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owners, other than natives, must file with him before September 1, 1938, declarations of ownership. He is then authorized to purchase reindeer and other property necessary for the industry, to manage it and to distribute the reindeer, caribou and other property among native Indians, Eskimos and Aleuts, of whole or part blood. Two million dollars is appropriated for the purpose.

The United States and Canadian Convention signed at Ottawa January 29, 1937, has been supplemented by the Northern Pacific Halibut Act limiting catches on the Pacific Coast to nationals, carriage of halibut and outfitting to Canadian and United States vessels, and fishing to licensed fishermen. Power of search, arrest and seizure is given the Coast Guard, Customs Service and Bureau of Fisheries, with penalties of fines, imprisonment and forfeiture of catch, cargo and vessel.

National Forests. Several townships have been added to the Snoqualmie and Columbia National Forests.

Narrows Bridge. The time within which the bridge over Puget Sound in Pierce County may be constructed has been extended to 1940.

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The Functions of a Trial Committee Under the State Bar Act*

I have been asked to talk today upon the functions of Trial Committees as they exist under the State Bar Act. The act, as you know, was enacted in 1933 and created a body corporate therein designated as "an agency of the state" to be known as the Washington State Bar Association, vesting in it the right to sue and be sued, hold property and to do those other things which are ordinarily incidental to the existence of a corporate entity. The members of the Association are the lawyers of this state, and the Association is governed by a Board of Governors whose supervisory

*Speech delivered by De Wolfe Emory of Seattle at a meeting of Trial and Local Administrative Committees at 1937 Convention of Washington State Bar Association.

powers are not dissimilar to those exercised over a corporation by its directors.

The Board of Governors is, under Section 8 of the State Bar Act, given power from time to time to adopt rules, subject to the approval of the Supreme Court, touching upon the professional conduct of all members of the State Bar and to hear all causes involving discipline, disbarment, suspension, or reinstatement and to make recommendations thereon to the Supreme Court. The Board is also authorized by this enactment, also with the approval of the Supreme Court, to prescribe rules establishing the procedure for the investigation and hearing of such matters and establishing county or district agencies to assist therein to the extent provided by such rules.

From these rule-making and inquisitorial powers vested in the Board of Governors has sprung the set of rules by virtue of which the State Bar is attempting (as stated in the by-laws of the Association) "to uphold and elevate the standard of honor, of integrity and of courtesy in the legal profession." These disciplinary powers are a recognition of the unity and self-sufficiency which the phrase "integrated Bar" implies. They are a modern adaptation of the old maxim that one's house cleaning had best be intrusted to the immediate family.

In October of 1933 there were approved by the Supreme Court rules designated "Rules of Procedure in Causes Involving Discipline, Disbarment, or Reinstatement of Members of the Washington State Bar Association". These rules, embodying 52 sections, constitute a code of procedure and practice governing disciplinary proceedings conducted under the State Bar Act. These rules are comprehensive in their scope but lend to flexibility and informality in actual practice. The rules govern the conduct of a disciplinary proceeding from its inception with the Local Administrative Committee to its termination in the Supreme Court, should it go that far.

It is not my purpose to more than briefly refer to the activities of the Local Administrative Committee, but some understanding of its functions is necessary to an appreciation of the duties of the Trial Committee. The Local Administrative Committee (of which there is one for each county or combination of counties which have been formed into a district) consists of from three to five members. It hears complaints, investigates any complaint made to it or referred to it by the Board of Governors, and passes upon the existence of "probable cause for further investigation of such complaints". Its functions may be likened to that of a committing magistrate in our criminal courts. It is only when the Local Administrative Committee concludes "probable cause" to exist that Local Trial Committees swing into action.

The Trial Committees consist of five members and exist in each county of the state, save where two or more counties have been combined into a district, in which event one committee functions for the district. The members of the Local Trial Committees are appointed by the Board of Governors and serve for a term of two years. Under the rules of procedure all cases of professional conduct involving disbarment arising in each county or district are

tried by the members of the Local Trial Committee, together with one member of the Board of Governors. The member of the Board of Governors to whom the matter has been assigned presides at the hearing and is from a district other than that in which the accused attorney resides. It should be here noted that the Trial Committee acts in advisory capacity only. Its conclusions are transmitted to the Board of Governors, not in form of a final judgment but only as a "recommendation".

The issues in a disciplinary proceeding before a Trial Committee are framed in much the same way as those in our state courts. The pleadings consist of a complaint and answer. Demurrers and motions are not allowed. The complaint and answer are verified in the usual manner. Process is in the form of a ten-day notice and provision is made for substituted service where personal service may not be effected.

The rules of procedure go a good way in providing for a scrupulously fair hearing. The lawyer charged may challenge a member of the Local Trial Committee, this challenge being passed upon by the committee. While ordinarily the trial is held in the county of the residence of the accused, provision is made for change of venue. The accused is also given the right to appear by counsel, a right, by the way, which is not very frequently exercised. Should the accused desire to subpoena witnesses or to take depositions he may do so.

These Trial Committee hearings are extremely informal. Unless requested by the accused or otherwise ordered by the Board of Governors, the hearings are not public. Witnesses are of course sworn and any question of evidence raised is passed upon by the committee. As a matter of practice, the trial is usually opened by a reading of the complaint by the attorney for the State Bar Association. The accused is given an opportunity to explain across the table his position and any extenuating circumstances. Such witnesses are proffered by either side as may be thought to be helpful to their cause and many times the matter is submitted without formal argument. Not infrequently members of the Trial Committee examine a witness on some point thought to be obscure. The atmosphere is one of round-table discussion rather than of the court room. In this connection the rules provide that no finding, recommendation, or order made in the disciplinary proceeding shall be invalidated on the ground of admission or rejection of evidence, or for error in pleading, or procedure, or upon any other ground unless upon the whole record, including the evidence, the Board of Governors is of the opinion that error has been committed and will result in a miscarriage of justice.

As might be expected, hearings before Trial Committees do not always result in agreement among the members of the committee. The recommendation of the Trial Committee, which must be filed with the Board of Governors, is sometimes a divided report. Within ten days of the filing of the Trial Committee's recommendations, the accused may file his objections thereto, which are heard by the Board of Governors upon the whole record made before the Trial Committee. No new testimony is taken before the Board of Gov-

ernors without special leave granted or where a hearing *de novo* is ordered.

There are, of course, a wide range of charges upon which a lawyer may be brought to trial before a committee. These grounds may or may not have a direct bearing upon the conduct of the accused as a lawyer. The rules provide that he may be disciplined for any act involving moral turpitude or dishonesty, "whether the same be committed in the course of his relations as an attorney or counsellor at law or otherwise." "Gross incompetency" in the practice of the profession is, under the rules, grounds for such procedure. Violation of the Code of Ethics of the American Bar Association (which is the standard of ethics for the members of this Bar) will also warrant such a procedure.

In the twenty odd cases which have come before the several Trial Committees since the enactment of the State Bar Act, it is perhaps not surprising to find that almost all of them have as their basis the inability of a lawyer to distinguish between his own money and that of his client's. Such phrases as "Failure to report collections", "Failure to account for funds", "Misappropriation of collections" spring to light in a large percentage of these case surveys. The money element is at the root of the major portion of disciplinary actions before Trial Committees.

It must not be thought, however, that it is the function of a Trial Committee to act as a collection agency. Embezzlement of trust money by a lawyer is not turned into a creditor-debtor or other non-fiduciary relationship by the making of restitution. The stain upon the Bar—the imprint upon the public's mind, is not erased thereby. This thought is given expression in the Procedural Rules which provide that "Neither unwillingness or neglect of the accuser to sign the complaint or to prosecute the charges, nor settlement, compromise, or restitution, shall, in itself, justify the committee in failing to undertake or to complete its investigation or to report thereon to the Board of Governors."

The record is not lacking, however, in other offenses. Lawyers have been charged before Trial Committees with offenses not necessarily directly bearing upon their professional conduct such as selling stock in a mine when no mine existed; issuing worthless checks; disposing of property sold under conditional sales contract without consent of the vendor. Incompetency in the practice of the profession has also served as a basis for disciplinary action. Failure to file briefs on appeal; subjecting an action to operation of the statute of limitations through untoward delay are charges which come within the category just mentioned.

For this variety of offenses, what disciplinary action may be taken? The rules authorize the imposition of reprimand, suspension, or disbarment. It is more often than not an extremely vexing and difficult problem to fit the punishment to the grade of the offense and the character of the offender. The State Bar record of the various offenses coming before Trial Committees since the enactment of the State Bar Act and the final action taken on each offense may give rise to the thought that the punishment meted out in one case over-balances in severity that imposed in an equally serious case. Digging into the record, however, would probably

disclose the actual non-existence of such a disparity. Trial Committees are human and must be, as they are, influenced by the previous record of the offender, the length of time he has practiced, the wideness and character of his experience, his apparent willingness and ability to keep his record clean in the future. These circumstances must be reflected in any final conclusion in a disciplinary proceeding.

I believe that under our system there is very little chance of a lawyer receiving disciplinary punishment of a grade more severe than his just deserts. This would seem to be inevitable from the fact that before any final action is taken against him, whether suspension or disbarment, the evidence must be sifted by five separate agencies, some of them acting in a judicial capacity—the investigator or attorney for the State Bar Association, the Local Administrative Committee, the Local Trial Committee, the Board of Governors, and finally the Supreme Court. Experience has taught that there is constantly in mind of these bodies or agencies the fact that to suspend or disbar the practitioner is in most cases to permanently deprive him and his family of a livelihood.

Yet Trial Committees functioning under the State Bar Act must and do remember, that in the broader aspect these trials more vitally involve the state and the profession as a whole. The cropping up of embezzlement, corruption, or fraud in the profession effect you and me as lawyers, because it colors the attitude of the public toward the integrated bar. The bar of this state will have the respect of the people of this state only as long as it can effectively deal with those of its members who refuse to be bound by rules of honesty. In attaining this objective, it is my belief that the Trial Committees can and do play a most important part.