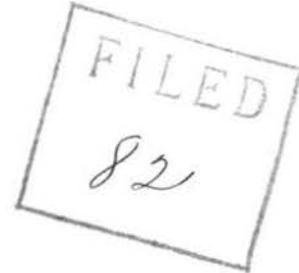


Non-resident attorneys, effect of prior dis- Sec. 11692, 11693, 11696,
barment in this state, -- construction of - Sec. 11703, 11695, R.S. Mo. 1929.

January 28, 1933



Hon. J.B.Searcy
Prosecuting Attorney
Shannon County
Eminence, Missouri

Dear Sir:

Your recent letter addressed to the Attorney General has been handed the undersigned for attention. You state the following facts and request an opinion thereon:

"One J.D.Wallace, a practicing attorney in the State of Missouri, and two times Prosecuting Attorney of Oregon County, Missouri, was convicted of the offense of seduction. The merits of the case need not be discussed as his conviction was affirmed and he served his sentence except for the allowance for good behavior. The conviction was in 1925. He was disbarred in 1928, at the instance of attorneys in that county who were not friendly to Mr. Wallace. He was granted a pardon by the Governor of the State of Missouri. At the time of his disbarment the Supreme Court intimated that the suspension from practice might be terminated at a later date.

"Mr. Wallace moved to the State of Arkansas and appeared before the Board of Law Examiners who are appointed by the Supreme Court of that State. He made frank disclosure to the Chairman of the Board of Law Examiners as to all the facts pertaining to his conviction and disbarment, also his pardon from the Governor of Missouri and many certificates of good moral character from citizens of both Arkansas and Missouri. These certificates were under oath. He was licensed at that time to practice law in the State of Arkansas and is now and has been for more than two years past a member of the bar of the State of Arkansas, in good standing and residing at Mammoth Springs, Arkansas, not far from the Missouri line. In the course of his practice some residents of Missouri conferred with him concerning litigation in this State and he has been offered employment to come into the courts of Missouri and represent such clients. Mr. Wallace takes the position that under Section

11703 of the Missouri Revised Statutes for 1929 that he is entitled to appear in any court of the State of Missouri as long as he can show that he is a member of the bar, in good standing in some other State."

Section 11692, R.S. Mo. 1929, among other things, provides:

"The 'practice of the law' is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies."

Section 11693, R.S. Mo. 1929, among other things, provides:

"No person shall engage in the 'practice of law', *** as defined in section 11692, *** unless he shall have been duly licensed therefor and while his license therefor is in full force and effect. *** "

Section 11696, R.S. Mo. 1929, among other things, provides:

"Every applicant for such admission and license must be at least twenty-one years of age, of GOOD MORAL CHARACTER AND A RESIDENT OF THIS STATE."

Section 11703, R.S. Mo. 1929, among other things, provides:

"Nothing in this chapter shall be construed to require a non-resident attorney in good standing from appearing in a case in which he may be employed."

Section 11695, R.S. Mo. 1929, is as follows:

"The power to admit and license persons to practice as attorneys and counselors in the courts of record of this state, or in any of them, is hereby vested exclusively in the supreme court, subject to such regulations as are hereinafter provided."

From the section as above quoted, it is to be noted that the Legislature required that in addition to the other requisites, a person

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seeking the privilege of admission and of the right to practice law in this state, should possess a good moral character.

If the non-resident attorney can meet the requirements of Section 11703, R.S. Mo. 1929, in respect to the requirement of good moral character under said section, he is granted the privilege of appearing in the capacity of an attorney at law in the courts of this state. There is a general presumption in our law extended to all persons, such as good reputation, innocence from crime, etc., but that presumption is destroyed upon actual and positive proof to the contrary. It was not the intention of the Legislature to grant to a citizen of another state, privileges of which its own citizens would be deprived. If the positive proof should be disclosed that a citizen of this state was not of good moral character, the Supreme Court would refuse to grant the privilege of practicing law to such person, were he an applicant so to do, and will likewise refuse a non-resident attorney upon the same ground.

In the case of *In Re Wallace* 19 S.W.(2) 625, in an action of disbarment instituted against J.D.Wallace, under Section 681, the Supreme Court, in banc, by reason of a conviction of J.D.Wallace, the then Prosecuting Attorney of Oregon County, for the crime of seduction under promise of marriage, which conviction was affirmed on December 20, 1926, said:

"At the time of the commission of the offense, he was an officer of the court, and the prosecuting attorney of a county. The nature of the offense considered, we are of the opinion that he should no longer be permitted to enjoy the high privileges of an attorney at law."

Judgment was therefore ordered entered, removing from practice in the courts of this state said J.D.Wallace.

From the above, it will be seen that the presumption of good moral character that clothed a non-resident attorney appearing in the courts of this state, under the privilege of the section above quoted, has been destroyed by the solemn record of the highest tribunal in this state, and until such record has been changed, or modified, in respect to the removal of J.D.Wallace from practice in the courts of this state, it is the opinion of this department, that his appearance in the courts of this state as an attorney at law, would be unlawful, and would constitute an offense for which he might be prosecuted, under the law of the state, or he could be cited by the Supreme Court in contempt for a violation of its order and mandate, as above stated.

Yours very truly,

CCA:ER

CARL C. ABINGTON
Assistant Attorney-General

Approved:

ATTORNEY GENERAL