

IN RE ROYALL, 1928-NMSC-032, 33 N.M. 386, 268 P. 570 (S. Ct. 1928)

In re ROYALL

No. 3335

SUPREME COURT OF NEW MEXICO

1928-NMSC-032, 33 N.M. 386, 268 P. 570

May 02, 1928

Original contempt proceedings by the Board of Commissioners of the State Bar against Charles C. Royall, charging him with unlawfully practicing law after disbarment.

SYLLABUS

SYLLABUS BY THE COURT

The disbarment of an attorney is a judicial function, which cannot be exercised by the board of commissioners of the state bar.

COUNSEL

E. R. Wright, of Santa Fe, for Commissioners of State Bar.

J. S. Vaught, of Albuquerque, for respondent.

JUDGES

Parker, C. J. Bickley, J., and Frenger, District Judge, concur.

AUTHOR: PARKER

OPINION

{*387} {1} OPINION OF THE COURT The board of commissioners of the state bar filed an information in contempt in this court against Charles C. Royall charging him with unlawfully practicing law as assistant district attorney, and generally, in the Sixth judicial district of the state, notwithstanding and in violation of the order of the said board of commissioners, made August 9, 1926, disbaring said Royall from the practice of law in any of the courts of the state. An order to show cause was issued and served, and respondent filed his answer, in which he set up that chapter 100, Laws 1925, under which the board of commissioners was organized and assumed to act in the premises, was, in so far as the judgment of disbarment is concerned, unconstitutional and void.

The said board of commissioners at the request of said Royall certified to this court a complete transcript of the proceedings before and by said board, which was before us for review at the hearing. The matter came on for hearing before this court and was argued and submitted.

{2} It is not seriously contended by counsel for the board that the board can be lawfully empowered to make the order of disbarment. That this must be so seems clear, when we remember that the disbaring of an attorney is a strictly judicial function with which the board may not be clothed. *State ex rel. Wood v. Raynolds*, 22 N.M. 1, 158 P. 413. See, also, *In re Bruen*, 102 Wash. 472, 172 P. 1152.

{3} If the order of disbarment by the board was without jurisdiction, as we hold, then the respondent cannot be guilty of contempt in disobeying the order. This consideration would seem to be sufficient to dispose of the case and to entitle the respondent to his discharge; and it is so ordered.