his doctor and let the doctor cut him up (not audible).

Mr. Daly: Well, I'm far from a religious bug or anything like that, but as I understand it the greatest healer of all time was supposed to be Jesus Christ, and he never had a license to practice medicine. But, be that as it may--Like take there in Las Vegas, Nevada, now--Frank hired me to come out there and defend him with the Internal Revenue Service. And it's common knowledge in Las Vegas there isn't one lawyer in the town that can be trusted with a matter before the Internal Revenue--they've all sold out to the Internal Revenue. In other words, when it comes to the Internal Revenue Service, it's hands off--they won't--they pluck the goose from both sides, and that's the Internal Revenue and the lawyer representing the client. And it's common knowledge out there. I get calls from all over the United States--the same complaint (not audible).

Justice Peterson: You don't have to be a lawyer to practice before the Internal Revenue Department, is that it?

Mr. Daly: That's what a recent United States District Court decision in New York State held that. They held--this man's accountant was excluded and they held that he had a right to have the accountant represent him because that was the man he would like to have for advice.

Justice Otis: Do you advise the clients that you handle their affairs through the power of attorney?

Mr. Daly: Am I advising clients to that effect?

Justice Otis: Yes.

Mr. Daly: In a criminal case, yes. I think that--that's the--

Justice Otis: Do you intend to violate what the law rules [??]?

Mr. Daly: In a criminal case. In a criminal case I say that, pursuant to the United States Constitution, that the client has the right to select his own attorney, if he is--or agent.

Justice Otis: You are acting on that assumption now, are you?

Mr. Daly: That's right.

Justice Otis: Well, you are violating the terms of the order suspending you, but think you have a constitutional right to do so?

Mr. Daly: That's right.

Justice Otis: Do you have a lawyer in this courtroom?

Mr. Daly: At present? representing me?

Justice Otis: In the disciplinary proceedings.

Mr. Daly: No. And I don't intend to hire one because I don't think there is any in this state that can be trusted.

Justice Otis: Forty-five hundred lawyers, and you don't feel you can put this matter safely in the hands of any one of them?

Mr. Daly: Not in this state. No, sir.

Justice Otis: And you think that there is only one lawyer in Las Vegas or Reno, Nevada?

Mr. Daly: None.

Justice Otis: None that can be trusted as your lawyer as it applies to matters before the Internal Revenue Department?

Mr. Daly: None. I got a--- The agent that was the head of the fraud department of the Internal Revenue Department defected from them. Just quit. (not audible) and he joined our side and he said there wasn't one lawyer in Las Vegas, Nevada, that can be trusted. If you want an affidavit from him, I can get it.

Justice Otis: Is this true elsewhere?

Mr. Daly: Yes. Another agent is defected from Chicago, Illinois. He was the head of -- in the fraud department of the Internal Revenue.

Justice Otis: Are you suggesting that these lawyers are duplicitous--that they are betraying their clients?

Mr. Daly: That is just exactly what I am saying. Precisely.

Justice Otis: All of them?

Mr. Daly: Well, I don't know about all of them but I haven't found any that -- there's a few. I noticed an article in Coronet Magazine where there are some six or seven lawyers that handled cases where fools would fear to tread -- it's -- what it said -- it's a new Coronet that's out -- and they are all under fire in their bar associations in their states.

Justice Otis: Have you tried to secure counsel elsewhere?

Mr. Daly: Well, I don't know what I need a lawyer for. As I see it, I haven't done anything wrong. I have been faithful to my clients. There isn't one that's complaining. As a matter of fact, I think I have gone too far overboard.

Justice Rogosheske: Jerome, I really was startled by your position as a trained lawyer that a person can represent clients under an agency relationship. Wouldn't you have to get the statute of Minnesota declared unconstitutional before you do that under any view of the law? The statute makes--

Mr. Daly: You mean, bring a proceeding and have it declared unconstitutional?

Justice Rogosheske: Yes.

Mr. Daly: Well, I would assume that. Right.

Justice Rogosheske: But, you're doing it before that. Don't you think that is taking the law in your own hands?

Mr. Daly: You mean you think I should --

Justice Rogosheske: The statute directly prohibits it, and you flaunt it by doing what the statute says you can't do. I can't understand that.

Mr. Daly: Well, as I understand it, the only recourse I have from here is to go into the United States District Court on a writ of habeas corpus proceeding, and I can ask that it be declared unconstitutional in there.

Chief Justice Knutson: All right. I think that is your only---

Mr. Daly: But that's my only recourse as I see it.

Chief Justice Knutson: (not audible)

Mr. Daly: Well, I'm -- Well, I--

Chief Justice Knutson: You stand here before this court and tell us that you can practice law without being admitted to practice or after your suspension--and do it lawfully. That's what you're telling us.

Mr. Daly: Well, I think it -- I might as well say it. Isn't that right.

Chief Justice Knutson: Yes.

Justice Rogosheske: And you don't seek to try to finish the cases you have started before the finding of contempt. You don't want to pursue that. You just want to declare your right to continue as agent to represent them. Is that it?

Mr. Daly: Well, I got a case that's been pending now for a couple of years that I've been trying to get settled, and it's before Judge Haering. I've about got it settled, but he doesn't want to proceed without some authority from this court.

Chief Justice Knutson: We already gave you that right. Certification for leave to settle that case. (not audible)

Mr. Daly: Well, can this-- Could this what I have had here today be treated as such?

Chief Justice Knutson: Well, what you have here today is a petition to set aside the whole order. You don't point out any particular brief there that you want to finish. You're asking for a rehearing--that's really what you're asking for.

Mr. Daly: Well-- I don't want to prejudice my rights by petitioning (not audible) --- against the validity of what has proceeded so far.

Chief Justice Knutson: (not audible)

Mr. Daly: And I don't want to prejudice my rights to that extent. I don't know just what--my clients have all asked me to come up here and see if I can't get it straightened out.

Justice Rogosheske: I would think that if you were going to ask leave to continue serving clients in cases that have been started before, the petition ought to recite the case, the facts, when it was started, and so on.

Mr. Daly: Each separate case.

Justice Rogosheske: Yes. I would think so. Wouldn't you have to do that?

Mr. Daly: Well, I didn't know just how to proceed, to be honest with you--with reference to that. But, if that's what it will take, I will do that.

Justice Rogosheske: Well, the order said rather plainly that you were ordered to do that before October first. We heard nothing from you except a three-line letter saying you wanted to petition for a redress of grievances. Isn't that right?

Mr. Daly: That's right. Yes.

Justice Rogosheske: That was a strange response, in my mind, when the language was rather plain and clear.

Mr. Daly: Well, I didn't understand it that I had to be here before October first. I didn't understand it to that effect.

Chief Justice Knutson: Well, I would say that we still haven't seen your petition with reference to two cases to tell us how far you have gone on the cases and why you need to continue finishing them. You say you don't want to do that because you're recognizing our authority.

Mr. Daly: Well, I was in some hopes that we could resolve this whole thing. But, it appears that you're going to stand pat on the order. Is that right?

Chief Justice Knutson: Well, I don't know what the court is going to do. I would think that you have presented no reason here today why we shouldn't stand pat on it.

Mr. Daly: There's nothing in the petition, you say, that's any reason? Well--well, you said you'd hear--I said I would obey an oral order of the court at any time at any place provided I was notified by somebody from the Supreme Court and then given the opportunity to be heard. Is that an unreasonable position?

Chief Justice Knutson: Well, we've given you two opportunities to be heard now, the one on the citation to see if you were in contempt and the one now for your petition for redress of grievance.

Mr. Daly, Well, I'm talking about in the future.

Chief Justice Knutson: I don't know what more hearing we can give you.

Mr. Daly: Well, I indicated in the future orders or hearings before this court what I would agree to do. Now I don't know what more I can do.

Justice Rogosheske: I think you ought to understand that the way in which we are sitting here is rather unusual, and the only reason we're sitting here is because there is no other place that we can tape-record what's being said.

Mr. Daly: Uh-huh.

Justice Rogosheske: It's the only facility we have. Otherwise we would have the conference inside and you might be more comfortable than standing.

Mr. Daly: No, I feel just as comfortable here as I would inside. It's not a matter of being uncomfortable.

Justice Rogosheske: Well, it seems to me--

Mr. Daly: And I'm not mad at anybody.

Justice Rogosheske: It seems to me, Jerome, that you ought to read that opinion if you don't understand it. You were found in contempt of this court. The penalty was suspension by October first with leave to have it modified upon your application to do so, and now what you try to do is have a rehearing on why we were justified in finding you in contempt.

Mr. Daly: Well, but, under the law, can you impose a penalty without--I mean, you are the accusers, and the triers, and the prosecutors.

Chief Justice Knutson: Oh, no. How else are we going to enforce a process of this court when you deliberately ignore it.

Mr. Daly: Well, my brother, a municipal judge down there, had a similar situation and sent his clerk down to the municipal court in Hastings and they swore out a criminal complaint. And now they're going to give criminal protection and give him a jury trial in the municipal court in Hastings for an offense that took place before the municipal court in Burnsville--if it is contempt.

Chief Justice Knutson: Is that pending now?

Mr. Daly: Pending down there in the municipal court in--in--if you think I'm guilty of contempt, why, let's swear out a complaint in municipal court.

Chief Justice Knutson: I don't think the court has to do anything of the kind when you deliberately violate an order of the court and stand up here before us and say that you deliberately ignored it.

Mr. Daly: Well, all right, now I'm back up here and I said that I wouldn't deliberately ignore an order of the court in the future.

Justice Rogosheske: I think you've got to be mindful that you're not just a litigant before the court. You're also an officer of the court. You have a dual role when you appear here. We found you, like yourself, in contempt of court as an officer of the court. The very thing that-- Is this not a strange proposition of the law?

Mr. Daly: No.

Justice Rogosheske: The question is what sanction should now be imposed. While it is a temporary suspension now, the court has to find out whether this is an isolated instance or whether you've been doing this all over the state.

Mr. Daly: Well, what did you find out?

Justice Rogosheske: Well, we've got a referee where you can prove that you haven't been doing this all over the state--deliberately and willfully disobeying court orders by some plain speeches claiming the court has no jurisdiction. No matter how sincerely you believe it, it's got to have some legal substance.

Mr. Daly: Well, while I admit I--I--made a tactical error. I probably should have made a motion before the court to have the order set aside rather than ignore and come up here. But hindsight is wonderful. But, it's over and done with.

Chief Justice Knutson: Well, I can't see that you have presented anything here today that we can do anything about. Anybody disagree?

Justice Rogosheske: I don't disagree.

Justice Nelson: I should think that if he wants to have any case considered which is pending which was started before the order was made, he ought to put that case down, state what the case is, and ask for a suspension on that so that we can proceed to get it out of the way. You haven't got anything like that before us, have you?

Mr. Daly: No. Well, I can present that to the judge in chambers then?

Justice Nelson: If you have a few of those, why don't you put them down on paper and prepare a petition and ask the court to consider it. We sit here and we don't know what you are trying to do, and we aren't able to do anything either.

Chief Justice Knutson: As far as the order of suspension is concerned generally, and I think I speak for the court, that is not going to be set aside on the showing you made here today.

Justice Otis: I think you would be well advised not to proceed on the theory that you can act as an attorney in fact on legal matters in which you saw serious jeopardy of further serious effect in disciplinary proceedings.

Mr. Daly: Well, I-- In order to go further I gotta ask that you make an order--

Chief Justice Knutson: We have a note here, Mr. Daly, that you are appearing or supposed to appear in a case in which Mr. Edelmann is interested in Dakota County tomorrow.

Mr. Daly: That's right.

Chief Justice Knutson: Well, if you want to appear there, I would suggest you prepare a petition setting forth what that case is about and why you should be permitted to appear. When is the case scheduled: For the morning?

Mr. Daly: Ah-- 9:30 tomorrow morning. What time do the members get here in the morning?

Chief Justice Knutson: About 9 o'clock. Be here with your petition about 9 o'clock and we can act upon it.

Mr. Daly: I would like to have some disposition made of this petition because I--I want to go further with it in a legal manner. Youre probably right--I should have it settled.

Justice Rogosheske: I think you would be well advised, as Justice Otis said, not to try to pursue this business of practicing law under an attorney in fact situation. I think you would be also well advised to get yourself counsel.

Mr. Daly: Well, like I told you, I might as well be frank about it, I'm going to go into Federal Court. I'm going to petition for habeas corpus. I think I got a right to do that. I'm a citizen, and--

Justice Rogosheske: Don't you remember from your early training the old story that the fellow who tries to represent himself has a fool for a client?

Mr. Daly: Yes, and a jackass for a lawyer.

Justice Rogosheske: You remember that?

Mr. Daly: Yes, that's right.

Chief Justice Knutson: As far as this petition is concerned, I think I speak for the court when I say it's denied, and you may have leave. And that's recorded too.

Mr. Daly: Okay. Well, thank you for your time.

(12)

42174

In re Jerome Daly

SUPREME COURT
FILED
OCT 31 1969
JOHN McCARTHY
CLERK

Transcript of Re-Hearing
on Contempt Proceedings
in Courtroom on
10-8-69 filed

September 11, 1969

Mr. Jerome Daly
28 E. Minnesota St.
Savage, Minnesota

Dear Mr. Daly:

In re Jerome Daly, No. 42174

Enclosed please find a copy of the transcript of the proceedings in this court on August 21, 1969.

Yours truly,

John McCarthy, Clerk

9/11/69
O.K. as written
PJS

42174

September 9, 1969

Honorable E. R. Selnes
Glenwood, Minnesota

Dear Judge Selnes:

In re Jerome Daly, No. 42174

Enclosed please find a certified copy of the opinion in this case which appoints you referee for subsequent investigation. You will also find enclosed our original files which includes:

1. Order to Show Cause, filed 8-19-69;
2. Copy of Transcript of Supreme Court Proceedings, filed 8-26-69;
3. Affidavit of Gordon Busdicker, filed 8-21-69;
4. Order Authorizing Transfer of File, filed 9-4-69.

When you have completed your investigation, please return these items, together with your findings, conclusions and recommendations to this office. If you need anything else, please let us know.

Respectfully,

John McCarthy, Clerk

4214

No. 3290½—Affidavit of Service by Mail. (Rev. 1957) Miller-Davis Co., Minneapolis

State of Minnesota,

County of HENNEPIN } ss.

DONNA R. RACETTE of the City of St. Louis Park

County of Hennepin in the State of Minnesota, being duly sworn, says that on the 9th day of March, 1971 she served the annexed

Objections to Motion of Respondent for Dismissal

on Jerome Daly

~~the attorney(s) for~~

the Respondent in this action, by mailing to said Jerome Daly a copy thereof, inclosed in an envelope, postage prepaid, and by depositing same in the post office at St. Louis Park Minnesota directed to said attorney(s) at 28 East Minnesota Street, Savage, Minnesota, the last known address of said attorney(s).

Donna R. Racette

Subscribed and sworn to before me, this 9th day of March, 19 71.

Notary Public Hennepin County, Minnesota

My Commission Expires

Notary Public, Hennepin County, Minn.
My Commission Expires Aug. 27, 1975.

STATE OF MINNESOTA

IN SUPREME COURT

In re Jerome Daly.

No. 42174

O R D E R

IT IS ORDERED that respondent's motion to dismiss, dated February 27, 1971 and filed in this office on March 4, 1971, be and hereby is denied.

Dated: March 23, 1971.

BY THE COURT

Associate Justice

~~Chief Justice~~

STATE OF MINNESOTA

IN SUPREME COURT

IN RE Jerome Daly File NO. 42174

To: The Minnesota State Board of Law Examiners and to its Attorney Herbert C. Davis

Sirs:

You will please take notice that on March 23, 1971 at 2:00 P.M. or as soon thereafter as counsel can be heard Jerome Daly will move the Supreme Court of the State of Minnesota in the State Capitol Building located at St. Paul, Minnesota for an Order directing a Judgment of dismissal of all proceedings herein upon the grounds of a complete lack of Jurisdiction upon the grounds that never at any time material herein was any process issued signed by the Clerk of this Court and issued under the Seal of this Court, as required by Minnesota State Statutes 1927 Sec. 157.

February 27, 1971

Jerome Daly
Attorney for himself
28 East Minnesota Street
Savage, Minnesota

Likewise, the Order of the Court purportedly signed by Justice Peterson dated July 11, 1969 was in violation of General Statutes of Minnesota of 1927 Section 157, (MSA 484.04) to wit:

> **Every writ or process issuing from a court of record shall be tested in the name of the presiding judge, be signed by the clerk and sealed with the seal of the court, be dated on the day of its issue, and before delivery to the officer for service shall be endorsed by the clerk with the name of the attorney or other person procuring the same; and, when no other time is fixed by law or authorized by the rules of practice, it shall be made returnable on the first day of the next succeeding term.**
>
> **History and Source of Law**
>
> **Derivation:**
>
> St.1927, § 157.
> Gen.St.1923, § 157.
> Gen.St.1913, § 146.
> Rev.Laws 1905, § 93.
> Gen.St.1894, §§ 4847–4849.
> Gen.St.1878, c. 64, §§ 12–14.
> Gen.St.1866, c. 64, §§ 12–14.
> Pub.St.1858, c. 57, §§ 12 14.
> Rev.St.(Terr.), c. 69, art. II, §§ 14, 16, 17.

587.02 on Writs of Prohibition provides as follows:

> **587.02 Service and return of writ**
>
> **Such writ shall be served upon the court and party or officer to whom it is directed in the same manner as a writ of mandamus; and a return to such writ shall be made by such court or officer, the making of which may be enforced by attachment.**

> **586.05 Writ; court order; service**
>
> **Writs of mandamus shall be issued upon the order of the court or judge, which shall designate the return day, and direct the manner of service thereof, and service of the same shall be by copies of the writ, order allowing the same, and petition upon which the writ is granted.**

See Aetna Insurance Company vs. Hallock. 6 Wall 556, 18 Led 948. This United States Supreme Court case is in line with Minnesota Supreme Court decisions found in Minnesota Dunnell Digest Section 7798 on Process, and holds as follows:

"A Process, issuing from a Court which by law authenticates such process with its seal, is void if issued without a seal; it can confer no authority, and all proceedings under it are simply void."

Taken from State vs. Barrett 40 M. 70

The clerk of the district court is not one of the officers who are by law specially required to have a seal. The court itself must have one; and in the attestation of papers, and upon all writs and process, the seal of the court, not that of the clerk, must be impressed. Gen. St. 1878, c. 22, § 2, and c. 64, §§ 12, 13.

Taken from Longdon vs. Minnesota FArmers Mutual Fire INsurance Company 22 M. 192

BERRY, J. Wehman became owner of the land to which this action relates in January, 1865. On May 6, 1865, in an action commenced against him by certain creditors, application was made to a court commissioner for a warrant of attachment. The court commissioner issued a pretended warrant of attachment, the same being a document signed by him as court commissioner, but not signed by the clerk, nor sealed with the seal of the court, or otherwise. Under the authority of this document the sheriff assumed to attach the land in question.

For the reasons assigned in *Wheaton* v. *Thompson*, 20 Minn. 196, the document referred to was, as a warrant of attachment, simply void, and the levy made under it incurably void also. There is nothing in the distinction between the *warrant* provided for under the law in force in 1865 and the *writ* provided for under the law in force in November, 1866, when the pretended writ referred to in *Wheaton* v. *Thompson* was issued; for, if there be any doubt whether the warrant be a writ, there can certainly be none that it is a process, and, therefore, required to be executed in the same way and with the same formalities as a writ, under Pub. St. ch. 57, §§ 12, 13.

Taken from Wheaton vs. Thompson 20 M. 199

Wheaton v. Thompson et al.

At the trial of the action of claim and delivery, the defendant therein introduced all the writs of attachment in which the plaintiffs' names are specifically mentioned in the above extract from the answer, and one other in which James W. Dresser and wife were plaintiffs.

It further appears that in addition to these writs of attachments said defendant Wheaton "held what he claimed to be a writ of attachment in an action pending in said court in which Brown & Smith were plaintiffs, and said Hempel defendant, and that prior to the commencement of the action of claim and delivery he levied the same upon said stock of goods which he claimed to hold under and by virtue of all said writs. The so called writ of attachment in the action brought by Brown & Smith was signed N. M. Donaldson, judge district court fifth district," but was not signed by the clerk, nor sealed with the seal of the court, or otherwise.

Under the law in force at the time when the pretended writ purports to have been issued, the district judge had authority to *allow* a writ of attachment. *Gen. St., ch.* 66, §§ 129, 130. But by section 13, ch. 64, tit. 1, Gen. Stat., the writ was required to be sealed with the seal of the court, and to be signed by the clerk.

Whatever might have been the case if the paper in question had been signed by the clerk, or sealed with the seal of the court of which the clerk is the proper custodian, the signature of the judge without the seal, and without the signature of the clerk, is ineffectual to make it a writ of attachment. While the judge's signature might be regarded as an *allowance* of a writ of attachment, it does not make the document signed a writ of attachment for the simple reason that the writ is purely statutory, and the statute does not authorize the judge to issue it.

If the writ had been issued by an authorized officer, any mere irregularities in the manner of issue might have been cured by amendment; but in this case, the pretended writ is as a writ simply void, and of course any levy made under it is incurably void also.

This pretended writ was not introduced in evidence upon the trial of the action of claim and delivery. If it had been offered, it would have been inadmissible, not only because void, but because, not being duly issued out of or under the seal of the court, it was not one of the writs pleaded in the answer either specially or generally.

42174

STATE OF MINNESOTA

IN SUPREME COURT

File No. 42174

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IN RE

JEROME DALY

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OBJECTIONS TO MOTION
OF RESPONDENT FOR DISMISSAL

TO: JEROME DALY

The Petitioner in the above entitled proceeding, the State Board of Law Examiners, by and through its attorney, Herbert C. Davis, in opposition to the Motion of Jerome Daly for an Order directing judgment of dismissal of all proceedings herein, states the following:

Respondent herein has made a Motion based upon the provisions contained in Section 484.04, Minnesota Statutes Annotated, requiring that writs and processes issuing from courts of record be tested in the name of the presiding judge of the court, signed by the clerk, and sealed with the seal of the court. Petitioner asserts that Section 484.04 has no application to the proceeding currently before this Court.

In In re Tracy, 197 Minn. 35, 266 N.W. 88

(1936), this Court, in giving consideration to a statute of limitations enacted by the Legislature relative to misconduct of attorneys, stated the following:

> "We cannot avoid the conclusion that the statute is unconstitutional as an attempted projection of legislative power into the judicial department. That follows inescapably the well-settled proposition 'that a court which is authorized to admit attorneys has inherent jurisdiction to suspend or disbar them. This inherent power of the court cannot be defeated by the legislative or executive department. The removal or disbarment of an attorney is a judicial act.'"

Prior to February 1, 1971, discipline proceedings were governed by Rules adopted by the Supreme Court and amended to March 21, 1968. It was within the framework of those prior Rules that this proceeding was instituted. According to those Rules:

> "When a member of the bar of this state is charged with misconduct and a verified accusation and petition praying that he be disciplined is submitted to this court, and an order is filed directing respondent to answer, such order and accusation shall be served upon respondent in the same manner as a summons in a civil action is served under the rules of this court. * * * Respondent shall, after service upon him, have twenty days, exclusive of the day of service, in which to comply with the order of the court."

Respondent does not claim that the procedure established by the Rule above quoted was not followed. Respondent claims only that this is a writ or process which was required to be tested in the manner provided in Section 484.04, Minnesota Statutes Annotated. The

section relied upon by Respondent is included in the chapter providing legislation affecting the District Courts of the State of Minnesota; there is no comparable section in Chapter 480 which prescribes legislative regulation for the Supreme Court of this State. Section 480.04, authorizing writs and processes issued by the Supreme Court, provides:

> "Any justice of the court, either in vacation or in term, may order the writ or process to issue and prescribe as to its service and return."

In In re Daly, 284 Minn. 567, 171 N.W.2d 818 (1969), this Court determined that:

> "Any justice of the supreme court, either in vacation or in term, may execute orders in behalf of the court pursuant to Section 480.04. * * *
>
> "We find no essential requirement that such orders be issued by or through the office of the clerk of this court. To impose such a requirement would unnecessarily curtail the capacity of this court to respond in emergency situations. It would be unreasonable to make the performance of a clerical act a necessary condition to the exercise of judicial authority which must be asserted promptly to be effective. The signature of a justice of this court is adequate assurance of the authenticity of any order to which such signature is affixed."

No claim has been made by the Respondent that the Rules properly established by this Court for the discipline of attorneys were not followed in the institution of this proceeding. Those Rules and decisions of this Court indicate that this is not a criminal proceeding but is a

proceeding sui generis in the nature of a civil action.

It is settled law in Minnesota that a summons in a civil action is not process within the constitutional provision or statutes affecting process. See, for example, Schultz v. Oldenberg, 202 Minn. 237, 277 N.W. 918 (1938). Petitioner is of the view that the Petition and Accusation and Order provided for by the Rules are not processes within the meaning of Section 480.04 or within the meaning of Section 484.04, Minnesota Statutes Annotated, but should be treated as a summons in a civil action for the purpose of giving notice to the Respondent of the acts of misconduct alleged. This Court has authority to regulate the officers who appear before it without judicial interference and has prescribed appropriate Rules for that purpose.

In any event, this Motion is untimely because it is made after a full hearing before a Referee of this Court has been concluded and the objection to jurisdiction has, therefore, been waived. That it can be waived is settled. It is an objection to jurisdiction over the person of the Respondent and not jurisdiction over the subject matter of this proceeding. See Dobbs Beyond Bootstrap: Foreclosing the Issue of Subject-Matter Jurisdiction Before Final Judgment, 51 M.L.R. 491, 1966-67.

For the reasons herein assigned, Petitioner

requests that the Court deny the Motion of Respondent dated February 27, 1971.

DATED: This 8th day of March, 1971.

STATE BOARD OF LAW EXAMINERS

By _____
Herbert C. Davis
Counsel

30

42174

STATE OF MINNESOTA
IN SUPREME COURT
File No. 42174

In re

JEROME DALY

OBJECTIONS TO MOTION
OF RESPONDENT FOR DISMISSAL

HERBERT C. DAVIS, counsel for the
STATE BOARD OF LAW EXAMINERS
6100 Excelsior Boulevard
St. Louis Park, Minnesota 55416
929-8541

Form No. 1749—Return for Personal Service Exhibition Judge's Signature. (Rev. 1959.)

☆☆☆ BLANK DOUCHER MINNEAPOLIS

State of Minnesota,

County of Scott } ss.

I Hereby Certify and Return, That at the Village of Savage in County and State aforesaid, on the 22nd day of September 1969 I served the hereunto attached Order, Petition and Accusation upon the within named Jerome Daly personally by then and there handing to and leaving with him a true and correct copy thereof, and at the same time and place exhibiting to him so that he could see and read the same, the original signature of Honorable Oscar R. Knutson, Judge of the ~~District Court of~~ Supreme Court, in The State Of ~~County~~, Minnesota, to said original.

Dated this 22nd day of September 19 69.

Sheriff Fees—Service, $4.00

Travel, $3.00

Total, $7.00

W. B. Schroeder

Sheriff of Scott County, Minn.

By Colin A. Smith Deputy Sheriff

STATE OF MINNESOTA

IN SUPREME COURT

42174

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In re JEROME DALY ORDER

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Upon the Petition and Accusation herein which has been filed in the office of the Clerk of said Court, a copy of which is hereto attached, and on motion of the State Board of Law Examiners,

IT IS ORDERED that this Order and a copy of said Petition and Accusation be forthwith served upon Jerome Daly, wherever he may be found, within or without the State of Minnesota, in the manner provided for in Rule I of the Rules of the Supreme Court for the Discipline and Reinstatement of Attorneys, as amended to March 21, 1968, and that Jerome Daly plead or file his answer in duplicate to the said Petition and Accusation with the Clerk of this Court at the State Capitol Building in the City of St. Paul, Minnesota, and serve a copy thereof upon the attorney for the Petitioner herein at his office at 6100 Excelsior Boulevard, St. Louis Park, Minnesota, within twenty (20) days after service of this Order, Petition and Accusation upon said Jerome Daly.

DATED: This 17th day of September, 1969.

BY THE COURT:

Chief Justice of the Supreme Court

STATE OF MINNESOTA

IN SUPREME COURT

42174

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In re JEROME DALY

PETITION
AND
ACCUSATION

- - - - - - - - - - - - - - - - - - -

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA AND TO OSCAR R. KNUTSON, CHIEF JUSTICE:

The undersigned, President and counsel of the State Board of Law Examiners, on behalf of the Board, represent and state to the Court the following:

That Jerome Daly is and at all times since the 14th day of May, 1953, has been licensed to practice law in the State of Minnesota and has practiced law in this state during all times material to this Petition. That said attorney has paid the registration fees required by Rule III of the Rules of the Supreme Court for Registration of Attorneys.

That complaints have been made to your Petitioner that Jerome Daly has been and is guilty of misconduct as hereinafter set forth. These complaints have been duly referred to the Petitioner by the Practice of Law Committee of the Minnesota State Bar Association by Resolution of the Committee on June 18, 1969, which Resolution was forwarded, with the complaints and the Committee investigation, on July 15, 1969, with the recommendation that disciplinary proceedings be instituted in the Supreme

Court. Your Petitioner has reviewed the files and records forwarded by the Practice of Law Committee and, upon the basis of such review, has found reasonable grounds to believe, and does believe, that Jerome Daly has been guilty of the acts of professional misconduct hereinafter set forth and that competent proof of such misconduct is available for presentation in support of this Petition.

WHEREFORE, your Petitioner alleges that Jerome Daly is guilty of the following acts of misconduct, which acts, if proved, would justify and require disciplinary action by this Court against such attorney:

I

That on September 5, 1969, the Supreme Court of the State of Minnesota filed its Opinion, File No. 42174, in the case entitled In re JEROME DALY, finding Daly in contempt of an Order of the Supreme Court dated July 11, 1969, signed by Justice C. Donald Peterson. By such Order, the Supreme Court directed that the State Board of Law Examiners conduct an investigation into other activities of Mr. Daly relative to his fitness and competence to serve as a practicing attorney in the Courts of the State of Minnesota. Such an investigation has been conducted and, as the first allegation respecting his fitness and competence to practice law in the State of Minnesota, the State Board of Law Examiners cites his conduct before the Supreme Court of the State of Minnesota relative to the case of Leo Zurn v. Roger Derrick and the Northwestern

National Bank of Minneapolis originating before Martin V. Mahoney, Justice of the Peace of Credit River Township, Scott County, Minnesota. In that case, Mr. Daly deliberately disregarded a Writ of Prohibition issued by the Supreme Court July 11, 1969, by causing additional proceedings to occur before the Justice of the Peace Martin V. Mahoney on July 14, 1969, by entry of Findings of Fact, Conclusions of Law and Order for Judgment, in direct contravention of the Order of the Supreme Court.

II

Since the year 1963, Mr. Daly has been involved as litigant and counsel in a number of cases espousing that the National Bank Act of 1864 and the Federal Reserve Act of 1913 were unconstitutional; that the Constitution requires that gold and silver coin are the only legal tender; that Federal Reserve Notes issued by authority of Congressional action are not legal tender; that by reason of these contentions, mortgage obligations, income tax statutes, and all other transactions involved in payment other than by gold and silver coin or certificates redeemable in gold or silver coin are unconstitutional exercises enacted by the legislative and enforced by the executive and judicial branches of the state and national governments; that such contentions have been forwarded by Mr. Daly in a number of cases; that in each of such cases, these contentions have been ruled invalid; that Jerome Daly persists in these contentions despite

declaration of courts with competent authority in opposition to his position. A review of such cases is as follows:

In 1963, Mr. Daly represented plaintiffs in the case of Horn, et al, v. Federal Reserve Bank of Minneapolis, in the District Court of Minnesota, District Court File No. 3-63-332 Civil. This case is reported in 227 F. Supp. 225 (1964) and the decision of Judge Donovan of the District Court was affirmed by the Eighth Circuit of the Court of Appeals in 1965 in Opinion published in 344 F.2d 725.

On March 14, 1966, Daly represented certain plaintiffs in the case of Wildanger, et al, v. Federal Reserve Bank of Minneapolis, et al, United States District Court File No. 4-66 Civil 83, restating the same position. A summary judgment was granted by Chief Judge Devitt by Order dated July 18, 1966.

Mr. Daly brought an action in which he represented Alfred M. Joyce in the District Court of Minnesota for the Eighth Judicial District, Chippewa County, on this same subject. During the pendency of that action, an action was started on behalf of Mr. Alfred M. Joyce in the United States District Court on July 11, 1966, against Commodity Credit Corporation of the United States and others. In each of these instances, Findings were entered in opposition to plaintiff's case. Actions have also been commenced in Mr. Daly's behalf and in the name of Alfred M. Joyce in the District Court for the State of Minnesota, First Judicial District, Scott County; Justice Court of Credit River Township, Scott County; and on behalf of plaintiff Leo Zurn in the United States District Court. All of these cases also involve the claims above recited and in each of these cases, except those cases before the Justice Court of Credit River Township, judgments were entered for the defendants in the form of a dismissal of the action or a summary judgment therein. This question has been presented to the Court of Appeals for the Eighth Circuit and the position of the United States District Court for the District of Minnesota has been sustained. The Court of Appeals, in the case of Bernard E. Koll v. Wayzata State Bank, et al, stated the following:

> "At best, the complaint represents a euphoric harassment of bank officials, lawyers and federal courts. It is difficult to accept that the complaint has been drafted by a person licensed to practice law."

That such activity on the part of Mr. Daly was permanently enjoined by Order of the United States District Court on June 20, 1968, as follows:

> "Ordered, adjudged and decreed that the preliminary injunction heretofore granted and issued orally by this court herein on the 3rd day of May, 1968, and affirmed in memorandum and order of the court dated June 17, 1968, be and the same hereby is made perpetual and permanent and that the plaintiff, Alfred M. Joyce, and his attorney, Jerome Daly, are permanently enjoined and restrained from continuing, commencing, or prosecuting any suit, action, or proceeding, either in this court or in any court, state or federal, upon any claim arising out of any claimed transaction between the parties hereto at and prior to the date of this order, of any claims regarding unlawful creation of money and credit, or an attempt to re-litigate the same cause of action, and matters previously determined in respect to the same such matter, or based upon any right, question or fact previously decided by this court on March 16, 1967, and by the decision of the State District Court, Eighth Judicial District, at Montevideo, Minnesota, decided on March 14, 1966."

Despite such Order, Jerome Daly did continue to prosecute actions involving the questions of the constitutionality of the Federal Reserve System, National Banking System, Treasury notes, creation of credit by such banks, and other related issues in the United States District Court, the District Courts of the State of Minnesota, and the Justice Courts of the State of Minnesota. That on

April 28, 1969, Judge Miles W. Lord, United States District Judge, entered his Certificate for contempt for violation of the prior injunction of the District Court. That the repeated and persistent effort of Jerome Daly to litigate and re-litigate the questions determined in the various cases involving these questions has caused substantial expense and effort to the litigants involved as defendants in those cases, without justification; that continued litigation of these issues amounts to the practice of barratry and maintenance, crimes at common law, and demonstrates the utter disregard of Jerome Daly for the authority of the courts of the United States and the State of Minnesota. That such actions are prosecuted for purposes inconsistent with those purposes established by the Constitution of the United States and the State of Minnesota to provide a tribunal for the redress of wrongs, the enforcement of laws, and the determination of real disputes.

III

Jerome Daly was, for a period of time, engaged as counsel in association with William E. Drexler representing Dr. Palmer A. Peterson in a divorce proceeding pending in the State of Minnesota. That during the course of such proceeding, the District Court of Minnesota entered its Order appointing a receiver of all of the assets and receivables of Dr. Palmer A. Peterson. Jerome Daly,

with knowledge of such Order, conspired with William E. Drexler and his client, Dr. Peterson, to secure funds in the hands of the receiver and accounts receivable from patients of Dr. Peterson to thwart the Order of the District Court. That such proceeding resulted in a determination by the jury in the case of Faye V. Peterson, et al, v. Marcia Bartels, et al, Hennepin County District Court File No. 632581, that plaintiff was entitled to judgment against Jerome Daly in the sum of $35,500.00 for fraudulent misappropriation of funds while acting as an officer of the court. Interrogatories were submitted to the jury and answers given as follows:

"1) Were the damages that you have assessed against Jerome Daly created by his fraud or misappropriation while acting as an officer of the court? Answer yes or no. Yes.

"2) Are the damages that you have found against Jerome Daly based upon a liability for obtaining money or property by false pretenses or false representations? Answer yes or no. Yes.

"3) Were such false pretenses or representations made knowingly and fraudulently or recklessly? Answer yes or no. Yes."

That the Supreme Court of Minnesota has re-referred that case for retrial of the issues therein contained by its Opinion in Supreme Court File No. 41514 dated September 5, 1969, upon procedural issues raised in that proceeding and not upon the merits. It is alleged that Jerome Daly did in fact fraudulently misappropriate a sum or sums

of money in violation of an Order of the District Court of Hennepin County in that proceeding and failed to regard the proper Orders of the District Court therein.

IV

Rule 63.03 of the Rules of Civil Procedure for the District Courts of Minnesota permits a party or his attorney to file an affidavit of prejudice in any civil case. The Rule is stated as follows:

"63.03 Affidavit of Prejudice.

"Any party or his attorney may make and serve on the opposing party and file with the clerk an affidavit stating that on account of prejudice or bias on the part of the judge who is to preside at the trial or at the hearing of any motion, he has good reason to believe and does believe that he cannot have a fair trial or hearing before such judge. The affidavit shall be served and filed not less than 10 days prior to the first day of a general term or 5 days prior to a special term or a day fixed by notice of motion, at which the trial or hearing is to be had, or, in any district having two or more judges, within one day after it is ascertained which judge is to preside at the trial or hearing. Upon the filing of such affidavit, with proof of service, the clerk shall forthwith assign the cause to another judge of the same district, and if there be no other judge of the district who is qualified, or if there be only one judge of the district, he shall forthwith notify the Chief Justice of the Supreme Court."

Jerome Daly has, on numerous occasions, filed affidavits of prejudice in cases to be heard before various judges of the district. In many instances he has filed affidavits naming more than one judge of the district prior to the assignment of any case and has on occasion attempted to file more than one affidavit of prejudice after such

assignment. Such affidavits, in many instances, contain inflammatory language demeaning to the judge and accusing such judge of attitudes and conduct in violation of the oath which the judge has taken as a requirement upon his assumption of office. That the accusations in such affidavits have been unsupported by presentation of any evidence of their truthfulness and your Petitioner alleges that they have been used not for the protection of the litigants involved, as was intended by the Rule, but as a weapon to create confusion and delay in the prosecution of the business of the court.

That in the case of Alfred M. Joyce, as Executor of the Last Will and Testament of Helen A. Patterson, Decedent, v. Supreme Court of the State of Minnesota, et al, (naming all of the Justices of the Supreme Court) and the District Court of the County of Dakota, First Judicial District, State of Minnesota and Miles Lord, United States District Court File, District of Minnesota, Civil Action No. 3-66-340, Jerome Daly, as attorney for the plaintiff, attacked the authority of the Supreme Court of Minnesota to promulgate the Rules of Civil Procedure containing Rule 63.03 and asked that such Rules be declared unconstitutional and void and that the Supreme Court of Minnesota be enjoined and restrained from promulgation of any Rules upon the ground that it did not have Constitutional authority to do so. That despite this proceeding commenced November 28,

1966, Jerome Daly has consistently engaged in the practice of filing affidavits of prejudice as permitted by such Rules of Civil Procedure for the purposes above alleged.

That Jerome Daly represented the defendant in a mail fraud proceeding in the United States District Court for the District of Minnesota, Fourth Division, in the case of United States of America v. Carl R. Anderson, File No. 4-68 Criminal 47. After a finding by the Judge of contempt for presentation of defenses as described in Paragraph II of this Petition and Accusation, Jerome Daly brought an action against the Judge who found him in contempt, the Clerk of District Court, George Ramier, counsel for the Practice of Law Committee, the Practice of Law Committee, Patrick Foley, then United States Attorney, William H. Eckley, Internal Revenue Service Officer, and the Minnesota State Bar Association, for damages totalling $1,000,000.00, alleging a conspiracy against Mr. Daly to secure his consent and his client's consent to a plea of guilty in a criminal case. That on a number of occasions, Daly has brought proceedings against various judges, lawyers, representatives of the United States Government, including the President of the United States, members of the Federal Reserve Board of the United States, and the United States Attorney. Your Petitioner alleges that actions in filing of affidavits of prejudice against judges,

bringing of actions against judges, lawyers, public officials, bank officers and Federal Reserve officers and directors, have been an effort upon the part of Mr. Daly to coerce such persons to accede to his demands and to agree in his positions in cases pending before the Courts of this State and of the United States District Court.

V

That Mr. Daly, in the practice of his profession, has not comported himself according to the standards required of members of this profession in relation to required Court appearances. That upon assignment of cases for trial, Daly often fails to appear, or is late in appearing, inconveniencing the Court, the opposing lawyer and litigants. That on a number of occasions, he has caused bench warrants to be issued for his own client's arrest by reason of his failure to notify clients of the dates of appearance. He has indiscriminately used his authority as an officer of the Court to secure the release on his personal recognizance of defendants who fail to appear in Court and his privilege has been suspended on two occasions by the Municipal Court of Hennepin County. Illustrative of the misconduct charged in this section of this pleading are the following:

In District Court, First Judicial District, County of Dakota, Daly served a Notice of Motion upon counsel for the plaintiff in the divorce case of Mary Agnes Dearing v. Colin F. Dearing, District Court File No. 67255, scheduling an

appearance for August 15, 1969. No Motion or Note of Issue was filed with the Clerk of District Court. On the date appointed for the hearing, plaintiff and her counsel, Lawrence Lenertz, appeared. No appearance was made by Daly or his client. The Court entered an Order assessing Daly's client $100.00 for attorney's fees for failure to appear.

In File No. 523565, Hennepin County Municipal Court, notice was given for a trial date on January 4, 1967, in the case of Daniel J. Poupard. Upon failure of either Daly or his client to appear, Judge Leslie issued a bench warrant for the client.

In File No. 380504, Hennepin County Municipal Court, in the case of State v. Eugene M. Erickson, the case was set for trial November 7, 1967. There was no appearance by either Daly or his client. A bench warrant was issued by Order of Judge Durda.

In File No. 584954, Hennepin County Municipal Court, in the case of State v. Melvin Lenzen, the case was set for trial January 30, 1969. There was no appearance by Daly or his client. A bench warrant was issued and bail forfeited by Order of Judge Lommen.

In File No. 598367, in the case of State v. Gerald Haugdahl, Hennepin County Municipal Court, the case was set for trial April 1, 1969. No appearance by Daly or his client was made. A bench warrant was issued and bail forfeited by Order of Judge Lommen.

In File No. 597136, State v. Vic R. Severson, the case was set for trial June 4, 1969. There was no appearance by Mr. Daly or his client. A bench warrant was issued and bail forfeited by Order of Judge Estrem.

On February 16, 1965, Mr. Daly was placed on the Prohibited Release on Personal Recognizance List for a period of one year in Hennepin County Municipal Court. On January 4, 1969, Mr. Daly was placed on the Prohibited Release on Personal Recognizance List for a period of two years in Hennepin County Municipal Court.

VI

In trials of cases before Justices of the Peace, Mr. Daly has secured and maintained possession of Justice Court files, refusing to deliver them upon Appeal or upon Order of superior courts. Illustrative of that situation is the case of First National Bank of Montgomery, Minnesota, v. Jerome Daly, Scott County, Minnesota, before Justice Martin V. Mahoney, now being considered by Judge Arlo Haering, District Court Judge in Scott County, District Court File No. 19144. In that case, the matter was heard before the Justice of the Peace, who was being advised during the course of the trial by William E. Drexler, a client of Daly's on occasion, and the lawyer with whom Daly has associated in the Peterson divorce case. Despite an Order of the District Court upon Notice of Appeal from the decision in that proceeding, the files were not transferred to the District Court upon the contention of Daly that the filing fee required by the Statute for the transfer of a cause on Appeal from Justice Court was paid in Federal Reserve notes which are not, as Daly claims, legal tender.

VII

In 1966, Jerome Daly prepared and filed a Tax Return for the period covered by the calendar year 1965 in which he failed to include any statement of income earned or received by him for that reporting period. After a refusal to answer questions proposed by representatives

of the Internal Revenue Service to permit completion of an accurate Tax Return, Daly was found in contempt by the United States District Court for the District of Minnesota, Fourth Division, File No. 3-66-349 Civil, by Order of Judge Miles Lord dated May 3, 1967. Appeal was had to the Court of Appeals for the Eighth Circuit which Court remanded the matter to the United States District Court for hearing on the question whether answers to the questions proposed by the Internal Revenue Service would in fact incriminate Jerome Daly. It was determined upon hearing that such answers would tend to incriminate Daly and, upon the basis of this defense, the Court vacated its contempt Order previously entered in the proceeding. Your Petitioner is informed and believes that the same kind of income tax return has been made by Jerome Daly for all years subsequent to the year 1965; that Daly has paid no tax for any of such years; that he contests the authority of the United States Government to require him to pay a tax on the grounds that earnings represented by Federal Reserve notes not redeemable in silver or gold are not money and therefore not income.

VIII

Jerome Daly caused a certain advertisement to appear in the August 16, 1969, issue of "The Farmer", a magazine publication originating from Webb Publishing Company, 1919 Shepherd Road, St. Paul, Minnesota, as follows:

"FARM LOANS

"MINNESOTA TRIAL COURT DECIDES FEDERAL reserve notes and national bank mortgage unconstitutional and void. For free information about decision, Jerome Daly, Lawyer, Box 177, Savage, Minnesota."

That such advertisement is a violation of the Rules of this Court against solicitation.

IX

That by reason of the facts alleged in Paragraphs I, II, III, IV, V, VI, VII and VIII above, your Petitioner alleges that Jerome Daly is guilty of unethical conduct.

WHEREFORE, your Petitioner prays that Jerome Daly be disbarred as an attorney and officer of this Court and that the Court make its Order herein requiring Jerome Daly to plead or answer to this Petition and Accusation and thereafter to establish a time and place for hearing to be fixed by the Court.

DATED: This 17 day of September, 1969.

STATE BOARD OF LAW EXAMINERS

By Kenneth M. Anderson
Kenneth M. Anderson, President

By Herbert C. Davis
Herbert C. Davis, Attorney for Petitioner

STATE OF MINNESOTA)
: ss
COUNTY OF HENNEPIN)

KENNETH M. ANDERSON, being duly sworn, deposes and says: That he is the President and a member of the State Board of Law Examiners, the Petitioner herein. That he has read the foregoing Petition and Accusation subscribed to by him and he believes the charges therein contained are true.

/Kenneth M. Anderson
Kenneth M. Anderson

Subscribed and sworn to before me this 12th day of September, 1969.

Donna R. Racette
Notary Public in and for Hennepin County, Minnesota.

DONNA R. RACETTE
Notary Public, Hennepin County, Minn.
My Commission Expires Oct. 17, 1971

42174

STATE OF MINNESOTA

IN SUPREME COURT

42174

- - - - - - - - - - - - - - - - - - - -

In re JEROME DALY

- - - - - - - - - - - - - - - - - - - -

ORDER, PETITION
and ACCUSATION

HERBERT C. DAVIS
Attorney for the State Board of
Law Examiners
6100 Excelsior Boulevard
St. Louis Park, Minnesota 55416
929-8541

(10) 42174

No. 42174

STATE OF MINNESOTA
SUPREME COURT

IN RE JEROME DALY.

No. 42174

JUDGMENT ROLL

Filed: July 16, 1971

John McCarthy **Clerk**

No. 42174

STATE OF MINNESOTA

IN SUPREME COURT

IN re Jerome Daly ANSWER

Comes now Jerome Daly and hereby appears specially and not generally and objects to the Jurisdiction of the Court over the subject matter and over his person and states and alleges:

I.

That the Court lacks jurisdiction over the subject matter and over the person of Jerome Daly upon the following grounds.

A. That there is no case or controversey within contemplation of the Constitution of the United States or Minnesota pending herein because of a total absence of adverse parties.

B. That this action is not brought in the name of the real party in interest, which is the State of Minnesota, or by any party at all.

C. That no action is commenced by service of a Summons and Complaint or by Criminal Complaint and Warrant or by any lawful process or at all.

D. That the Judicial power of the State of Minnesota is not involked in a lawful manner or at all nor is it invoked in a proper Court of Original Jurisdiction under the Constitution of the State of Minnesota and the United States and all laws passed pursuant thereto to affect rights to life, liberty or property in a lawful manner or at all.

II.

That the purported petition sets out only Complaints made by Lawyers and Bankers and certain Judges who are not the real party in interest.

III.

That prior to the Supreme Court's ex-party decision, which is without Jurisdiction, on September 5,1969 earl in the morning, Jerome Daly filed and commenced an action against the Minnesota State Bar Association and others with reference to certain illegal conduct on the part of the Minnesota State Bar Association and one

George Ramier, Counsel for its so called practice of Law Committee in a civil action in The United States District Court, District of Minnesota, Fourth Division, Civil File No. 4-69 Civ. 311. That said United States District Court is one of the Courts of the United States of Original Jurisdiction with right of trial by Jury guaranteed therein. That if the Minnesota State Bar Association or any of its Committees think they are entitled to relief of any kind or nature against Jerome Daly they can assert it therein and Daly will be glad to have a Jury decide the matter in controversey. That this Court has no jurisdiction because this is the second action attempted to be commenced over the same subject matter.

IV.

That the Petition does not set forth grounds for relief of any kind.

V.

That the Statute of Limitations has run on the matters set forth in the so called petition.

VI.

That it is impossible to believe that the Petition is drafted by persons who have taken a solemn Oath to uphold, maintain and support the Constitution of the United States and Minnesota, therefore, Jerome Daly generally denies the same for the purpose of putting the subscribers and the so called State Board of Law Examiners to their strict proof.

VII.

That the petition and its contents is in direct contravention of and in subversion of the Constitutions of the United States and of the State of Minnesota and more especially the Bill of Rights of the United States Constitution.

VIII.

That the above Court has no Jurisdiction in view of the fact that there is an abortive application to deprive Jerome Daly of property rights and liberty and a franchise granted by the State and an Attempt to infringe upon Daly's rights under the First Amendment of the United States Constitution to peaceable assemble

and petition the Governments of the United States and more particularly the Judicial Departments thereof for a redress of grievances with other clients, friends, associates and other citizens of the United States.

WHEREFORE, Jerome Daly prays for Order and Judgment of this Court that this attempted proceeding be dismissed and set aside and vacated in this Court.

October 13,1969

Jerome Daly
On his own behalf
28 East Minnesota Street
Savage,Minnesota

I hereby certify that I have miled a copy of this Answer to Herbert C. Davis, Attorney at Law, 6100 Excelsior Boulevard, St.Louis Park, Minnesota by depositing the same in the United States Mail at the Airport Post Office, Wold Chamberlain Field, Minnesota on April 14,1969, postage prepaid.

Jerome Daly

(10)

42174

Answer to
Petition and
Accusation

500 6-66

State of Minnesota, Supreme Court

IN RE JEROME DALY.

NO. 42174

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the // JEROME DALY //////////////////////////////// of the Court below, herein appealed from, to-wit, of the District Court within and for the County of ////////////////////////////// be and the same hereby is in all things

for the misconduct in his profession be, and he is hereby removed from his office of attorney and counsellor at law in this state and his name stricken from the roll of attorneys entitled to practice therein.

Dated and Signed **July 16, 1971**

BY THE COURT.

Attest:

John McCarthy Clerk.

State of Minnesota }ss.
SUPREME COURT

I, John McCarthy, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry Judgment in the case therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul July 16, 1971

John McCarthy, Clerk.

By _____, Deputy.

STATE OF MINNESOTA
SUPREME COURT

In re Jerome Daly.

No. 42174

Transcript of Judgment

No. 153-3/4 Supreme Court

Per Curiam
Took no part, Knutson, C.J.

In re Jerome Daly.

42174

Endorsed
Filed July 16, 1971
John McCarthy, Clerk
Minnesota Supreme Court

Heard and considered en banc.

O P I N I O N

PER CURIAM.

This is a disciplinary proceeding conducted in accordance with the rules of this court governing professional responsibility of members of the bar of Minnesota admitted and licensed to practice as attorneys at law.

Upon our decision in In re Daly, 284 Minn. 567, 171 N. W. (2d) 818, adjudging respondent, Jerome Daly, to be guilty of contempt of this court and ordering his temporary suspension from the practice of law, an investigation into his fitness and competence to continue to practice before courts of this state was made by the State Board of Law Examiners.[1] Thereupon, a petition and accusation filed by the board for respondent's disbarment, together with his answer, were, as authorized by our rules,[2] referred to the Honorable Donald C. Odden, Judge of the District Court of the Sixth Judicial District, who was appointed as referee to hear and report the evidence.[3] Following an

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[1] During the pendency of these proceedings, the functions of the State Board of Law Examiners were transferred to the State Board of Professional Responsibility and the State Administrative Director on Professional Conduct.

[2] Rule I, Rules of the Supreme Court for Discipline and Reinstatement of Attorneys (283 Minn. ix), now Rule 8, Minnesota Supreme Court Rules on Professional Responsibility, adopted December 16, 1970.

[3] The Honorable E. R. Selnes, retired judge of the District Court of the Eighth Judicial District, was originally appointed referee. Upon his request, after respondent filed an affidavit of prejudice, Judge Selnes was relieved of the assignment and Judge Odden was appointed.

8-day evidentiary hearing and submission of an 808-page verbatim transcript of the testimony, the referee, in compliance with the rules and the order of appointment, filed comprehensive findings of fact, conclusions, and a recommendation that respondent be disbarred. We have examined the evidence with care and are constrained to adopt the fully supported findings of the referee and to order respondent disbarred for numerous acts of unprofessional conduct.

As covered in detail in In re Daly, supra, respondent, without justifiable explanation or excuse, intentionally and defiantly disregarded an order of this court prohibiting him and a justice of the peace from further proceedings in a declaratory judgment action, then pending before the justice of the peace, which was obviously, and for numerous reasons outlined in our decision, beyond the limits of jurisdiction of a justice of the peace. In finding respondent in contempt and ordering his temporary suspension from practice because of the extraordinary nature of his professional behavior, we recognized that a conviction of contempt of court ordinarily does not reflect on an attorney's fitness, trustworthiness, or competence. Accordingly, we authorized respondent to apply for limited exceptions to the suspension order so that he might complete matters pending in his office. Further, we stated:

> "We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. * * *
>
> * * * * *
>
> "* * * Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated." 284 Minn. 568, 571, 171 N. W. (2d) 820, 823.

Contrary to respondent's fanciful assertions that these proceedings are a conspiracy by banks and their directors to put an end to his persistent attacks upon the constitutionality of the monetary

system of the United States, disciplinary proceedings, including this one, are not designed to punish an attorney or to prevent him from, in good faith, espousing a legal cause, however unpopular or seemingly untenable, but rather to discharge this court's responsibility to protect the public, the administration of justice, and the profession by imposing disciplinary sanctions, including removal from practice, upon those attorneys who, after careful investigation, proper notice, and hearing, are found to have demonstrated that they do not possess the "qualities of character and the professional competence requisite to the practice of law." Baird v. State Bar of Arizona, 401 U. S. 1, 7, 91 S. Ct. 702, ___, 27 L. ed. (2d) 639, 647. See, also, Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U. S. 154, 91 S. Ct. 720, 27 L. ed. (2d) 749; Schware v. Board of Bar Examiners, 353 U. S. 232, 77 S. Ct. 752, 1 L. ed. (2d) 796; Hallinan v. Committee of Bar Examiners, 65 Cal. (2d) 447, 453, 55 Cal. Rptr. 228, 233, 421 P. (2d) 76, 81. The United States Supreme Court and all courts recognize that--

> "* * * [t]he power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do." Theard v. United States, 354 U. S. 278, 281, 77 S. Ct. 1274, 1276, 1 L. ed. (2d) 1342, 1345.

Although disciplinary proceedings have been described in the context of the requirement of procedural due process as "adversary proceedings of a quasi-criminal nature" (In re Ruffalo, 390 U. S. 544, 551, 88 S. Ct. 1222, 1226, 20 L. ed. [2d] 117, 122), we have noted that they are not considered in the same light as an ordinary adversary action but are proceedings sui generis:

> "A disciplinary proceeding is not the trial of an action or suit between adverse parties, but an investigation or inquiry by the court into the conduct of one of its officers in order to determine his fitness to continue as a member of his profession." In re Application for Discipline of Peterson, 260 Minn. 339, 344, 110 N. W. (2d) 9, 13.

Since lawyers are granted a monopoly to perform legal services for hire, it is self-evident that they, like all monopolies, must be

subject to strict regulation with respect to admission to practice and to the performance of professional services, as well as to public accountability for adherence to the rule of law, canons of ethics, and standards of professional responsibility.[4] The formulation of ethical principles and standards of professional conduct, as well as the procedures for enforcement, is, and must be, under our constitutional system, the responsibility of the judicial branch of government. The ultimate determination governing admission, supervision, and discipline of attorneys in this state, including their removal from practice before our courts, is vested in this court. In re Disbarment of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

The ancient and fundamental standards of professional conduct are well established. These standards are taught as a required subject in the law schools of this state. Questions concerning them are included in examinations for admission to practice. They are set forth in the Canons of Professional Ethics and, as recently revised, in the Code of Professional Responsibility adopted by the American Bar Association and by this court.[5] As in all disciplinary proceedings, the canons, and now the new code, encompass the standards by which respondent's conduct must be judged in determining his fitness to continue in the practice of law.

An overall view of the voluminous record compels us to agree with the referee's conclusions that respondent--

> "* * * has failed to conduct himself in a manner consistent with the ethical principles of the legal profession, has deliberately and intentionally disregarded those ethical principles in the conduct of his practice, has taken unconscionable advantage of his position as a lawyer of this state, has flaunted his

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[4] See, A. B. A., Code of Professional Responsibility, Preamble.

[5] Canons of Professional Ethics were adopted May 2, 1955, (241 Minn. xvii) and the Code of Professional Responsibility on August 4, 1970 (286 Minn. ix). Most of respondent's misconduct occurred while the former were in force. The new code, however, retains and reaffirms as disciplinary rules, mandatory in character, the same proscriptions in the older one with which respondent's behavior is equally at odds. Where appropriate, therefore, references to both are cited in this opinion.

> disregard for the authority of Judges, Courts, Statutes, and the ethical rules governing conduct required of attorneys, and has offered no persuasive evidence or excuse for his conduct."

Moreover, given every opportunity to explain or justify alleged misconduct as not "a persistent and continuing effort to defy the authority of the courts" (284 Minn. 571) but occasioned by inadvertence, misconception of professional responsibilities, or compelled by circumstances not of his making or beyond his capacity to control, respondent exhibited indifference to these proceedings and undertook to use the hearing before the referee as a forum for expounding his own views concerning the constitutionality of the Federal Reserve System and the validity of Federal Reserve notes, as well as the constitutionality of our Rules of Civil Procedure and those governing the conduct and discipline of attorneys. By his conduct in representing himself before the referee and upon oral argument before this court, respondent has, at best, demonstrated a perverted misconception of the role and function of an attorney and the necessity for strict regulation and accountability of attorneys or, at worst, a deliberate and defiant rejection of any judicial control of his professional activities.[6] While such a misconception, if it exists, provokes our perplexity and commiseration, it, no less than respondent's intentional, persistent, and habitual misconduct as found by the referee, and his declared intention before this court that he will continue to disobey any court orders or rules governing his professional conduct which he regards as harsh, oppressive, or unconstitutional in the future, leaves us no choice but to order his disbarment.

The ultimate factual findings of the referee, supported by

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[6] At oral argument, respondent not only questioned the constitutional authority of courts to license attorneys or to establish and enforce rules regulating professional conduct but, in expressing his indifference to these proceedings and to the consequences of an order disbarring him, insisted that the right to represent persons in a legal matter derives from the client, not from the courts, and a lawyer's accountability for services rendered should be governed only by faithfulness to his client, his "conscience," and obedience to laws proscribing criminal conduct.

specific and detailed instances and ample evidence, are, in essence, that respondent has "persistently and perniciously" used his position as a licensed attorney, for himself and as counsel for others, to subvert the processes of justice by (1) initiating unfounded lawsuits for the purposes of harassing numerous named banking institutions, public officials, and private persons, and to avoid legal obligations of himself and his clients, thereby depriving parties involved of property to which they were lawfully entitled, causing them very substantial expense, and occupying the time and efforts of courts in nearly all levels of jurisdiction;[7] (2) by advancing in such cases by "immaterial and unnecessarily inflammatory" allegations his personal theory of the unconstitutionality of the monetary system of the United States;[8] (3) by continuing to espouse his theory in spite of repeated rulings by courts of record that his contentions are untenable and unfounded and despite an order of the United States District Court for the District of Minnesota restraining him from relitigating the issue, and in contemptuous disregard thereof without seeking appeal of the lower court ruling and orders;[9] (4) by employing tactics in his professional activities deliberately intended to delay the timely and orderly disposition of cases such as failing to appear for hearings and trial,

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[7] Conduct violative of A. B. A., Canons of Professional Ethics, Canon 30, and of A. B. A., Code of Professional Responsibility, DR 7-102(A)(1).

[8] The United States Court of Appeals for the Eighth Circuit, in affirming a dismissal of a complaint in a purported conspiracy action, characterized the complaint filed by respondent as "16 printed pages of disconnected, incoherent and rambling statements," observing, "At best the complaint represents a euphoric harassment of bank officials, lawyers and federal courts." Koll v. Wayzata State Bank (8 Cir.) 397 F. (2d) 124, 125.

[9] Referee's findings 4, 4A, 4B, and 4B-III. See, prohibiting "[s]tirring up strife and litigation," A. B. A., Canons of Professional Ethics, Canon 28, made more specific by A. B. A., Code of Professional Responsibility, DR 7-106A, requiring obedience to a ruling of a tribunal.

indiscriminately filing affidavits of prejudice, often containing scandalous accusations, against numerous judges;[10] abusing the assertion of the attorney-client privilege, conspiring to conceal and divert assets under the control of a court;[11] and willfully refusing to follow lawful rulings and orders of the courts of the United States and of this state.[12]

We regard as most serious and intolerable respondent's willful, persistent, and continuing unprofessional behavior in defying the authority, rules, and orders of courts. The finding of the referee confirms a pattern of conduct indicated by respondent's contumacious behavior before this court which resulted in his temporary suspension from practice. Indeed, throughout these proceedings, he does not contest his disregard of rules and court orders which he views as unlawful. The following testimony before the referee unmistakably reflects his philosophy of an attorney's obligation in this respect and his disposition to continue such behavior.

> "Q. * * * Mr. Daly, you have claimed in the petition in this contempt proceeding, that the Supreme Court had no jurisdiction to enter its order dated September 5, 1969, Exhibit One?
>
> "A. Suspending me from the practice of law.

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10 For example, respondent filed one such affidavit stating as follows: "* * * Further, I believe and so state that [he] has a prejudice against the Declaration of Independence and the Constitution of the United States and the Constitution of Minnesota and a bias in favor of that element advocating the nullification and overthrow of it. That this case involves a dispute with the Lutheran Church, Missouri-Synod, which is composed of preachers arrogating attributes of Diety [sic] to themselves in association with Papal Jewish Hegemony, all of whom are in vortex with each other rotating and operating on a common axis sited in Hell." See, A. B. A., Canons of Professional Ethics, Canon 1, and A. B. A., Code of Professional Responsibility, DR 8-102(B).

11 See, Peterson v. Bartels, 284 Minn. 463, 170 N. W. (2d) 572, and In re Application for Discipline of Drexler, ___ Minn. ___, ___ N. W. (2d) ___, filed June 18, 1971.

12 See, referee's findings 4B, 4B-II, 4B-III, 5, and 7; A. B. A., Canons of Professional Ethics, Canons 21 and 22; A. B. A., Code of Professional Responsibility, DR 7-101(A)(1) and DR 1-102(A)(4, 5, 6).

"Q. You have made the claim that the Court had no jurisdiction to do so and it is an invalid order, is that right?

"A. That is right.

"Q. And you also claim that the order of Judge Lord, holding you in contempt, was an invalid order?

"A. I think that is right.

"Q. And you have indicated that the order of Judge Stephenson--

"A. That is not a lawful order.

"Q. Restraining you from doing anything further or arguing further the constitutionality of the Federal Reserve System, was not valid?

"A. Not a lawful order.

"Q. You have indicated that the Justices of the Supreme Court of Minnesota have executed orders relating to the adoption of Rules of Civil Procedure, which are not lawful orders?

"A. Yes. * * *

"Q. Will you explain to the Court, Mr. Daly, whether it is your belief that an order is lawful only if you think it is lawful?

"A. No, no, it is lawful if it squares with the law.

"Q. And if it squares with the law in your opinion or in whose opinion?

"A. Well, I think any citizen or any person walking the face of the earth has a right to be guided by his own conscience, within the bounds of reason. And I can look at an order and I can make a determination in my mind whether it is lawful or not.

"Q. And whether or not you will follow it?

"A. That is right * * *.

* * * * *

"Q. Now, Mr. Daly, if an order was issued out of the Supreme Court of the United States determining that the Federal Reserve System was a constitutionally appropriate system, would you follow that order?

* * * * *

"A. Not if they are going to perpetrate a fraud on the people.

"Q. Let's assume that what they do is to declare the Federal Reserve System is a constituional system.

* * * * *

"A. Do you want to know if I would follow the order of the Supreme Court of the United States if they said that the banks had authority to manufacture money and credit out of nothing; you are asking me if I would follow that?

"Q. Yes, Sir.

"A. I would not."

Because it is elementary that our system of justice is founded on the rule of law, a willful disobedience to a single court order may alone justify disbarment. Minn. St. 481.15, subd. 1(3); In re Application for Discipline of Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 124, 99 L. ed. 694.

No useful purpose would appear to be served by repeating the detail of the instances supporting the foregoing summary of ultimate findings, all of which are adopted as the basis for respondent's removal from practice. It should be noted, however, that respondent's persistent and continuing attacks on our national monetary system can hardly be regarded as zealous advocacy or a good-faith effort to test the validity of repeated decisions of courts of record. For, as found by the referee, up to the time of his findings and recommendations respondent had avoided payment of any Federal income tax for 1965 and subsequent years on the asserted ground that he has not received gold and silver coin and, therefore, had no earnings that were taxable.[13] Also, he has taken personal advantage of the system he attacks by borrowing money from a bank to purchase lakeside property, only to subsequently defeat the bank's repossession after mortgage foreclosure

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[13] Respondent's testimony confirms this finding: "Q. Mr. Daly, the exhibits [respondent's amended tax returns for 1965, 1966, 1967, and 1968] disclosed no figures in which any income was reported by you, is that correct?

"A. Well, they use the sign dollar, which I understand means dollar. And there were no figures disclosed with reference to income, that is right; dollars, as such.

"Q. You interpreted the word dollars to mean gold and silver coins, received by you?

"A. Or their equivalent.

"Q. Which would be a certificate redeemable in gold or silver?

"A. Freely and readily available."

by taking the position that the bank's extension of credit was unlawful, obligating him neither to pay the debt nor to surrender possession following expiration of the time to redeem. As detailed in the referee's finding, we regard the tactics employed by respondent in the unlawful detainer proceedings before the justice of the peace as not only unprofessional but reprehensible.

The misconduct found by the referee, and demonstrated by respondent's oral declarations before this court in violation of the Canons of Professional Ethics, reflects professional irresponsibility to such a degree as to render respondent totally unfit to continue to discharge the duties of an attorney.

Let judgment of disbarment be entered.

MR. CHIEF JUSTICE KNUTSON took no part in the consideration or decision of this case.

Rogosheske, J.

STATE OF MINNESOTA
SUPREME COURT

(37)

No. 42174

STATE OF MINNESOTA

SUPREME COURT

In re Jerome Daly.

PER CURIAM OPINION

Filed July 16, 1971

John McCarthy
Clerk.

By _____
Deputy.

14

No. 153-3/4 Supreme Court

Per Curiam
Took no part, Knutson, C.J.

In re Jerome Daly.

42174

Endorsed
Filed July 16, 1971
John McCarthy, Clerk
Minnesota Supreme Court

Heard and considered en banc.

O P I N I O N

PER CURIAM.

This is a disciplinary proceeding conducted in accordance with the rules of this court governing professional responsibility of members of the bar of Minnesota admitted and licensed to practice as attorneys at law.

Upon our decision in In re Daly, 284 Minn. 567, 171 N. W. (2d) 818, adjudging respondent, Jerome Daly, to be guilty of contempt of this court and ordering his temporary suspension from the practice of law, an investigation into his fitness and competence to continue to practice before courts of this state was made by the State Board of Law Examiners.[1] Thereupon, a petition and accusation filed by the board for respondent's disbarment, together with his answer, were, as authorized by our rules,[2] referred to the Honorable Donald C. Odden, Judge of the District Court of the Sixth Judicial District, who was appointed as referee to hear and report the evidence.[3] Following an

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[1] During the pendency of these proceedings, the functions of the State Board of Law Examiners were transferred to the State Board of Professional Responsibility and the State Administrative Director on Professional Conduct.

[2] Rule I, Rules of the Supreme Court for Discipline and Reinstatement of Attorneys (283 Minn. ix), now Rule 8, Minnesota Supreme Court Rules on Professional Responsibility, adopted December 16, 1970.

[3] The Honorable E. R. Selnes, retired judge of the District Court of the Eighth Judicial District, was originally appointed referee. Upon his request, after respondent filed an affidavit of prejudice, Judge Selnes was relieved of the assignment and Judge Odden was appointed.

8-day evidentiary hearing and submission of an 808-page verbatim transcript of the testimony, the referee, in compliance with the rules and the order of appointment, filed comprehensive findings of fact, conclusions, and a recommendation that respondent be disbarred. We have examined the evidence with care and are constrained to adopt the fully supported findings of the referee and to order respondent disbarred for numerous acts of unprofessional conduct.

As covered in detail in In re Daly, supra, respondent, without justifiable explanation or excuse, intentionally and defiantly disregarded an order of this court prohibiting him and a justice of the peace from further proceedings in a declaratory judgment action, then pending before the justice of the peace, which was obviously, and for numerous reasons outlined in our decision, beyond the limits of jurisdiction of a justice of the peace. In finding respondent in contempt and ordering his temporary suspension from practice because of the extraordinary nature of his professional behavior, we recognized that a conviction of contempt of court ordinarily does not reflect on an attorney's fitness, trustworthiness, or competence. Accordingly, we authorized respondent to apply for limited exceptions to the suspension order so that he might complete matters pending in his office. Further, we stated:

> "We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. * * *
>
> * * * * *
>
> "* * * Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated." 284 Minn. 568, 571, 171 N. W. (2d) 820, 823.

Contrary to respondent's fanciful assertions that these proceedings are a conspiracy by banks and their directors to put an end to his persistent attacks upon the constitutionality of the monetary

system of the United States, disciplinary proceedings, including this one, are not designed to punish an attorney or to prevent him from, in good faith, espousing a legal cause, however unpopular or seemingly untenable, but rather to discharge this court's responsibility to protect the public, the administration of justice, and the profession by imposing disciplinary sanctions, including removal from practice, upon those attorneys who, after careful investigation, proper notice, and hearing, are found to have demonstrated that they do not possess the "qualities of character and the professional competence requisite to the practice of law." Baird v. State Bar of Arizona, 401 U. S. 1, 7, 91 S. Ct. 702, ___, 27 L. ed. (2d) 639, 647. See, also, Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U. S. 154, 91 S. Ct. 720, 27 L. ed. (2d) 749; Schware v. Board of Bar Examiners, 353 U. S. 232, 77 S. Ct. 752, 1 L. ed. (2d) 796; Hallinan v. Committee of Bar Examiners, 65 Cal. (2d) 447, 453, 55 Cal. Rptr. 228, 233, 421 P. (2d) 76, 81. The United States Supreme Court and all courts recognize that--

> "* * * [t]he power of disbarment is necessary for the protection of the public in order to strip a man of the implied representation by courts that a man who is allowed to hold himself out to practice before them is in 'good standing' so to do." Theard v. United States, 354 U. S. 278, 281, 77 S. Ct. 1274, 1276, 1 L. ed. (2d) 1342, 1345.

Although disciplinary proceedings have been described in the context of the requirement of procedural due process as "adversary proceedings of a quasi-criminal nature" (In re Ruffalo, 390 U. S. 544, 551, 88 S. Ct. 1222, 1226, 20 L. ed. [2d] 117, 122), we have noted that they are not considered in the same light as an ordinary adversary action but are proceedings sui generis:

> "A disciplinary proceeding is not the trial of an action or suit between adverse parties, but an investigation or inquiry by the court into the conduct of one of its officers in order to determine his fitness to continue as a member of his profession." In re Application for Discipline of Peterson, 260 Minn. 339, 344, 110 N. W. (2d) 9, 13.

Since lawyers are granted a monopoly to perform legal services for hire, it is self-evident that they, like all monopolies, must be

subject to strict regulation with respect to admission to practice and to the performance of professional services, as well as to public accountability for adherence to the rule of law, canons of ethics, and standards of professional responsibility.[4] The formulation of ethical principles and standards of professional conduct, as well as the procedures for enforcement, is, and must be, under our constitutional system, the responsibility of the judicial branch of government. The ultimate determination governing admission, supervision, and discipline of attorneys in this state, including their removal from practice before our courts, is vested in this court. In re Disbarment of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

The ancient and fundamental standards of professional conduct are well established. These standards are taught as a required subject in the law schools of this state. Questions concerning them are included in examinations for admission to practice. They are set forth in the Canons of Professional Ethics and, as recently revised, in the Code of Professional Responsibility adopted by the American Bar Association and by this court.[5] As in all disciplinary proceedings, the canons, and now the new code, encompass the standards by which respondent's conduct must be judged in determining his fitness to continue in the practice of law.

An overall view of the voluminous record compels us to agree with the referee's conclusions that respondent--

> "* * * has failed to conduct himself in a manner consistent with the ethical principles of the legal profession, has deliberately and intentionally disregarded those ethical principles in the conduct of his practice, has taken unconscionable advantage of his position as a lawyer of this state, has flaunted his

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[4] See, A. B. A., Code of Professional Responsibility, Preamble.

[5] Canons of Professional Ethics were adopted May 2, 1955, (241 Minn. xvii) and the Code of Professional Responsibility on August 4, 1970 (286 Minn. ix). Most of respondent's misconduct occurred while the former were in force. The new code, however, retains and reaffirms as disciplinary rules, mandatory in character, the same proscriptions in the older one with which respondent's behavior is equally at odds. Where appropriate, therefore, references to both are cited in this opinion.

> disregard for the authority of Judges, Courts, Statutes, and the ethical rules governing conduct required of attorneys, and has offered no persuasive evidence or excuse for his conduct."

Moreover, given every opportunity to explain or justify alleged misconduct as not "a persistent and continuing effort to defy the authority of the courts" (284 Minn. 571) but occasioned by inadvertence, misconception of professional responsibilities, or compelled by circumstances not of his making or beyond his capacity to control, respondent exhibited indifference to these proceedings and undertook to use the hearing before the referee as a forum for expounding his own views concerning the constitutionality of the Federal Reserve System and the validity of Federal Reserve notes, as well as the constitutionality of our Rules of Civil Procedure and those governing the conduct and discipline of attorneys. By his conduct in representing himself before the referee and upon oral argument before this court, respondent has, at best, demonstrated a perverted misconception of the role and function of an attorney and the necessity for strict regulation and accountability of attorneys or, at worst, a deliberate and defiant rejection of any judicial control of his professional activities.[6] While such a misconception, if it exists, provokes our perplexity and commiseration, it, no less than respondent's intentional, persistent, and habitual misconduct as found by the referee, and his declared intention before this court that he will continue to disobey any court orders or rules governing his professional conduct which he regards as harsh, oppressive, or unconstitutional in the future, leaves us no choice but to order his disbarment.

The ultimate factual findings of the referee, supported by

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[6] At oral argument, respondent not only questioned the constitutional authority of courts to license attorneys or to establish and enforce rules regulating professional conduct but, in expressing his indifference to these proceedings and to the consequences of an order disbarring him, insisted that the right to represent persons in a legal matter derives from the client, not from the courts, and a lawyer's accountability for services rendered should be governed only by faithfulness to his client, his "conscience," and obedience to laws proscribing criminal conduct.

specific and detailed instances and ample evidence, are, in essence, that respondent has "persistently and perniciously" used his position as a licensed attorney, for himself and as counsel for others, to subvert the processes of justice by (1) initiating unfounded lawsuits for the purposes of harassing numerous named banking institutions, public officials, and private persons, and to avoid legal obligations of himself and his clients, thereby depriving parties involved of property to which they were lawfully entitled, causing them very substantial expense, and occupying the time and efforts of courts in nearly all levels of jurisdiction;[7] (2) by advancing in such cases by "immaterial and unnecessarily inflammatory" allegations his personal theory of the unconstitutionality of the monetary system of the United States;[8] (3) by continuing to espouse his theory in spite of repeated rulings by courts of record that his contentions are untenable and unfounded and despite an order of the United States District Court for the District of Minnesota restraining him from relitigating the issue, and in contemptuous disregard thereof without seeking appeal of the lower court ruling and orders;[9] (4) by employing tactics in his professional activities deliberately intended to delay the timely and orderly disposition of cases such as failing to appear for hearings and trial,

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[7] Conduct violative of A. B. A., Canons of Professional Ethics, Canon 30, and of A. B. A., Code of Professional Responsibility, DR 7-102(A)(1).

[8] The United States Court of Appeals for the Eighth Circuit, in affirming a dismissal of a complaint in a purported conspiracy action, characterized the complaint filed by respondent as "16 printed pages of disconnected, incoherent and rambling statements," observing, "At best the complaint represents a euphoric harassment of bank officials, lawyers and federal courts." Koll v. Wayzata State Bank (8 Cir.) 397 F. (2d) 124, 125.

[9] Referee's findings 4, 4A, 4B, and 4B-III. See, prohibiting "[s]tirring up strife and litigation," A. B. A., Canons of Professional Ethics, Canon 28, made more specific by A. B. A., Code of Professional Responsibility, DR 7-106A, requiring obedience to a ruling of a tribunal.

indiscriminately filing affidavits of prejudice, often containing scandalous accusations, against numerous judges;[10] abusing the assertion of the attorney-client privilege, conspiring to conceal and divert assets under the control of a court;[11] and willfully refusing to follow lawful rulings and orders of the courts of the United States and of this state.[12]

We regard as most serious and intolerable respondent's willful, persistent, and continuing unprofessional behavior in defying the authority, rules, and orders of courts. The finding of the referee confirms a pattern of conduct indicated by respondent's contumacious behavior before this court which resulted in his temporary suspension from practice. Indeed, throughout these proceedings, he does not contest his disregard of rules and court orders which he views as unlawful. The following testimony before the referee unmistakably reflects his philosophy of an attorney's obligation in this respect and his disposition to continue such behavior.

> "Q. * * * Mr. Daly, you have claimed in the petition in this contempt proceeding, that the Supreme Court had no jurisdiction to enter its order dated September 5, 1969, Exhibit One?
>
> "A. Suspending me from the practice of law.

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10 For example, respondent filed one such affidavit stating as follows: "* * * Further, I believe and so state that [he] has a prejudice against the Declaration of Independence and the Constitution of the United States and the Constitution of Minnesota and a bias in favor of that element advocating the nullification and overthrow of it. That this case involves a dispute with the Lutheran Church, Missouri-Synod, which is composed of preachers arrogating attributes of Diety [sic] to themselves in association with Papal Jewish Hegemony, all of whom are in vortex with each other rotating and operating on a common axis sited in Hell." See, A. B. A., Canons of Professional Ethics, Canon 1, and A. B. A., Code of Professional Responsibility, DR 8-102(B).

11 See, Peterson v. Bartels, 284 Minn. 463, 170 N. W. (2d) 572, and In re Application for Discipline of Drexler, ___ Minn. ___, ___ N. W. (2d) ___, filed June 18, 1971.

12 See, referee's findings 4B, 4B-II, 4B-III, 5, and 7; A. B. A., Canons of Professional Ethics, Canons 21 and 22; A. B. A., Code of Professional Responsibility, DR 7-101(A)(1) and DR 1-102(A)(4, 5, 6).

"Q. You have made the claim that the Court had no jurisdiction to do so and it is an invalid order, is that right?

"A. That is right.

"Q. And you also claim that the order of Judge Lord, holding you in contempt, was an invalid order?

"A. I think that is right.

"Q. And you have indicated that the order of Judge Stephenson--

"A. That is not a lawful order.

"Q. Restraining you from doing anything further or arguing further the constitutionality of the Federal Reserve System, was not valid?

"A. Not a lawful order.

"Q. You have indicated that the Justices of the Supreme Court of Minnesota have executed orders relating to the adoption of Rules of Civil Procedure, which are not lawful orders?

"A. Yes. * * *

"Q. Will you explain to the Court, Mr. Daly, whether it is your belief that an order is lawful only if you think it is lawful?

"A. No, no, it is lawful if it squares with the law.

"Q. And if it squares with the law in your opinion or in whose opinion?

"A. Well, I think any citizen or any person walking the face of the earth has a right to be guided by his own conscience, within the bounds of reason. And I can look at an order and I can make a determination in my mind whether it is lawful or not.

"Q. And whether or not you will follow it?

"A. That is right * * *.

* * * * *

"Q. Now, Mr. Daly, if an order was issued out of the Supreme Court of the United States determining that the Federal Reserve System was a constitutionally appropriate system, would you follow that order?

* * * * *

"A. Not if they are going to perpetrate a fraud on the people.

"Q. Let's assume that what they do is to declare the Federal Reserve System is a constituional system.

* * * * *

"A. Do you want to know if I would follow the order of the Supreme Court of the United States if they said that the banks had authority to manufacture money and credit out of nothing; you are asking me if I would follow that?

"Q. Yes, Sir.

"A. I would not."

Because it is elementary that our system of justice is founded on the rule of law, a willful disobedience to a single court order may alone justify disbarment. Minn. St. 481.15, subd. 1(3); In re Application for Discipline of Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 124, 99 L. ed. 694.

No useful purpose would appear to be served by repeating the detail of the instances supporting the foregoing summary of ultimate findings, all of which are adopted as the basis for respondent's removal from practice. It should be noted, however, that respondent's persistent and continuing attacks on our national monetary system can hardly be regarded as zealous advocacy or a good-faith effort to test the validity of repeated decisions of courts of record. For, as found by the referee, up to the time of his findings and recommendations respondent had avoided payment of any Federal income tax for 1965 and subsequent years on the asserted ground that he has not received gold and silver coin and, therefore, had no earnings that were taxable.[13] Also, he has taken personal advantage of the system he attacks by borrowing money from a bank to purchase lakeside property, only to subsequently defeat the bank's repossession after mortgage foreclosure

[13] Respondent's testimony confirms this finding: "Q. Mr. Daly, the exhibits [respondent's amended tax returns for 1965, 1966, 1967, and 1968] disclosed no figures in which any income was reported by you, is that correct?

"A. Well, they use the sign dollar, which I understand means dollar. And there were no figures disclosed with reference to income, that is right; dollars, as such.

"Q. You interpreted the word dollars to mean gold and silver coins, received by you?

"A. Or their equivalent.

"Q. Which would be a certificate redeemable in gold or silver?

"A. Freely and readily available."

by taking the position that the bank's extension of credit was unlawful, obligating him neither to pay the debt nor to surrender possession following expiration of the time to redeem. As detailed in the referee's finding, we regard the tactics employed by respondent in the unlawful detainer proceedings before the justice of the peace as not only unprofessional but reprehensible.

The misconduct found by the referee, and demonstrated by respondent's oral declarations before this court in violation of the Canons of Professional Ethics, reflects professional irresponsibility to such a degree as to render respondent totally unfit to continue to discharge the duties of an attorney.

Let judgment of disbarment be entered.

MR. CHIEF JUSTICE KNUTSON took no part in the consideration or decision of this case.

No. Sp. Supreme Court Per Curiam

In re Jerome Daly.

42174

Endorsed
Filed September 5, 1969
John McCarthy, Clerk
Minnesota Supreme Court

O P I N I O N

PER CURIAM.

On July 11, 1969, Mr. Justice C. Donald Peterson, acting for the Minnesota Supreme Court, directed Martin V. Mahoney, Justice of the Peace of Credit River Township, Scott County, Minnesota, and Jerome Daly, counsel for plaintiff in an action brought by one Leo Zurn against one Roger D. Derrick and the Northwestern National Bank of Minneapolis, to show cause why they should not be permanently restrained from further proceedings in the justice court. In addition, Justice Peterson ordered a stay of all further proceedings before the justice of the peace pending final determination of the questions raised by Northwestern National Bank's petition for writ of prohibition.

Although the stay order of Justice Peterson was served on the justice of the peace and Mr. Daly on July 11, 1969, they intentionally and deliberately disregarded it in this way: On July 14, 1969, the justice of the peace, upon motion of Mr. Daly, entered findings of fact, conclusions of law, and an order for judgment in favor of Zurn. In response to our order of August 12, 1969, directing the justice of the peace and Mr. Daly to show cause why they should not be held in constructive contempt of the Supreme Court of Minnesota for this conduct, Mr. Daly appeared personally in his own behalf before this court on August 21. He advised the court that he had

been authorized to represent the justice of the peace in the proceedings. After noting that he was making a special appearance, Mr. Daly, an attorney at law admitted to practice in this state, acknowledged that both he and the justice of the peace intentionally violated the order of Justice Peterson because in their opinion neither this court nor Justice Peterson had jurisdiction to issue it.

Although the death of the justice of the peace on August 22, 1969, has rendered the proceedings as against him moot, it is our judgment that the conduct of Jerome Daly was contumacious. It is the order of this court that he be temporarily suspended from the practice of law in the courts of this state effective October 1, 1969.

We reserve jurisdiction of this matter to permit further proceedings, the object of which will be to determine whether this contumacious conduct of Jerome Daly is or is not an isolated instance of impropriety. Final determination of the disciplinary measures to be invoked will be made after such hearing has been conducted. Reasonable notice of any charges of misconduct and a full opportunity to be heard shall be afforded in these contemplated hearings.

The rationale of our determination is as follows:

(1) The Supreme Court of the State of Minnesota by the terms of our Constitution has power to issue writs of prohibition restraining a court of limited jurisdiction from exceeding its power. Minn. Const. art. 6, § 2, provides that the Supreme Court "shall have original jurisdiction in such remedial cases as may be prescribed by law." By the terms of Minn. St. 480.04, the legislature has provided:

> "The court shall have power to issue to all courts of inferior jurisdiction and to all corporations and individuals, writs of error, certiorari, mandamus, prohibition, quo warranto and all other writs and processes, whether especially provided for by statute or not, that are necessary to the execution of the laws and the furtherance of justice. It shall be always open for the issuance and return of such writs and

> processes and for the hearing and determination of all matters involved therein and for the entry in its minutes of such orders as may from time to time be necessary to carry out the power and authority conferred upon it by law, subject to such regulations as it may prescribe. Any justice of the court, either in vacation or in term, may order the writ or process to issue and prescribe as to its service and return."

(2) In Minnesota, the justice of the peace court is a court of inferior jurisdiction.[1] Since the constitutional amendment of the judicial article in 1956 justice of the peace courts exist in this state only to the extent permitted by the legislature. Minn. Const. art. 6, §§ 1, 8, and Schedule. The legislature has fixed narrow limits to the jurisdiction which may be exercised by justices of the peace in this state. (Minn. St. 530.01, 530.05, 530.06, 531.03, 531.04, 532.37.) Acts in excess thereof by such justices of the peace are a nullity and subject to control by a writ of prohibition. Smith v. Tuman, 262 Minn. 149, 114 N. W. (2d) 73.

(3) The power to prohibit an improper exercise of jurisdiction embraces the power to issue ex parte an order designed to maintain the status quo pending a hearing upon an application for a writ of prohibition. See, Minn. St. 480.04. In the case of In re Lord, 255 Minn. 370, 378, 97 N. W. (2d) 287, 292, under similar circumstances, we stated that--

> "* * * this court had full authority to issue a preliminary order to show cause why such peremptory writ should not issue, and, in order to maintain the status quo until both sides of the controversy could be heard, to issue a restraining order to prevent any further action from being taken, either affirmatively or by inaction such as we have here."

See, also, 21 C. J. S., Courts, § 88, p. 136, and cases cited in ~~foot~~note 13.

(4) The order executed by Justice Peterson, acting in the name of this court, was a proper exercise of the court's authority. Any justice of the supreme court, either in vacation or in term, may

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[1] For a definition of the term "inferior courts" see 21 C. J. S., Courts, § 7, p. 21.

execute orders in behalf of the court pursuant to § 480.04. See, 48 C. J. S., Judges, § 48, and particularly cases cited in ~~foot~~note 94; 30A Am. Jur., Judges, § 35.

We find no essential requirement that such orders be issued by or through the office of the clerk of this court. To impose such a requirement would unnecessarily curtail the capacity of this court to respond in emergency situations. It would be unreasonable to make the performance of a clerical act a necessary condition to the exercise of judicial authority which must be asserted promptly to be effective. The signature of a justice of this court is adequate assurance of the authenticity of any order to which such signature is affixed.

Although the verification of statements of fact submitted to this court in ex parte matters is to be preferred, there is no jurisdictional requirement that a petition for temporary relief or for a writ of prohibition be verified. See, Dean v. First Nat. Bank, 217 Ore. 340, 341 P. (2d) 512; 73 C. J. S., Prohibition, § 26. In the matter before us it was evident from an examination of the summons and complaint in the proceedings sought to be restrained that Justice of the Peace Mahoney was undertaking to act in a matter with respect to which he had no jurisdiction. The representation of an attorney at law authorized to practice before this court that a copy of this summons and complaint attached to the petition seeking the writ of prohibition was a true and correct copy of the process served on his client formed in itself an adequate factual basis for the issuance of the temporary order directed to Justice of the Peace Mahoney and Jerome Daly.

(5) The refusal of the justice of the peace to respect the July 11 order of this court was not justified. The justice of the peace would be bound to obey our intermediary order regardless of whether the actions restrained by our order were in excess of his

jurisdiction. In re Lord, supra. Apart from this principle, it is clear that the proceedings restrained were beyond the limits of the jurisdiction of the justice of the peace in a number of respects, including these:

> (a) The summons, being returnable at 7 p. m. rather than between the hours of 9 a. m. and 5 p. m. as specified by Minn. St. 531.03, was a nullity.
>
> (b) The summons did not contain a statement of the amount claimed by plaintiff as required by § 531.03.
>
> (c) Contrary to the provisions of § 531.04, the summons was personally served upon Northwestern National Bank of Minneapolis in the city of Minneapolis, a city having a population in excess of 200,000.
>
> (d) This service was performed outside of the county of issuance, Scott County, in violation of the provision of § 531.04 that such service must satisfy the requirements of Minn. St. 532.29. One of the requirements of Minn. St. 532.29 is a continuance of proceedings for a period not exceeding 20 days, and no such continuance was provided in this case.
>
> (e) The amount in controversy exceeded the $100 jurisdictional limitation of the justice of the peace courts under § 530.05.
>
> (f) The relief sought, a declaratory judgment, was not within the granted powers of a justice of the peace. See, § 530.05. It has been the law ever since the 1861 case of Fowler v. Atkinson, 6 Minn. 350 (503), that a justice of the peace has no jurisdiction over equitable proceedings. See, Smith v. Tuman supra.

(6) We are satisfied from the record that the justice of the peace acted upon the advice and at the instance of attorney Jerome Daly. Mr. Mahoney was not admitted to practice as a lawyer. An attorney who intentionally and deliberately advises and encourages a justice of the peace or any other person to disregard an order of the Minnesota Supreme Court is guilty of contempt. See, Minn. St. 588.01, subd. 3(1, 2, 3, 7); In re Lord, supra; State v. Leftwich, 41 Minn. 42, 42 N. W. 598; In re Green, 172 Ohio St. 269, 175 N. E. (2d) 59. The fact that such advice is prompted by fanciful notions that justice of the peace courts have a constitutional status giving them immunity from the jurisdiction of the supreme court of this state cannot excuse or justify this conduct. This is especially

the case in the present situation where the jurisdiction of this court to prohibit acts beyond the jurisdiction of a justice of the peace was clearly delineated by our decision in Smith v. Tuman, supra, published in 1962. See, also, State ex rel. Meister v. Stanway, 174 Minn. 608, 219 N. W. 452.

(7) The supreme court has inherent power to discipline an attorney guilty of contempt. In re Cary, 165 Minn. 203, 206 N. W. 402. In exercising this authority no attempt is made to impose the sanctions of the criminal law. A principal purpose of the exercise of disciplinary authority is to assure respect for the orders of this court by attorneys, who, as much as judges, are responsible for the orderly administration of justice in this state. In disciplinary proceedings the formal requisites of criminal procedure, including the right to a jury trial, have no application. In re Williams, 221 Minn. 554, 23 N. W. (2d) 5; In re Rerat, 232 Minn. 1, 44 N. W. (2d) 273; In re Joyce, 242 Minn. 427, 65 N. W. (2d) 581, certiorari denied, 348 U. S. 883, 75 S. Ct. 124, 99 L. ed 694; In re Discipline of Tracy, 197 Minn. 35, 266 N. W. 88, 267 N. W. 142.

10/6/69

DISPOSITION

Jerome Daly is adjudged to be guilty of contempt of this court. We are not prepared to determine with finality at this time the appropriate form of discipline to be prescribed. Final resolution of the matter must depend on whether the acts of this attorney are a part of a persistent and continuing effort to defy the authority of the courts and in part on whether there is any disposition to amend the contumacious behavior demonstrated.

Rule 1 of the Rules of the Supreme Court for Discipline and Reinstatement of Attorneys, adopted November 14, 1961, (27B M. S. A. p. 21) which prescribes the procedure to be followed in cases where unproved complaints involving alleged unprofessional conduct are

leveled against an attorney, was not intended to apply to situations where an attorney has been found in contempt of this court and an inquiry is needed to aid us in determining the kind of discipline to be imposed. To meet the problem posed by this case, we herewith refer further proceedings in this matter to the Honorable E. R. Selnes, Judge of the District Court of the State of Minnesota, who will act as a referee of the Minnesota Supreme Court in order to consider such evidence as may be presented to him bearing on the fitness and competence of Jerome Daly to serve as a practicing attorney in the courts of this state. The State Board of Law Examiners (see, In re McDonald, 204 Minn. 61, 282 N. W. 677, 284 N. W. 888) is hereby assigned the duty and responsibility of conducting a thorough investigation of the fitness and competency of Jerome Daly to continue as a member of the bar of this state. So far as applicable, proceedings shall be in conformity with the rules of this court promulgated November 14, 1961. Due notice of such charges of unfitness and incompetence as may be warranted by the evidence secured, together with due and proper notice of the time and place of such hearings as may be held with respect to such charges as may be filed, shall be afforded the said Jerome Daly. The Practice of Law Committee of the Minnesota State Bar Association is authorized to intervene and become a party to these proceedings if it so elects. Upon the evidence presented and received, together with such evidence as may be presented by the said Jerome Daly in his own behalf, the Honorable E. R. Selnes in his capacity as a referee of this court shall make findings of fact and conclusions and recommendations for disposition of this matter as shall be justified by the evidence. Such determination shall be conclusive subject to the right of any party aggrieved to secure a review of the referee's determination in the manner outlined in said rules of November 14, 1961.

Because of the deliberate and aggravated nature of the

contumacious conduct on the part of the said Jerome Daly and his failure or refusal to present any reasonable justification for his effort to frustrate the processes of the Minnesota Supreme Court, his privilege to practice law in the courts of this state is suspended effective October 1, 1969; provided, however, that this court will consider such application as the said Jerome Daly may make prior to October 1, 1969, for such limited exceptions to this order of temporary suspension as may be proved necessary in order to protect the interests of clients now represented by the said Jerome Daly and involved in litigation pending in the courts of this state.

This matter is herewith referred to the Honorable E. R. Selnes, designated as referee herein, for further proceedings consistent with this opinion, which proceedings shall be entitled "In re Jerome Daly."

Sherman Jr

(4)

STATE OF MINNESOTA
SUPREME COURT

No. 42174

STATE OF MINNESOTA

SUPREME COURT

In re Jerome Daly.

PER CURIAM OPINION

Filed September 5, 1969

John McCarthy
Clerk.

By _____
Deputy.

14

3/12/82

John, our file and register book seem to be missing.

My recollection is that the register is probably at 1500 Miss. Blvd. and the file box at the Wabasha address. I run copies for a all justices.

Wayne

STATE OF MINNESOTA

IN SUPREME COURT

#42174

- - - - - - - - - - - - -
In Re JEROME DALY.
- - - - - - - - - - - - -

ORDER DISMISSING
REINSTATEMENT
PETITION

It appearing to the court that Jerome Daly has by August 22, 1982, letter withdrawn his reinstatement petition dated March 11, 1982,

IT IS ORDERED that said reinstatement petition be and hereby is in all respects dismissed.

Dated: Sept 27, 1982

BY THE COURT

DOUGLAS K AMDAHL

SUPREME COURT
FILED
SEP 28 1982
JOHN McCARTHY
CLERK

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
444 LAFAYETTE ROAD
4TH FLOOR
ST. PAUL, MINNESOTA 55101

612 - 296-3952

September 27, 1982

PERSONAL AND CONFIDENTIAL

Honorable Douglas K. Amdahl
Chief Justice
Supreme Court of Minnesota
State Capitol
St. Paul, MN 55155

HAND DELIVERED

Re: In Re Jerome Daly, File No. 42174.

Dear Judge Amdahl:

Please find enclosed a proposed order dismissing Mr. Daly's petition for reinstatement.

Very truly yours,

Michael J. Hoover
Director

By Richard Harden
Richard Harden
Attorney

MJH/RJH/cjs
Enclosure
cc: Jerome Daly

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
444 LAFAYETTE ROAD
4TH FLOOR
ST. PAUL, MINNESOTA 55101

612 - 296-3952

MICHAEL J. HOOVER
DIRECTOR OF LAWYERS
PROFESSIONAL RESPONSIBILITY

JANET DOLAN
ASSISTANT DIRECTOR

RICHARD J. HARDEN
[redacted]
WILLIAM J. WERNZ
ATTORNEYS

August 27, 1982

PERSONAL AND CONFIDENTIAL

Honorable Douglas K. Amdahl
Chief Justice
Supreme Court of Minnesota
State Capitol
St. Paul, MN 55155

Re: In Re Jerome Daly, File No. 42174

Dear Judge Amdahl:

On March 11, 1982, Mr. Daly served a petition for reinstatement. We have now received the enclosed August 22, 1982, dismissal of petition for reinstatement. In order that our file may be cleared, we request an order of the court formally dismissing the petition for reinstatement.

Very truly yours,

Michael J. Hoover
Director

MJH/ct
Enclosure
cc: Jerome Daly

9-81 Called Hoover. He will submit order
DKA

File at 1500 Mississippi St.

IN THE SUPREME COURT OF THE STATE OF MINNESOTA

IN RE JEROME DALY
NO. 42174

DISMISSAL OF PETITION FOR REINSTATEMENT

The Petition for Reinstatement dated and served on March 11, 1982 is hereby dismissed.

August 22, 1982

Respectfully submitted,

Jerome Daly

Jerome Daly
P.O.Box 1708
Twin City Airport, Minnesota
55111

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing paper was served on Richard Harden, Attorney for Lawyers Professional Responsibility Board, 444 Lafayette Road, 4th Floor, St.Paul Minnesota 55101 in a postage paid wrapper addressed to him at the foregoing stated address on August 22, 1982
August 22, 1982

Jerome Daly

Jerome Daly

42174

SUPREME COURT
FILED
AUG 23 1982
JOHN McCARTHY,
CLERK

JEROME DALY

Box 1708 / Twin City Airport, MN 55111 / 612-854-7714

March 11,1982

Clerk of Supreme Court
State Capitol
St.Paul,Minnesota 55102

IN RE JEROME DALY
NO. 42174

Sir:

Attached kindly find Petition for reinstatement to practice law with certificate of service by mail upon the Director and President of the Minnesota State Bar Association.

Respectfully yours,

Jerome Daly

CC Mike Hoover
Clinton A.
Schroeder

IN THE SUPREME COURT OF THE STATE OF MINNESOTA

IN RE JEROME DALY,
No. 42174

PETITION FOR REINSTATEMENT

WHEREAS, Rule 18. "REINSTATEMENT" of the Rules of Professional Responsibility provides as follows:

RULE 18. REINSTATEMENT

(a) Petition for reinstatement. A suspended, disbarred, or resigned lawyer's petition for reinstatement to practice law shall be served upon the Director and the president of the State Bar Association. The original petition, with proof of service, and one copy, shall then be filed with this Court.

(b) Investigation; report. The Director shall investigate and report his conclusions to a Panel.

(c) Recommendation. The Panel may conduct a hearing and shall make its recommendaton. The recommendation shall be served upon the petitioner and filed with this Court.

(d) Hearing before Court. There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. This Court may appoint a referee. If a referee is appointed, the same procedure shall be followed as under Rule 14.

NOW THEREFORE, comes now Respondent, Jerome Daly, and, pursuant to the Rules of Professional Responsibility of the Supreme Court of the State of Minnesota, and hereby Petitions the Court to enter an Order for reinstatement to practice law.

March 11,1982

Respectfully submitted,

Jerome Daly

Jerome Daly
P.O.Box 1708
Twin City Airport,Minnesota
55111

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing attached paper was served on Mike Hoover, Director of Professional Responsibility, 444 Lafayette Rd., 4th Floor, St.Paul,Minnesota 55101; and Clinton A. Schroeder, President, Minnesota State Bar Association, 300 Roanoke Building, Minneapolis, Minnesota 55402 by delivering the same to each of them at their respective addresses in a postage-paid wrapper addressed to them at the foregoing stated addresses following their names on March 11,1982.
March 11, 1982

Jerome Daly

42174

Petition for
Reinstatement

STATE OF MINNESOTA

IN SUPREME COURT

In re Jerome Daly

No. 42174

O R D E R

IT IS ORDERED that this case be and hereby is set for an en banchearing as the second case on Friday, May 7, 1971. Court convenes at 10:00 a. m. The time within which the respondent's brief, if any, may be served and filed is extended to include April 30, 1971.

Dated: March 31, 1971.

BY THE COURT

Martin A. Nelson

Associate Justice

(32) 42174

SUPREME COURT
FILED
MAR 31 1971
JOHN McCARTHY
CLERK

Order Setting
Case

11/17

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE

DISTRICT OF ALABAMA, NORTHERN DIVISION

FILED

NOV 17 1969

R. C. DOBSON, CLERK

By ..... Deputy Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CR. NO. 12,252-N
)
CHARLES ROBERT MUNCASTER,)
)
Defendant.)

O R D E R

Charles Robert Muncaster was indicted by a grand jury that reported to this Court September 12, 1969, for violating certain provisions of the criminal code of the United States relating to the wilful and knowing failure and refusal to register or to submit to registration as required by the Military Selective Service Act of 1967. The defendant appeared for arraignment upon these charges in open court on October 6, 1969. Upon this occasion, as the file in this case reflects through a transcription of the proceedings, this Court denied the father of the defendant the right to represent this defendant upon the trial of this case. The basis for this denial was and is that the defendant's father is not an attorney. Upon this arraignment proceeding, this defendant was specifically advised that if he did not have the funds to employ and pay counsel to represent him in this case this Court would, if he requested it, appoint a competent attorney to represent him without cost. Upon this offer, this Court was advised by the defendant that he and/or his father would employ counsel of his own choosing. The matter proceeded to arraignment and the defendant pleaded not guilty. The case was set for trial for the jury term commencing November 17, 1969.

On November 8, 1969, Jerome Daly of Savage, Minnesota, filed with the Clerk of this Court a power of attorney and an appearance to act as counsel for the defendant in this case. The Clerk of this Court by letter dated November 10, 1969, advised Jerome Daly that prior to the time he could appear and act as counsel for the defendant in this case it would be necessary that he file with the office of the Clerk of this Court a certificate evidencing his admission to practice in the United States courts of Minnesota and evidencing that he was a member of the Bar in good standing in the Minnesota federal courts. On November 12, 1969, this Court was advised by the Clerk of the Supreme Court of Minnesota

that Jerome Daly's privilege to practice law in the courts of the State of Minnesota was suspended by formal opinion and order of the Supreme Court of Minnesota filed September 5, 1969, and that this suspension was effective October 1, 1969. On November 14, 1969, this Court was advised by a copy of a formal order entered by the United States District Court for the District of Minnesota that Jerome M. Daly was, effective October 1, 1969, suspended from further practice in the United States District Court for the District Court of Minnesota.

Upon consideration of the foregoing, it is the ORDER, JUDGMENT and DECREE of this Court that the said Jerome Daly be and he is hereby denied leave to appear as counsel for Charles Robert Muncaster or for any other defendant, or in any other proceeding in this court until the orders suspending his right and privilege to practice law as entered by the Supreme Court of Minnesota and the United States District Court for the District of Minnesota have been set aside.

Done, this the 17th day of November, 1969.

UNITED STATES DISTRICT JUDGE

(15)

42174

SUPREME COURT
FILED
NOV 25 1969
JOHN McCARTHY
CLERK

Copy of order in "U.S.A.
v Muncaster" which
denies Daly right to
appear in U S District
Court for Middle District
of Alabama

STATE OF MINNESOTA

IN SUPREME COURT

NO. 42174

In re Jerome Daly O R D E R

Upon application of Jerome Daly, supported by one Gordon E. Fitzgerald, for an order lifting the suspension of Mr. Daly so that he might proceed with the trial of Fitzgerald v. Hansen, an action started in behalf of said Fitzgerald,

IT IS ORDERED that the suspension of Jerome Daly be lifted for the purpose of permitting Mr. Daly to proceed with the trial of said case.

Dated January 14, 1970.

BY THE COURT

Chief Justice.

42174

SUPREME COURT
FILED
JAN 15 1970
JOHN McCARTHY
CLERK

STATE OF MINNESOTA - IN SUPREME COURT

- -
In re JEROME DALY PETITION
- -

STATE OF MINNESOTA
SS
COUNTY OF SCOTT

Jerome Daly, being first duly sworn deposes, states and Petitions the Court as follows:

1. This Court on Sept. 5,1969 issued an opinion and sus pended Jerome Daly from the practice of Law in this State as of October 1,1969. In this Opinion the Court reserved Jurisdiction to determine whether"this contumacious conduct of Jerome Daly is or is not an isolated instance or imporpriety." The Court then referred the matter to E.R.Selnes, retired District Judge and directed the Minnesota State Bar Association to investigate.

2. The Bar Assn. apparently did investigate and on September 12,1969 filed a 16 page petition and accusation which sets forth in the main complaints about Daly's raising isse as to the Constitutionality of the Income Tax and the Federal REserve System and its phony fiat paper money. The petition does not allege that Daly contumaciously violated any Court Orders directed to Daly.

3. Attorney Herbert C. Davis first contacted Daly by Letter on December 12,1969 asking is the date of January 25,1970(which is a Sunday) is satisfactory for beginning a hearing. That Daly is scheduled to go out for trial before Judge Arlo Hearing on Jan. 19,1970 which will last about two weeks.

4. That this suspension has prejudiced the rights of clients in Las Vegas Nevada, Washington Court House, Ohio, Montgomery Alabama, New Orleans, La. Chicago, Illinois, Detroit Michigan, Portland Orgeon, Fargo N.D. as well as here in Minnesota. It has also prejudiced the rights of clients in criminal cases in the foregoing named states and in Mo. and Texas. The Courts of these states have refused to allow Daly to appear because of this suspension. That there is nothing in the petition that warrants disbarrment. No fraud or bad faith toward any Client is alleged.

5. That Client Gordon Fittzgerald in the Case of Fitzgerald vs. Hansen, et al., File No. 620856, Hennepin County has had a personal injury action on file for over 6 years and wants his case tried. He has indicated that he does not want another Lawyer.

WHEREFORE, your Petitioner, Jerome Daly respectfully requests this Court enter its Order vacating the Order of suspension and re-instating Petitioners license to practice Law.

Jerome Daly

Subscribed and sworn to before me
this 18th day of December,1969

JAMES M. BRADY
Notary Public, Hennepin County, Minn.
My Commission Expires Feb. 19, 1970.

State of Minnesota
SS
County of Scott

Gordon E. Fitzgerald, being first duly sworn deposes and states that he is Plaintiff in Fitzgerald vs. Hansen, Hennepin Court File No. 620856. That he hereby Petitions the Supreme Court to Order Mr. Jerome Daly's License re-instated so that he can represent me in this Case and in any other ligigation that I have or advice that I may need.

Gordon E. Fitzgerald

Subscribed and sworn to before
me this 18th day of December,1969

JAMES M. BRADY
Notary Public, Hennepin County, Minn.
My Commission Expires Feb. 19, 1970.

Copy to Mr. Herbert C. Davis
6100 Excelsior Blvd. St.Louis Park,Minn.
by mail on 12-18-69

J.Daly

42174

SUPREME COURT
FILED
DEC 19 1969
JOHN McCARTHY
CLERK

Petition of Jerome Daly to vacate order of suspension and to reinstate license to practice in case of Fitzgerald v Hansen

7. *Agreements reached on other matters during conference:*

8. *Statement as to waiver or non-waiver of medical privilege:*

9. *Orders or rulings of Court at conference not covered above:*

10. *Brief statement of contested claims of each party as they exist after conference.*

* is therefore ordered that this matter be set for another settlement conference and it is ordered that plaintiff personally appear before this Referee on February 1, 1968 at 1:00 o'clock p.m.

11. *Miscellaneous notes - possibility of settlement - length of trial - matters reserved for Court, etc.:* This case arises out of an automobile collision which occurred on November 17, 1962 on Highway 65 near 72nd Avenue North in Fridley. Both vehicles were travelling in the same direction. The car owned and operated by the defendants collided with the rear of plaintiff's vehicle while both vehicles were travelling south on Highway 65. At settlement conference plaintiff was represented by Richard Olson who stated that he had informed his client that the pre-trial settlement conference was scheduled for January 9, 1968 at 1:30 o'clock p.m. and that he had requested plaintiff to be present.
Plaintiff made no personal appearance.
The defendants were ready and willing to make an offer in settlement but plaintiff's attorney was in no position to either accept or reject the same. Plaintiff has been most uncooperative with his own lawyer and Mr. Olson announced that is this case were sent out for trial he would not try it. The defendants appeared by counsel and the Claims Representative of the insuror was also present. It is the feeling of the Referee that settlement might possibly be accomplished if plaintiff were present before him and it*

John A Weeks
Judge of District Court

Dated: January 9, 1968

Note: This form is to be filled in by or under the direction of the judge who conducts pre-trial conference where there is no formal pre-trial order. It may be by typewriter or pen. Additional appropriately identified sheets may be attached if there is not enough room on the form. It may be modified to cover problems presented by individual cases. When appropriate, notations on the form may merely refer to pre-trial statements of the parties. Counsel should be informed of its contents and may be given a copy if requested. The original will be left in the file with the pre-trial statements of the parties. After signature it will constitute the Court's pre-trial order and the case will be set for trial on the Ready For Trial Calendar unless otherwise ordered.

42174

6. *Th... ing witnesses may testify at the trial – to be called by:*

Plaintiff: (List names and addresses.)
Defendant: (List names and addresses.)
Other Parties: (List names and addresses.)

7. *The following exhibits may be offered at the trial by:*

Plaintiff: (Give brief identification.)
Defendant: (Give brief identification.)
Other Parties: (Give brief identification.)

8. *The following rulings (as distinguished from agreements) are made with reference to admission of exhibits:*
(The Court may defer rulings on exhibits until trial.)

9. *The Court makes the following additional rulings and orders:*
(Here set forth any rulings or orders such as those on amendments to pleadings, limitation of expert witnesses, etc.)

10. *The following issues of law, and no others, remain to be litigated at the trial:*
(Here set forth a concise statement of each.)

11. *The case will be tried by: (Court or jury.)*
(At this point include any additional agreements or orders as to the jury, such as alternates, number of peremptory challenges, number of jurors, sealed verdict, etc.)

Jerome Daly, Esq. for plaintiff
Harold E. Farnes, Esq. for defendant

12. *The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.*

13. *State other matters not covered by the foregoing but appropriate for the particular case and matters reserved for court, including estimated length of trial.* On Febauary 1, 1968 this matter was called for a settlement conference. Richard E. Olson, Attorney at Law, who previously represented the plaintiff, formally announced that he had withdrawn from the case and shortly after the conference began Mr. Olson left the hearing room having irformed the plaintiff that he was doing so. At this time the Insurance Representative and the Attorney for the defendants made an offer of settlement to Mr. Fitzgerald which was totally unacceptable to him. Plaintiff had previously been advised that he should engage the services of other counsel and he then advised that he had consulted Jerome Daly of Savage and produced a letter from Mr. Daly that attorney had interviewed him and directed to him Mr. Olson's complete file. Bettlement could not be made notwithstanding Mr. Olson's generous offer to charge no fees for his services nother thank his costs for the depositions. Mr. Daly indicated in the letter above mentioned that he would need ninety days to prepare for trial. It is hereby ordered

14. *This case is subject to trial at any time upon one hour notice.* that this matter be stricken subject to reinstatement on advise from Mr. Daly to the Court that the matter is ready for trial.

Dated: February 1, 1968

John A Weeks
District Judge

15a

42174

No. 3290½—Affidavit of Service by Mail. (Rev. 1957) Miller-Davis Co., Minneapolis

State of Minnesota,

County of HENNEPIN } ss.

DONNA R. RACETTE of the City of St. Louis Park

County of Hennepin in the State of Minnesota, being duly sworn, says that on the

24th day of March, 1971, he served the annexed

Notice of Entry of Order

on Jerome Daly

~~the attorney(s) for~~

the Respondent in this action, by mailing to said Jerome Daly a copy thereof, inclosed in an envelope, postage prepaid, and by depositing same in the post office at St. Louis Park Minnesota directed to said attorney(s) at 28 East Minnesota Street, Savage, Minnesota, the last known address of said attorney(s).

Donna R. Racette

Subscribed and sworn to before me, this 24th day of March, 1971.

Notary Public Hennepin County, Minnesota

My Commission Expires

Notary Public, Hennepin County, Minn.
My Commission Expires Aug. 27, 1975.

STATE OF MINNESOTA

IN SUPREME COURT

File No. 42174

- - - - - - - - - - - - - - - - - - -

In re

JEROME DALY

- - - - - - - - - - - - - - - - - - -

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the attached Order was duly filed in the office of the Clerk of the Supreme Court on March 23, 1971.

DATED: This 24th day of March, 1971.

HERBERT C. DAVIS
Counsel for the State Board of Law Examiners, and the Administrative Director on Discipline, its successor
6100 Excelsior Boulevard
St. Louis Park, Minnesota 55416
929-8541

STATE OF MINNESOTA

IN SUPREME COURT

In re Jerome Daly.

No. 42174

O R D E R

IT IS ORDERED that respondent's motion to dismiss, dated February 27, 1971 and filed in this office on March 4, 1971, be and hereby is denied.

Dated: March 23, 1971.

BY THE COURT

Associate Justice

~~Chief Justice~~

(31) 42174
~~42153~~

STATE OF MINNESOTA
IN SUPREME COURT
File No. 42153

- - - - - - - - - - - - - - - - - - -

In re

JEROME DALY

- - - - - - - - - - - - - - - - - - -

NOTICE OF
ENTRY OF ORDER

HERBERT C. DAVIS
Counsel for the State Board of Law
Examiners, and the Administrative
Director on Discipline, its
successor
6100 Excelsior Boulevard
St. Louis Park, Minnesota 55416
929-8541