T. L. Tobin

RULES
OF THE
SUPREME COURT
OF THE
STATE OF COLORADO
1929

With Rule 3 1933 Inc.

14c, 21a, 37a, 43, 49c

note: The last part of Rule 38 should be reinstated possibly

~~why it was omitted in this section~~

~~Has~~ 27a changed the certiorari clause in a writ of error under Rule 19.

Rule 19 (1) uses transcript of record for record on error no doubt

~~Under~~ 26 who serves the writ

RULES

OF THE

SUPREME COURT

OF THE

STATE OF COLORADO

ADOPTED JULY 1, 1929
EFFECTIVE SEPTEMBER 1, 1929

DENVER, COLORADO
BRADFORD-ROBINSON PRINTING CO.
1929

SUPREME COURT

OF THE

STATE OF COLORADO

MEETS AT THE CAPITOL
IN DENVER

REGULAR TERMS
Begin the Second Monday in January, April and September

SPECIAL TERMS
At any time by Order of the Justices on Fifteen Days' Published Notice

---

GREELEY W. WHITFORD, Chief Justice

JOHN T. ADAMS
CHARLES C. BUTLER
JOHN CAMPBELL
JULIAN H. MOORE
HASLETT P. BURKE
WILBUR M. ALTER

Justices

ARCH H. WHITE, Clerk
O. E. RICKERSON, Chief Deputy Clerk
CLARENCE W. SHEAFOR, Deputy Clerk

ROBERT E. WINBOURN, Attorney General
NEWTON C. GARBUTT, Reporter
FRED Y. HOLLAND, Librarian

Rules of the Supreme Court

OF THE

State of Colorado

I.

PRACTICE AND PROCEDURE IN *NISI PRIUS* COURTS

1. ACTIONS—HOW COMMMENCED.

Actions shall be commenced and summons issued and served as provided by the Code of Civil Procedure.

2. ALLEGATIONS IN ONE COUNT, ETC.—INCORPORATED IN OTHER COUNTS BY REFERENCE, ETC.

Allegations appearing in any count, defense or counterclaim need not be repeated but may be incorporated in other counts, defenses or counterclaims by reference. Any written instrument may be made a part of a pleading by attaching the same or a copy thereof thereto as an exhibit.

3. CHANGE OF PLACE OF TRIAL.

In case of change of place of trial of an action the party at whose instance such change is granted shall not be permitted to apply for another change upon the same ground.

A party shall not be deemed to have waived his right to place of trial by appearance or plea if his

63 P.(2d)892

objection thereto shall have been made in apt time, but the same may be reviewed on error as in other cases. (See also Rule 57 as to place of trial.)

4. MOTION TO QUASH PROCESS OR SERVICE — GENERAL APPEARANCE—EXEMPTIONS.

A motion to quash a summons or *scire facias* or service of either shall, if overruled, be deemed a general appearance of the party making such motion. This rule shall not apply where the moving party claims exemption from service of process, nor to service of process on minors or persons judicially declared incapable of conducting their own affairs.

5. EFFECT OF DISMISSAL OF ACTIONS.

Every dismissal of an action, whether by the court or otherwise, shall be held to be "with prejudice," unless differently ordered by the court.

6. RETRIAL MAY BE LIMITED TO SPECIFIC QUESTIONS OF FACT.

Upon a motion for a new trial, the court may, in its discretion, order a retrial of questions of fact with respect to which error was committed, without resubmission of those concerning which there has been no error.

7. INSTRUCTIONS — OBJECTIONS, HOW MADE — REVIEW LIMITED TO SUCH OBJECTIONS.

Counsel shall present to the trial court, at or prior to the close of the evidence, such instructions as they may desire. The court shall afford respective counsel

a reasonable time and opportunity to examine proposed instructions, whether requested, or to be given by the court of its own motion, and to prepare and present specific objections thereto before such instructions are given to the jury. On motion for new trial, or on review by the Supreme Court, only the grounds so specified shall be considered.

8. MOTION FOR NEW TRIAL—NECESSITY OF—EXCEPTION.

The party claiming error in the trial of any case must, unless otherwise ordered by the trial court, move that court for a new trial, and, without such order, only questions presented in such motion will be considered on review.

9. STAY OF EXECUTION—TERMS.

The trial court shall stay execution until the expiration of five days from the time of entry of judgment, and upon motion within said five days, or within the time of any extension, may grant a further stay pending application to the Supreme Court for a *supersedeas*. Upon granting the stay of five days, or any further stay, the trial court may prescribe terms or require security, or both.

10. BILLS OF EXCEPTIONS.

A bill of exceptions may be tendered to the judge or clerk; if to the clerk he shall note thereon the tender and without delay lay it before the judge. The judge shall then and there fix a time, to follow notice by the clerk of the tender, within which the opponent may file written objection to the bill, and if none is

filed within that time he shall settle and sign it. If such objection is filed the exceptor shall be immediately notified and the objection shall be heard and the bill settled and signed with all convenient speed.

11. TRIAL COURT RECORD—ENLARGEMENT OF.

The record in the trial court may be enlarged or added to as provided in the Code of Civil Procedure.

12. SERVICE OF NOTICE OF MOTION BY MAIL.

Service of notice may be by mail as prescribed in the Code of Civil Procedure, and when so served the time shall be increased above that to be given where service is personal, one day for every one hundred and twenty-five miles, or fraction thereof, between the place of deposit and the place of address.

13. COURTS TO PROVIDE RULE FOR DISMISSAL OF ACTIONS.

Nisi Prius courts shall by rule provide for the dismissal of actions not prosecuted or brought to trial with due diligence.

14. TRIAL COURTS — MAKE ADDITIONAL RULES — OWN PROCEDURE.

The *nisi prius* courts may make rules to govern their own procedure, not inconsistent with these rules or with statute.

14a. SERVICE BY PUBLICATION.

In addition to the requirements of statute, in case of service by publication, before the order for publication of summons the return of the sheriff must show

14c. MOTION FOR CHANGE OF JUDGE—NEW JUDGE CALLED.

When, in any cause pending in any district court, a motion for change of judge is sustained, or a change ordered, sua sponte, because of the disqualification of the trial judge, such available judge shall be called in as may be agreed upon by the parties within ten days from the date of said order. In case of failure to so agree within said time the trial judge so disqualified shall forthwith certify the facts to the Chief Justice of the Supreme Court, who shall thereupon assign a district judge to hear said cause.

Adopted March 21, 1935.
Effective April 8, 1935.

and set forth the efforts he has made to obtain service and the reason for his failure, and must show such real and *bona fide* efforts as shall satisfy the court, or a judge thereof.

The affidavit shall be made after the return and not more than ten days before the order, and, in case either the residence or postoffice address of any defendant is not stated, shall show and set forth, in detail, to the satisfaction of the court or judge, the efforts that have been made to discover such residence or address.

The court or judge, before ordering publication in such case may require and examine witnesses, may examine the affiant and may appoint a suitable person to make further search and inquiry and must be satisfied by clear and convincing proof that such defendant cannot be reached by mail or by personal service. (Note: See also Session Laws, 1929, Senate Bill No. 215, Act approved March 23, 1929.)

14b. COMMENTS BY DISTRICT JUDGES ON EVIDENCE.

The rules governing comments by district judges on evidence shall be those now in force in the United States district courts.

II.

PRACTICE AND PROCEDURE IN THE SUPREME COURT

15. SESSIONS EN BANC AND IN DEPARTMENTS.

The Chief Justice may convene the court *en banc* at any time, and shall do so on the written request of three Justices. Subject to this provision, or as limited by the Constitution, sessions of the court in departments for the purpose of hearing oral arguments, and designation of the Justices to hear such arguments, shall be under the direction and control of the Chief Justice. In case of his absence or inability to act, such duties shall devolve upon the Justice who would next be entitled to become Chief Justice.

16. COURT—SPECIAL TERMS—NOTICE OF.

Special terms of court may be held at any time upon an order signed by at least four of the Justices of the court and filed in the office of the clerk at least fifteen days prior to the day appointed for such assembling of the court. The clerk, on receipt of such order, shall forthwith enter the same at length in the records of the court, and give notice of the appointment of such special term, and the day appointed therefor, in one or more newspapers published at the seat of government.

17. APPEARANCE AS AMICUS CURIAE.

An attorney of this court may appear as *amicus curiae* in any cause pending herein by request of the

court, or by leave of court first had upon written application filed in said cause, setting forth the particular employment, relationship, or interest by reason whereof such leave is sought; and not otherwise.

18. WRIT OF ERROR—LIMITATION ONE YEAR—EXCEPTION —RECEIVER—TO REVIEW ORDER CONCERNING.

A writ of error shall not be brought after the expiration of one year from the rendition of the judgment complained of; but when a person thinking himself aggrieved by any judgment or decree that may be reviewed in the Supreme Court shall be an infant, *non compos mentis*, or imprisoned when the same was rendered, the time of such disability shall be excluded from the computation of the said one year.

An order appointing, or denying the appointment of, or sustaining or overruling a motion to discharge, a receiver, may be reviewed on error, before final judgment if prompt application for that purpose is made.

19. WRITS OF ERROR—SUPERSEDEAS—PROCESS ON WRITS OF ERROR.

Writs of error shall be directed to the clerk or keeper of the records of the court in which the judgment or decree complained of is entered, commanding him to certify a correct transcript of the record to this court. In any case where a transcript of the record, duly certified to be full and complete, or an agreed record on error, has been filed or may be hereafter filed, in the office of the clerk of this court, be-

fore the issuance of a writ of error, it shall not be necessary, except in a case where a *supersedeas* may be allowed, to deliver such writ to the clerk of the inferior court; but the same may be filed in the office of the clerk of this court and such transcript or agreed record so filed with the clerk of this court shall be taken and considered to be a due return to said writ of error. In capital cases, in which a writ of error shall issue and be made to operate as a *supersedeas* to stay the execution of the judgment of the trial court, as provided by statute, such writ of error, and also the *scire facias* to hear the errors assigned, shall be made returnable forthwith. When a writ of error shall issue in a case where a *supersedeas* has been allowed after the filing of the record, and shall be served on the clerk of the inferior court, he shall return upon said writ that the same has been served upon him and that it appears by the endorsement thereon that a record has been filed in the office of the clerk of the Supreme Court.

20. SUMMONS TO HEAR ERRORS—SERVICE AND RETURN THEREOF—APPEARANCE.

A *scire facias* or summons to hear errors in civil cases, and criminal cases not capital, shall require the defendant in error to appear in obedience thereto within ten days after service thereof, and shall be returnable twenty days after the issuance thereof. The service thereof, when by publication, shall be complete upon the expiration of the last day of such publication.

21. SCIRE FACIAS—ALIAS OR PLURIES MAY ISSUE.

If a *scire facias*, or summons to hear errors, shall not be served, an *alias* or *pluries* may be issued without an order of court therefor.

22. STAY OF EXECUTION—REVIEW OF.

If either party considers his rights have been, or will be, prejudiced by any ruling or order of the trial court in respect to any application for a stay or further stay of execution under Rule 9, he may docket the case in the Supreme Court on error by filing a verified statement setting forth the nature of the cause of action, the judgment, rulings and other matters complained of, from which it appears the trial court has committed error to his prejudice, and the Supreme Court may order a stay or further stay of execution for such time and upon such terms and conditions as it may determine; and may make any order in the premises necessary to protect the rights of the parties.

23. SUPERSEDEAS—APPLICATION FOR—RECORD COMPLETE.

No *supersedeas* will be granted unless the record upon which the application is made be complete and duly certified by the clerk of the court below, with assignments of error appended thereto, which assignments must be supported by a succinct printed or typewritten brief, filed with such application. Counsel for plaintiff in error shall serve upon defendant in error or his counsel a notice of such application and copy of his brief, who may within ten days there-

after file a brief in opposition, a copy of which shall be served upon counsel for plaintiff in error, who may reply thereto within five days. The application shall then stand submitted. No application for a *supersedeas* will be considered by the court, or by any Justice in vacation, unless the cause shall have been docketed.

Upon the docketing of the cause, as aforesaid, the sum of ten dollars shall be paid to the clerk, and upon the allowance of the writ, or upon further prosecution of the cause, an additional sum of ten dollars shall be advanced to the clerk.

24. SUPERSEDEAS—EFFECT OF.

When a writ of error shall be made a *supersedeas*, the clerk shall endorse upon said writ the following words: "The record in this cause having been filed in my office, with an order entered therein that the writ of error herein be made a *supersedeas* according to law, this writ of error is therefore made a *supersedeas*, and shall operate accordingly"; which endorsement shall be signed by the clerk of this court.

25. WATER PRIORITIES—PROCEEDINGS ON REVIEW—ALIGNMENT OF PARTIES.

Any party suing out a writ of error to review the whole or any part of a decree entered in any statutory proceeding adjudicating water priorities or the change of points of diversion thereof, shall file in this court a petition, as plaintiff in error, showing the priority and ditch rights claimed by such party, and making the assignments of error a part of the peti-

tion by reference only, and naming the ditches, reservoirs, pipe lines and other works, and the owners thereof who may be adversely affected by such proceedings in this court as defendants in error, and such alignment of parties in this court shall be according to such petition, and writ of error issued accordingly.

In actions to change point of diversion of water, it shall be competent to prove abandonment.

26. EXECUTION—RECALL OF.

Whenever execution or other final process shall be issued upon a judgment at law or decree in equity, and the record of such judgment or decree shall be removed into this court by writ of error operating as a *supersedeas*, such writ of error may be served upon the officer in whose hands such execution may be, and thereupon all proceedings under such execution shall be discontinued, and such officer shall return the same into the court from which it was issued, together with the copy of the writ of error served on him, and shall set forth in his return to such execution what, if anything, he hath done in obedience to the command thereof.

Such service of the writ of error and *supersedeas* may be made by delivering to the officer having such final process for execution a copy of such writ of error and the endorsements thereon, with the certificate of the clerk of the Supreme Court, or of the clerk of the inferior court to whom the same is directed, that the same is a true and perfect copy of the original of such writ of error and the endorsements thereon.

27. BOND—POWER OF ATTORNEY FILED—EXCEPTION.

Whenever a bond is executed by an attorney in fact, the original power of attorney shall be filed with the bond in the office of the clerk of this court, unless it shall appear that the power of attorney contains other powers than the mere power to execute the bond in question; in which case a true copy thereof shall be filed and proof thereof made as required by the clerk.

28. TRANSCRIPT OF RECORD—BILLS OF EXCEPTIONS.

Clerks of inferior courts in making up an authenticated copy of the record in civil cases, shall certify to this court so much of the record, arranged in chronological order, as the plaintiff in error may, by praecipe, indicate. If the record, so certified, shall be insufficient, it shall be perfected at his cost; and, if unnecessarily voluminous, the cost of the unnecessary parts shall be taxed against him. Carbon copies shall not be used in preparing the record. Bills of exceptions need not be copied but the original may be sent up.

29. RECORD ON ERROR—PARTIES MAY AGREE.

The parties to an action, after final judgment, may agree upon a record on error, which when certified by the trial court, together with the assignments of error, shall be certified by the clerk to the Supreme Court as the record on error.

30. TRANSCRIPT OF RECORD—ADDITIONAL—LEAVE TO FILE.

When a party to any cause pending in this court

asks leave, without suggesting a diminution of record, to file an additional or supplemental transcript of the record, he shall give at least twenty-four hours' notice thereof to the opposite party. At the time of giving such notice the additional or supplemental transcript shall be deposited with the clerk of this court for the inspection of the opposite party. Such motion shall be submitted under Rule 12 *supra*, and, if leave is granted, the additional or supplemental transcript may be filed and considered in connection with the original transcript.

31. RECORD—BINDING.

The transcript or agreed record shall be bound in half sheep or cloth, with substantial paper sides, thirteen inches in length and eight and one-quarter inches in width, and shall be fully indexed.

32. ASSIGNMENTS OF ERROR.

Plaintiff in error shall assign errors in writing at the time of filing the record and each error shall be separately alleged and particularly specified; *Provided*, That when errors are assigned upon exceptions to the ruling of the court in the admission or rejection of evidence, which go to the same point, it shall be sufficient to refer to the folio numbers of the record where such rulings and exceptions appear without particularly specifying the evidence admitted or rejected.

A general assignment of error on the ground that a motion for new trial has been granted or denied,

without specifying particular errors, will not be considered.

When the error alleged is to the charge of the court, the part of the charge referred to shall be quoted *totidem verbis* in the specifications; *Provided*, Where the charge is divided into separate paragraphs or instructions, which are each duly numbered, and error is assigned as to one or more entire paragraphs or instructions, it shall be sufficient to designate the part of the charge referred to by giving the number prefixed to each paragraph or instruction so assigned for error.

The same shall be signed by an attorney of the court.

If the defendant in error desires to assign cross-errors, he shall do so at the time he files his brief, as hereinafter provided; such assignments shall be in writing and signed by an attorney of this court.

33. ERRORS—FAILURE TO ASSIGN—WRIT DISMISSED.

If the plaintiff in error shall fail to assign error, the writ of error shall be dismissed.

34. JOINDER IN ERROR NOT REQUIRED—FILING BRIEF SUFFICIENT.

No formal joinder in error shall be required, but if the defendant in error shall not in any manner appear within the time allowed for filing brief in his behalf, the cause may be heard *ex parte* or the judgment or decree of the court below may, in the discretion of the court, be reversed without a hearing.

35. DISCUSSION LIMITED—ERRORS STATED.

Counsel will be confined to a discussion of the errors stated, but the court may, in its discretion, notice any other error appearing of record.

36. ABSTRACT OF RECORD—BRIEFS AND MOTIONS—CONTENTS.

Plaintiff in error shall within thirty days after the return day file with the clerk fifteen printed copies of an abstract of the record, except where application for *supersedeas* is pending, in which event the time shall be computed from the date of the determination of such application. Such abstract shall contain a brief statement of the contents of the pleadings, the judgment, the assignments of error relied on, and such other parts of the record as may be essential; but when for a proper understanding and determination of the questions raised it may be necessary, such matters may be stated fully or in the exact words of the record. If anything necessary to a determination of the case is omitted it may be supplied; defendant in error may, within the time allowed him for his brief, file fifteen copies of a supplemental abstract, and when the same is essential to a proper understanding of the case the costs thereof shall be charged to the plaintiff in error; otherwise, to him. The abstract shall be indexed and the folio numbers of the record shown on the margin thereof.

36a. COVER ENDORSEMENTS—ABSTRACTS—BRIEFS—PETITIONS.

All abstracts, briefs and petitions for rehearing

shall bear, on the front cover, the number and title of the case, the court to which the writ of error lies, the name of the trial judge, and the names and addresses of attorneys. In addition thereto, all petitions for rehearing shall bear the name of the justice who wrote the opinion, and shall state whether the decision was en banc or in department.

37. ABSTRACTS AND BRIEFS—HOW PRINTED.

Abstracts and briefs shall be printed on blue, white wove, antique finish, book paper of a weight the basis of which shall be eighty pounds to the ream, 25 x 38 inches in size. They shall be printed on pages 9⅛ by 7½ inches when trimmed, in small pica type, leaded, face of type page 22 x 40 ems pica, so printed as to leave an inside margin of 1½ inches, and an outside margin of 2⅜ inches, and a bottom margin of 2 inches. Extracts and quotations must be in the same type, either solid or indented, in the discretion of counsel. The number of the case in this court must be printed in large figures at the top of the outside cover.

38. BRIEFS—WHEN FILED—SERVICE ON OPPOSITE PARTY.

The brief of plaintiff in error shall set forth the propositions to be argued and the authorities in support thereof, and be filed within thirty days after the day fixed by rule for filing the abstract.

If it shall be filed in compliance with this rule, the defendant in error shall file his brief within thirty days after the expiration of the time for filing the brief of plaintiff in error.

37-a. BRIEFS—SUBJECTS—TABLE OF CASES.

In addition to other requirements, briefs shall contain a subject index of all matters discussed together with an alphabetically arranged list of cases with official citations and also an alphabetically arranged list of text and reference books and statutes cited in connection with each subject.

38. BRIEFS—WHEN FILED—SERVICE ON OPPOSITE PARTY.

The brief of the plaintiff in error shall set forth the propositions to be argued and the authorities in support thereof, and may be filed at anytime within thirty days after the time fixed by rule for filing the abstract.

The defendant in error shall file his brief within thirty days after service of copies of the brief of plaintiff in error.

The plaintiff in error shall have twenty days after service of briefs of defendant in error within which to file reply briefs.

Adopted January 12th, 1933.
Effective May 1st, 1933.

Twenty days thereafter shall be allowed for the reply of plaintiff in error.

Fifteen copies of every brief shall be filed and two copies of every abstract and brief shall be served upon the opposing party or his counsel, if appearance shall have been entered. Proof of such service shall be filed with the clerk.

39. SUPPLEMENTAL BRIEFS—LIMITATION OF DISCUSSION —WHEN FILED.

Either party may, not less than ten days prior to the submission of a cause for final determination, file a supplemental brief and the opposite party may, within five days thereafter, file a brief in answer thereto. Such briefs shall be confined solely to the citation and discussion of new authorities upon the proposition covered in the original briefs.

40. ABSTRACT OR BRIEF—FAILURE TO FILE—EFFECT OF.

In case the plaintiff in error shall neglect to file an abstract and brief as required, or either of them, the opposite party may proceed *ex parte*, or the court may dismiss the writ of error without notice.

41. ABSTRACTS AND BRIEFS—TIME FOR FILING—EXTENDED OR ABRIDGED.

No stipulation or motion shall suspend the operation of the rules, but for good cause shown, the court, or a Justice thereof in vacation, may extend or abridge the time for filing the abstracts, briefs, or other papers.

42. CASES CITED—TITLE, VOLUME AND PAGE GIVEN.

In citing cases from published reports, the title of the case shall be given as well as the volume and initial page and also the page whereon the matter for which the citation is made may be found. If a case is published in more than one series of reports, the citation to the official report should be given, if possible.

43. ORAL ARGUMENT—WHEN ALLOWED.

Oral arguments upon final hearing may be had by order of court, *sua sponte*, or upon written request therefor filed with the clerk within fifteen days from the expiration of the time for reply brief. Due notice of the time set for the argument will be given by the clerk. Oral arguments shall be limited to thirty minutes on each side, unless the time be extended by order of the court, and will not be permitted on application for *supersedeas*, on motions for rehearing, nor if the party applying for oral argument shall have failed to file his brief or briefs as required by the rules.

The reading of written or printed arguments will not be permitted.

In any cause orally argued in department counsel may, at the time of such argument, request further oral argument *en banc*, should the cause go there. Failure to so request shall be taken as a waiver of the right.

44. PUBLIC UTILITIES COMMISSION—WRITS OF REVIEW.

On Writs of Review to the Public Utilities Com-

44a. INDUSTRIAL COMMISSION RECORDS — ARRANGED CHRONOLOGICALLY—INDEXED.

On petitions for writs of error in cases determined by the Industrial Commission the record of the proceedings before the Commission shall be arranged in chronological order, omitting all duplicates, shall have folio numbers on the left margin, and shall be accompanied by a table of contents, which shall refer to the folio numbers of the record.

Adopted March 21, 1935.
Effective April 8, 1935.

mission, the party applying for such review shall file with the clerk of this court within five days after the issuance of said writ fifteen copies of an abstract of the record, covering so much thereof as is necessary for the determination of the questions raised. Within five days thereafter he shall file his brief, and the opposing party shall have ten days in which to file an answering brief. Reply briefs shall be filed within five days thereafter. Fifteen copies of briefs shall be filed in each case, printed as required in other cases, and service thereof on the opposing party or counsel shall be made as provided by Rule 38.

45. INDUSTRIAL COMMISSION—BRIEFS.

On writs of error involving causes determined by the Industrial Commission, briefs are not required to be printed, but if not printed, they shall be typewritten, legibly and upon good paper of ordinary legal-cap size (8″ x 13″).

Within fifteen days after the issuance of a writ of error, the plaintiff in error shall file with the clerk ten copies of his brief; within ten days thereafter the defendant in error shall file ten copies of his brief; and within five days thereafter the plaintiff in error may file his reply brief. No abstract of record is required.

Such cases shall not be argued orally except at the request of the court.

46. MOTIONS—HOW MADE—BRIEFS THEREON.

All motions shall be in writing. After appearance the opposite party shall be entitled to notice of motions not of course.

The party filing any such motion shall have three days in which to file briefs in support thereof; the party opposing shall have five days after service of copy upon him to answer, and three days shall then be allowed after like service for reply. The motion shall then stand submitted.

All such briefs may be typewritten. Copies of the same shall be served upon the opposite party or his attorney. All typewritten motions and briefs shall be bound at the top.

47. RECORD OR PAPERS FROM FILES—WITHDRAWAL OF.

No paper shall be taken from the files, without leave of court, except the record, which may be withdrawn by counsel for fifteen days and no more, for the purpose of making abstracts.

Every paper taken from the files, by leave of court or otherwise, must be retained in the custody of the party withdrawing it and must not be in any manner mutilated, taken apart, cut or marked.

48. REHEARINGS.

Application for rehearing shall be by petition, signed by counsel, briefly stating the points supposed to have been overlooked or misapprehended by the court, with proper reference to the particular portion of the abstract and brief and with any authorities relied upon. Such petition shall be filed within fifteen days after the filing of the opinion, and shall, except when the decision was on application for *supersedeas*, be printed in conformity to the rules as to printed briefs. No answer thereto will be permitted and no

action thereon will be taken by the court save to grant or deny the rehearing. In no case will argument be permitted in support of such petition. This rule will be strictly enforced, and any petition in violation thereof will be stricken from the files. (See also Rule 36a.)

49. REHEARING—FILING PETITION FOR—EFFECT OF.

The filing of a petition for a rehearing shall suspend proceedings under the decision until the petition is disposed of, unless the court in term time, or one of the Justices in vacation, shall otherwise order.

50. REMITTITUR—WHEN ISSUED.

Upon the denial of a petition for rehearing, or if within fifteen days after final judgment, no such petition shall have been filed, the clerk shall, except in an original proceeding, issue remittitur to the court below and within thirty days thereafter shall return to the trial court, or otherwise dispose of as this court shall direct, all exhibits remaining in his office and not bound with the bill of exceptions.

51. COSTS.

Unless otherwise ordered the successful party in proceedings not original shall recover as costs in this court:

1st. His actual costs paid to the clerk of this court;

2nd. His expenses actually and necessarily incurred for transcript of the record, not exceeding 20 cents per folio;

3rd. His expenses actually and necessarily incurred for printing the abstract of record, not exceeding $1.00 per page;

4th. His expenses actually and necessarily incurred in procuring a bill of exceptions, not exceeding 20 cents per folio.

The clerk, subject to the court, may require proof of incurrence of any such expense and of the necessity therefor, and may allow or disallow taxation thereof.

The court may order additional costs for frivolous prosecution of writs of error or other procedure, or remit costs, or in any case make such order concerning costs as it sees fit.

52. COSTS—COPIES OF RECORDS.

The clerk shall be entitled to receive the fees allowed by law for copies of records before delivering the same, except in criminal cases where the defendant is unable to pay for a transcript of the record and the trial court shall have ordered the same to be furnished without charge.

53. COSTS—CLERICAL.

Except as otherwise herein provided, there shall be paid to the clerk by the party filing any suit or proceeding, the sum of twenty dollars ($20.00), which shall be in full payment of all clerical costs of such party, except for copies of papers. The opposite party, upon entering his appearance, shall pay the sum of five dollars ($5.00), which shall be in full of

his clerical costs. Said payments shall be taxed and recovered as costs.

54. RETRIAL OF SPECIFIC QUESTIONS OF FACT.

On reversing a judgment, the court may order a retrial of specified questions of fact, and direct that specific questions of fact stand as established when it appears that neither party to the action will be prejudiced by such order.

55. AFFIRMANCE OF JUDGMENT ON DISMISSAL—AFFIRMANCE OR REVERSAL OF JUDGMENTS ON DENIAL OF SUPERSEDEAS — ON AFFIRMATION OR REVERSAL OF JUDGMENTS GENERALLY.

Whenever a writ of error shall be dismissed, this court may, in its discretion, affirm the judgment of the court below. Whenever a *supersedeas* is denied, the court, in its discretion, may affirm or reverse the judgment. Any judgment may be affirmed without written opinion, but on reversal the court shall give its reasons for such action, except in cases where it renders judgment here, or directs what judgment shall be entered in the court below.

56. COPIES OF OPINION FURNISHED JUDGE AND COUNSEL.

In all cases where a written opinion is handed down, the clerk shall mail a copy to the trial judge and to one attorney on each side of the case.

57. ORIGINAL JURISDICTION—WRITS—APPLICATION FOR—CONTENTS.

In any application made to the court for a writ of *habeas corpus, mandamus, quo warranto, certiorari,*

injunction or for any prerogative writ to be issued in the exercise of its original jurisdiction and for which an application might have been lawfully made to some other court in the first instance the petition shall, in addition to the matter necessary to support such application, also set forth the circumstances which render it necessary or proper that the writ should issue from this court, and not from such other court.

In case any court, justice, or other officer, or any board or other tribunal, in the discharge of duties of a public character, be named in the application as respondent, the petition shall also disclose the name or names of the real party or parties, if any, in interest, or whose interest would be directly affected by the proceedings; and in such case it shall be the duty of the applicant obtaining an order for any such writ, to serve, or cause to be served, upon such party or parties in interest a true copy of the petition and of the writ issued thereon, in like manner as the same is required to be served upon the respondent named in the application and proceedings, and to produce and file in the office of the clerk of this court the like evidence of such service.

Writs of prohibition will not be granted except in matters *publici juris* or matters of great gravity and importance. The mere fact that a court has erroneously granted or denied change of venue or is otherwise proceeding without or in excess of jurisdiction will not be regarded as sufficient. (See also Rule 3 as to place of trial.)

III.

LIBRARY.

58. ABSTRACTS AND BRIEFS.

The clerk shall file with the librarian of the Supreme Court library a complete set of the printed abstracts of record and briefs filed in all cases, which shall be suitably bound in volumes uniform in size, as near as practicable, with the reports of this court, which shall become a part of the court library. The clerk shall also cause one set of the printed briefs and abstracts to be bound for the files of this court.

59. WITHDRAWAL OF BOOKS—ABUSE OF PRIVILEGES.

Books may be withdrawn from the library by others than members of the court only upon the written order of the acting Chief Justice. Before being so withdrawn they shall be registered with the librarian and must be returned within five days.

For any violation of this rule, or for abuse or mutilation of volumes, or any misuse of library privileges, the same may be withdrawn from the offender.

60. SILENCE IN LIBRARY.

Silence is required in the library. Employees shall observe and enforce this rule.

Secure 5-9a new rule—

IV.

RULES GOVERNING ADMISSION TO THE BAR AND DISCIPLINE OF ATTORNEYS

EXAMINING COMMITTEES.

61. A committee of law examiners is hereby constituted consisting of nine members of the bar, each of at least five years' standing. The members of said committee shall be appointed by the Supreme Court and hold office for a term of five years and until the appointment of their successors. Said committee shall be known as "The Law Committee" and its duty shall be to pass upon the educational qualifications, general and legal, of all applicants for admission to the bar.

A character committee is hereby constituted consisting of five members of the bar, each of at least five years' standing. The members of said committee shall be appointed by the Supreme Court and hold office for a term of five years and until the appointment of their successors. Said committee shall be known as "The Bar Committee" and its duty shall be to pass upon the ethical and moral qualifications of all applicants for admission to the bar.

In emergencies, vacancies in either committee shall be filled by the Acting Chief Justice.

CLASSIFICATIONS OF APPLICANTS.

62. Applicants for admission to the bar are hereby divided into four classes, A, B, C, and D.

A.

Those who, not then being citizens of Colorado, have been admitted outside of this State (by the highest court of the jurisdiction having such power) and have practiced there ten years of the eleven years immediately preceding application here, comprise class A.

B.

Those who, not then being citizens of Colorado, have been admitted outside this State (by the highest court of the jurisdiction having such power and under requirements equal to ours) and have practiced there five years of the six years immediately preceding application here, or taught for such period in an approved law school, comprise class B.

C.

Those who have been admitted outside this State, but do not belong to either class A or class B, comprise class C.

D.

Residents of Colorado who have not been admitted in any State, comprise class D.

APPLICATIONS IN DUPLICATE—WHEN FILED.

63. All applications shall be addressed to the Court, made in duplicate on blanks furnished by the Law Committee and filed with the secretary of that committee. Those of classes C and D, with their accompanying affidavits and certificates, must be so filed not more than sixty and not less than thirty days before the date of the examination.

EXAMINATION FEE AND AFFIDAVIT.

64. Every applicant shall accompany his application with an "Examination Fee" of $10.00 and his own affidavit that he is a citizen of the United States, that he believes in the form of the government thereof and has never been disloyal thereto, that he is over the age of 21 years (giving his age), that he is a resident of Colorado (giving his address), that he has never been convicted of a felony, and that if admitted it is his intention to begin the practice of law within this State, or the teaching of law in an approved law school in Colorado, within three months from the date of his admission and to make the same his permanent and usual occupation.

ADDITIONAL AFFIDAVIT IN A, B, AND C.

65. Every applicant in class A, B or C shall accompany his application with his own affidavit where he has resided and practiced during the period covered by his classification and that no disbarment proceedings were ever instituted against him, or, if such there were, reciting the forum, grounds and result thereof.

PROOF OF REQUIREMENTS.

66. Applicants in classes B and C shall furnish proof of the standard of requirements in the State of their admission, if requested by the Law Committee.

QUALIFICATIONS PRELIMINARY TO LAW STUDY.

67. Every applicant in class C or D shall furnish satisfactory proof that at the beginning of his law

64. AFFIDAVIT AS TO QUALIFICATIONS—EXAMINATION FEES.

Every applicant shall accompany his application with an examination fee, which shall be $25.00 for applicants in classes A and B and $10.00 for applicants in classes C and D, and shall attach thereto his own affidavit that he is a citizen of the United States, that he believes in the form of government thereof and has never been disloyal thereto, that he is over the age of 21 years (giving his age), that he is a resident of Colorado (giving his address), that he has never been convicted of a felony, and that if admitted it is his intention to begin the practice of law within this State, or the teaching of law in an approved law school in Colorado, within three months from the date of his admission and to make the same his permanent and usual occupation.

Out of every examination fee of $25.00 paid by applicants in classes A and B, the sum of $15.00 shall be paid to the Bar Committee to defray the expenses of the Committee's investigation of the character of such applicants.

Adopted March 21, 1935.
Effective April 8, 1935.

studies he was eighteen years of age and had a general education equivalent to a standard four year high school course, in addition to which such applicant shall also furnish satisfactory proof that at the beginning of his law studies he had successfully completed the following work of an ordinary undergraduate course, not professional, in an approved college or university, as follows:

If application is filed prior to January 1, 1931, one year;

If application is filed on or after January 1, 1931, two years.

Provided, that applicants who have not such credits may be examined upon proof that at the beginning of their law studies they were qualified to enter the law school of the State University of Colorado, such proof to be made by the certificate of the Registrar of said University.

68. CLASSES C AND D.

Every applicant in class C or D whose application is filed after July 15, 1932, shall have:

(1) Completed the three year course of an approved day law school, or

(2) Completed the three year course of a Colorado night school heretofore approved, or

(3) Completed the four year course of any other approved night law school, or

(4) Served in this State a regular clerkship for three years in the office of a member of the bar of

this court, who, at the beginning of such clerkship had been in the active practice of the law for at least five years. In addition thereto if such application be filed prior to January 1, 1930, the applicant shall have satisfactorily completed at least one year of law study in an approved law school and, if filed after January 1, 1930, the applicant shall have satisfactorily completed at least two years' law study in an approved law school.

The following law study equivalents will be recognized:

(1) One year of night law school* for one year of clerkship.

(2) Two years of night law school* for two years of clerkship.

(3) Three years of night law school* for two years of day law school.

(4) If clerkship and law school work are carried at the same time, credit will not be given for both.

CERTIFICATE OF COMMENCEMENT OF CLERKSHIP.

69. In all cases of claim for credit for law study under a clerkship a certificate of the commencement thereof, signed by the attorney with whom such clerkship is to be served, must be filed in the office of the clerk of this court; and the period of such clerkship shall be computed from the date of the filing of such certificate.

*This refers to a night law school without the State of Colorado.

ADMISSIONS NOT ENTITLED TO CREDIT.

70. Applicants who have been admitted in other jurisdictions while they were citizens of Colorado, or admitted by other than the highest court of the jurisdiction having such power, or admitted in jurisdictions whose requirements are less than ours and practiced therein less than ten years, shall be given no credit by reason of such admission.

PROOF OF MORAL AND ETHICAL QUALIFICATIONS.

71. Proof of the moral and ethical qualifications of applicants in classes A and B shall be by three affidavits, one of a member of the bar in good standing in the community where petitioner last practiced; one of a business man actively engaged in business therein; and one of a member of the bar in good standing known personally to some member of the Bar Committee. Proof of such qualifications of applicants in classes C and D shall be by three affidavits; one of an instructor in the law school attended by applicant, or attorney under whom he served a clerkship, or both, as the case may be; one of a member of the bar in good standing known personally to some member of the Bar Committee; and one of a person chosen by applicant.

In any case the Bar Committee may require further proof.

PROOF OF GENERAL EDUCATIONAL QUALIFICATIONS.

72. The general educational qualifications of applicants in classes A and B shall be established, prima facie, by proof of the required admission and

practice. If contested, proof shall be made as required by the Law Committee and approved by the court.

Proof of the general educational qualifications of applicants in classes C and D shall be by High School diploma or certificate of admission to an approved college or university, and by the certificate of such college or university of the completion of work therein as provided in Rule 67 or the certificate of the Registrar of the State University of Colorado as therein required.

PROOF OF LEGAL EDUCATIONAL QUALIFICATIONS.

73. The legal educational qualifications of applicants in classes A and B shall be established, prima facie, by proof of the required admission and practice. If contested, proof shall be made as required by the Law Committee and approved by the court.

The legal educational qualifications of applicants in classes C and D shall be established by passing an examination conducted by the Law Committee as in these rules provided.

SPECIAL CREDITS IN CLASS C.

74. What credit shall be given applicants in class C by reason of study, admission or practice outside of Colorado, will be determined by the Court on the recommendation of the Law Committee and according to the facts in each case, except as provided in Rule 70.

SEMI-ANNUAL EXAMINATIONS.

75. The Law Committee shall hold two examina-

SPECIAL CREDITS IN CLASS C.

74. What credit shall be given applicants in class C by reason of study, admission or practice outside of Colorado, will be determined by the Court according to the facts in each case, except as provided in Rule 70.

Adopted September 30th, 1935.

ions each year. Unless otherwise ordered, such examinations shall be held the last week in June or the first week in July, and the first week in December. They shall be conducted in the Capitol Building at Denver, Colorado, and one portion thereof shall consist of an oral examination by, or in the presence of, the Supreme Court En Banc.

CHARACTER CERTIFICATES TRANSFERRED TO BAR COMMITTEE.

76. Immediately upon receipt of an application for admission the secretary of the Law Committee shall transmit to the Bar Committee one copy thereof together with such affidavits and certificates as relate to the moral and ethical qualifications of the applicant.

PERSONAL INTERVIEWS.

77. The members of the Bar Committee, or a majority thereof, shall personally interview each applicant; those in classes A and B at such time as may be convenient and those in classes C and D at the time of the examination by the Law Committee. Such personal interviews may be considered by the Bar Committee in making its report.

ADDITIONAL EXAMINATIONS.

78. Any applicant in class C or D who fails on examination to establish his legal educational qualifications may take the next succeeding examination. If he then fails he will be barred from further examination for a period of one year. If he fails the third time he will be re-examined only by special

permission of the Court En Banc and for good cause shown.

NOTICE OF APPLICATIONS—OBJECTIONS—REPORTS AND RECOMMENDATIONS.

79. Within ten days after each examination of applicants in classes C and D the Law Committee shall furnish to the clerk of the Supreme Court, the clerk of the District Court in each County, and to the secretary of the Colorado Bar Association, the names and addresses of all persons who have taken said examination. Each clerk shall immediately post the same in a conspicuous place in his office, keep them so posted for a period of thirty days, and furnish them to newspapers as may be requested.

Any person may, during said thirty days, present to the Law Committee any information bearing upon the question of the propriety of the admission of any such applicant; and any person, or any Bar Association may, during said period object to such admission. Should information so presented relate to the ethical or moral qualifications of the applicant it shall be immediately referred to the Bar Committee for its report. All such information shall be held confidential by the Committees and the Court unless in the opinion of the Court its disclosure becomes necessary in a hearing on the application. The reports of the Bar Committee on applications in classes A and B shall be delivered to the secretary of the Law Committee within fifty days after the filing of the application, and those in classes C and D within fifty days after the taking of the examina-

tion. Within ten days from the date of the receipt of such reports the said secretary shall transmit the same, together with the reports of the Law Committee, to the clerk of this court. Said reports shall cover any objections made to the admission of any applicant and all special information filed with the committee, and shall set forth the recommendation of each committee and the reasons therefor.

APPLICATIONS CONSIDERED—OBJECTIONS HEARD.

80. As soon as convenient after the receipt of the reports of the committees the court will consider the same and order that the several applicants be, or be not, admitted, or that their applications be continued for further hearing or consideration. The Court may, in its discretion, consider objections to the admission of any applicant irrespective of the presentation of the same within said thirty-day period. Provided always, that no applicant will be refused admission by reason of any charges without an opportunity to be heard. Such hearing may be before the Court En Banc, or in Department, or before the Law Committee, or the Bar Committee, or before a Commission appointed by the Court, as the Court in its discretion may determine.

ALL ADMISSIONS BY ORDER EN BANC.

81. The admission of all applicants shall be by order of the Court En Banc, duly entered of record, from which any Justice may dissent; and certificates of admission issued to applicants shall be signed by the Justices, or a majority thereof.

82. At the time of the entry of the order of admission of applicants in classes C and D the Court will designate a day certain for the administration of the oath and the secretary of the Law Committee will notify said applicants thereof.

OATH OF ADMISSION, DISCIPLINE FOR VIOLATION, AND CODE OF ETHICS.

83. Every applicant shall, before receiving a certificate of admission, pay the license fee required by statute and take the following oath, in open session of the Supreme Court sitting En Banc:

"I DO SOLEMNLY SWEAR BY THE EVERLIVING GOD; that,

I will support the Constitution of the United States and the Constitution of the State of Colorado;

I will maintain the respect due to Courts of Justice and Judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no

compensation in connection with his business except from him or with his knowledge or approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice."

For good cause shown and by order of the Acting Chief Justice said oath may be taken in open session of the District Court, and when so taken shall be subscribed and filed with the clerk of the Supreme Court.

83a. Any conduct inconsistent with the principles of said oath shall be considered unbecoming an attorney and cause for discipline.

83b. Any attorney of this court who shall be disbarred by any court of the United States or the highest court of any other state or territory shall thereupon be cited to show cause why he should not be disbarred here. Upon that hearing the judgment of disbarment shall be prima facie proof of guilt.

83c. Neither disbarred attorneys nor persons whose applications for examination or admission have been rejected for their failure to show good character, will be permitted to practice as attorneys in any justice of the peace or other court in this state.

83d. The present rules prohibiting the practice of law by those not thereto licensed shall hereafter include practice in probate.

83e. The Court recommends the Canons of Ethics set out in the appendix to these rules as a standard of professional conduct.

ESTABLISHMENT AND ADMINISTRATION OF "EXAMINATION FUND".

84. All "examination fees" required by rule 64 shall be paid to the secretary of the Law Committee and be by him kept in a separate fund to be known as the "Examination Fund," which shall be used only to pay expenses incident to examinations, admission and discipline, as the Court shall direct or approve. Said fund shall be kept in a depository designated by the Chief Justice, and be paid out only on warrants of said secretary countersigned by the chairman of said Law Committee and approved by the Acting Chief Justice. For the faithful accounting therefor said secretary shall give security as directed by the Court and approved by the Chief Justice.

Not less than thirty days nor more than sixty days after each regular examination the secretary of the Law Committee shall make and transmit in duplicate to the chairman of said committee a statement showing in detail all receipts and disbursements of said examination fund. One of said statements shall be forthwith transmitted by said chairman to the Chief Justice with such comments and recommendations as he may think proper.

83d. DISBARMENT UPON CONVICTION OF A FELONY—REINSTATEMENT.

That Rule 83d be amended by adding thereto the following: Should any member of the bar of this State be convicted of a felony the clerk of the court in which such conviction is had shall forthwith transmit to the clerk of the Supreme Court a certified copy of the judgment. The Supreme Court may thereupon summarily suspend the defendant from his office of attorney at law. Such suspension shall stand until the defendant be ultimately acquitted of the felony, or in a disciplinary proceeding be restored to his said office, or until the further order of the Supreme Court.

Adopted March 21, 1935.
Effective April 8, 1935.

RULES FOR PROCEDURE IN DISCIPLINE OF ATTORNEYS.

34a. TITLE OF PROCEEDINGS.

Proceedings in discipline shall be in the name of the People of the State of Colorado on the relation of the Colorado Bar Association which shall act through its Committee on Grievances. Upon leave of the court first obtained, such proceedings may be on the relation of other persons.

84b. PLEADINGS AND SERVICE.

In such proceedings the pleadings shall consist of a petition, setting forth the charges with reasonable definiteness, and an answer by the respondent. The answer shall be filed within twenty days after service of a copy of the petition upon the respondent. Such service shall be shown by proof satisfactory to the court that respondent has in fact received a copy of the petition, or that it has been served in any manner permitted by the code or rules of this court for service of summons, including service by publication. Upon failure to answer, the petition shall be taken as confessed.

84c. EVIDENCE.

Hearing shall be had as provided by rule 80, and the evidence and findings immediately returned to the court.

84d. DELAY.

It shall be the duty of the relator on notice to the respondent or his attorney to call the attention of the court to any delay.

84e. BRIEFS AND ARGUMENTS.

Printed briefs and arguments and oral arguments shall be made and filed as required by rules of court in other cases, the brief of the relator within ten days after the return of the evidence.

84f. ORDERS.

The court may disbar, suspend, censure or reprimand the respondent or take such other action as shall be just.

84g. COSTS.

No initial fee shall be required of either party but the court may assess costs as it shall see fit.

84h. DUTY OF GRIEVANCE COMMITTEE.

The Committee on Grievances of the Colorado Bar Association shall investigate, on its own motion or upon complaint of any person, the improper conduct of any licensed attorney which affects his profession and the conduct of any other person purporting to act as an attorney. The files and transactions of the committee shall not be public records unless released by vote of the committee with the approval of the court.

84i. INFORMAL HEARINGS.

If upon investigation and after opportunity to be heard the Committee on Grievances shall determine that the conduct of an attorney deserves a lesser penalty than disbarment or suspension, it may report this finding to the Supreme Court informally in a

written communication setting forth the facts found and the conclusion of the committee. The court may then, after giving him opportunity to be heard informally before the court or committee thereof, publicly or privately reprimand the respondent or take such action as it thinks wise. The reprimand in such case, if public, shall be administered by the reading of an order from the bench rebuking the person named for unprofessional conduct, and no part of the proceedings except in said order shall be included in the records of the court, but all other papers shall be returned to the files of the committee. The fact of such reprimand private or public shall be taken into consideration in any subsequent disciplinary proceedings against the respondent.

84j. ATTORNEY GENERAL.

The Attorney General shall prepare and prosecute all cases referred to him by the committee for that purpose.

V.

CONTESTED ELECTIONS.

85. Any qualified elector wishing to contest the election of any person to the office of presidential elector, supreme, district, or county judge, shall within thirty days after the canvass of the State Board of Canvassers, in case of a presidential elector, supreme, or district judge, file in the office of the Secretary of State a written statement of his intention to contest; and where the contest is for the office of county judge, such statement shall be filed in the office of the county clerk of the county in which the person whose election to the office of county judge is contested, resides, within thirty days after the canvass by the county board of canvassers, which statement shall set forth:

First—The name of the contestor.

Second—The name of the contestee.

Third—The office.

Fourth—The time of the election.

Fifth—The particular cause of contest.

The statement shall be verified by the affidavit of the contesting party that the causes set forth are true, as he verily believes.

86. It shall be the duty of the Secretary of State and the county clerk to safely keep and preserve all such statements in their respective offices.

87. If the contest is to be further prosecuted, the contestor, or some one in his behalf, or in behalf of the person for whose benefit the contest is made, shall, within thirty days after the filing of such statement of contest, file in the office of the clerk of the Supreme Court, if the contest relates to a presidential elector or supreme judge, or in the office of the clerk of the District Court in the proper county of the judicial district, if the contest relates to a district or county judge, a petition setting forth the filing of the statement of contest and the particular grounds therefor; which petition shall be verified by the oath of some credible person. Upon the filing of such petition, if the contest relates to a presidential elector or supreme judge, the clerk of the Supreme Court shall issue a summons, or if the contest relates to the office of district or county judge, then the clerk of the proper District Court shall issue a summons, directed to the sheriff of the county where the respondent resides, under the seal of the court; which summons, if issued out of the Supreme Court, shall bear *teste* in the name of the Chief Justice, and if issued out of the District Court, then in the name of the district judge, or of the presiding judge of said court and be returnable in not less than ten nor more than thirty days; the same may be served by the sheriff of the county in the same manner that like writs are served from the District Court, and shall command the respondent to be and appear before the court from which the writ issues by a day to be named therein, and answer the petition of the petitioner in that behalf; such summons may be issued

to any county in this state where the respondent may be found. *Alias* and *pluries* writs may issue in case service is not had under the original.

88. Upon the return day of the writ, if it shall appear that due service has been had, and the respondent fails to plead, default may be entered, and in that case, if the proceeding is pending in the Supreme Court, the court, or any four or more judges thereof in vacation, or if the proceeding is pending in the District Court, then the District Court, or any judge thereof in vacation, may grant the relief demanded, either with or without proof, as in the judgment of said court or the judges, or judge, thereof it may seem proper. The respondent's answer shall be under oath and shall contain a general or specific denial of each material allegation in the petition intended to be controverted, and may contain a statement of new matter, showing in ordinary and concise language the right or title of the respondent to the office in question. The sufficiency of the petition or answer may be questioned by demurrer or motion. If a pleading be found defective, it may be amended on such terms as the court, or the judges or judge thereof, may deem proper.

Every material allegation of the petition not controverted by the answer will be taken as true; the statement of any new matter in the answer will, at the hearing, be deemed controverted by the petitioner. The petition, answer, and demurrer or motion shall constitute the pleadings in the case.

89. When the case is at issue, the court, or, as the case may be, the judges, or judge, thereof in vacation, shall hear and determine the same in a summary manner, without the intervention of a jury. Unless otherwise ordered, no witness will be examined in open court, or before, or in the presence of, the judges, or judge, thereof in vacation.

Either party, after the issues are formed, may have the deposition of any witness taken before any officer authorized by law to administer oaths, which deposition shall be taken and returned in the manner prescribed by the civil code for the taking and returning of depositions in ordinary civil actions.

90. The finding and judgment of the court, or the judges, or judge, thereof in vacation, as the case may be, shall be entered at length upon the record of the court. The court, or, as the case may be, the judges, or judge, thereof in vacation, shall award costs to the successful party, and execution shall issue therefor, the same as in other cases. Witnesses and officers shall receive like compensation as prescribed by law for like duties and services in cases in the District Court.

VI.

RULES IN FORCE—WHEN

91. These rules shall take effect September 1, A. D. 1929, and thereupon all former rules and parts of rules in conflict herewith shall be abrogated.

*Appendix

CANONS OF ETHICS.

1. **The Duty of the Lawyer to the Courts.**—It is the duty of the lawyer to maintain toward the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. **The Selection of Judges.**—It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a

*This appendix is published as provided by Rule 83e.

desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court.—Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due to the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. When Counsel for an Indigent Prisoner.—A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. The Defense or Prosecution of Those Accused of Crime.—It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means, to present every defense that the law of the land permits, to

the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible.

6. Adverse Influences and Conflicting Interests.—It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interests of the client with respect to which confidence has been reposed.

7. Professional Colleagues and Conflicts of Opinion.—A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline

association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. Advising Upon the Merits of a Client's Cause. —A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever

the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. **Negotiations with Opposite Party.**—A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. **Acquiring Interest in Litigation.**—The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

11. **Dealing with Trust Property.**—Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. **Fixing the Amount of the Fee.**—In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without

ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

13. **Contingent Fees.**—Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.

14. **Suing a Client for a Fee.**—Controversies with clients concerning compensation are to be avoided

by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. How Far a Lawyer May Go in Supporting a Client's Cause.—Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full meaure of public esteem and confidence which belongs to the proper discharge of its duties, than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer

is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

16. **Restraining Clients from Improprieties.**—A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrong-doing the lawyer should terminate their relation.

17. **Ill-Feeling and Personalities Between Advocates.**—Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. **Treatment of Witnesses and Litigants.**—A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause.

The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. Appearance of Lawyer as Witness for His Client.—When a lawyer is witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.

20. Newspaper Discussion of Pending Litigation.—Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any ex parte statement.

21. Punctuality and Expedition.—It is the duty of the lawyer not only to his client, but also to the courts and to the public, to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

territory or foreign government is required, and the official print thereof is on file in the Supreme Court Library, a typewritten copy thereof, certified by the Librarian or Clerk of this Court to be the same as that contained in the official volume cited, shall have the same force and effect as such printed volume.

Adopted June 7th, 1934.

22. **Candor and Fairness.**—The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. Attitude Toward Jury.—All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. Right of Lawyer to Control the Incidents of the Trial.—As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. Taking Technical Advantage of Opposite Counsel; Agreements with Him.—A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the

rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.

26. Professional Advocacy Other Than Before Courts.—A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. Advertising, Direct or Indirect.—The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies

advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. **Stirring up Litigation, Directly or Through Agents.**—It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the

profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. **Upholding the Honor of the Profession.**—Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

30. **Justifiable and Unjustifiable Litigations.**—The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. Responsibility for Litigation.—No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into Court for plaintiffs, what cases he will contest in Court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

32. The Lawyer's Duty in Its Last Analysis.—No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent

adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

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