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Attorney and Client - Legal Ethics - Unauthorized Practice of Law

Robert P. Hamm

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RECENT DECISIONS

Attorney and Client—Legal Ethics—Unauthorized Practice of Law.—The defendant was a partner in a firm which carried on the business of investigating and adjusting claims which arose out of automobile accidents. This firm represented various insurance companies, and after an investigation recommended settlements or advised the companies and others as to their liability. The defendant also appeared before justices of the peace in a representative capacity, and selected and prepared releases and covenants not to sue. The Junior Association of the Milwaukee Bar sought an injunction to restrain the defendant from these practices on the ground that they constituted the unauthorized practice of law.

Held, giving advice as to legal rights is clearly the function of lawyers and constitutes the practice of law; appearing before a justice of the peace in a representative capacity is practicing law. As to the preparation of covenants not to sue and releases the court held that the mere filling in of blanks in contracts prepared by company attorneys would not be the practice of law but that if the defendant used his discretion as to what type of form to use in a particular case or if the defendant prepared the forms himself he was engaged in the unauthorized practice of law. On these points the "cease and desist" order of the lower court was affirmed. *State of Wisconsin ex rel Junior Association of the Milwaukee Bar v. Rice*, 236 Wis. 38, 294 N.W. 550 (1940).

There is much confusion as to just what the practice of law includes. It clearly embraces the preparation of pleadings and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts. In addition, conveyancing, the preparation of legal instruments of all kinds, and in general, all legal advice to clients, and all action taken for them in matters which require a knowledge of law are regarded as practicing law. But these latter activities are sometimes pursued by persons not admitted to the bar, and thus is raised the question, "What constitutes unauthorized practice?"

The American Bar Association has set itself against any formulated definition because it feels that since resort must inevitably be to the courts, they should not be hampered by definitions which by interpretation might limit the court's power. 57 REPORT OF THE AMERICAN BAR ASSOCIATION 563 (1932).

In Minnesota it has been held that advising as to legal rights and negotiating settlements for compensation is practicing law just as much as though legal process and pleadings were necessary. *Fitchette v. Taylor*, 191 Minn. 582, 254 N. W. 110 (1934).

A corporation which prepares wills and trusts is practicing law illegally according to an Idaho court which says: "Where an instrument is to be shaped from a mass of facts and conditions, the legal effect of which must be carefully determined by a mind trained to existing laws in order to insure a specific result and guard against others, more than the knowledge of a layman is required; and a charge for such services brings it definitely within the term 'practice of law.'" *In Re Eastern Idaho Loan and Trust Co.*, 49 Idaho 280, 288 Pac. 157 (1930).

Some courts hold that in order to find a defendant engaged in the unauthorized practice of law there must be some compensation either received or expected, directly or indirectly. It would seem, however, that the injury to the public and the legal profession is not affected by the fact that the unauthorized practitioner receives no compensation.

A real estate broker engaged in the business of drawing wills, warranty and quit-claim deeds, mortgages, contracts, and like instruments, and advising his clients as to their legal rights under such papers is practicing law. *Paul v. Stanley*, 168 Wash 371, 12 P. (2d) 401 (1932). Where a bank employs an attorney to act for it and for others in foreclosure actions and probate proceedings and collects the fees for such actions, merely paying the attorney a yearly salary, the bank is illegally practicing law and can be enjoined. *In Re Otterness*, 181 Minn. 254, 232 N.W. 318 (1930).

A layman who negotiated settlements of Workmen's Compensation claims and had such settlements approved by the Interstate Commerce Commission, and who appeared at hearings before this Commission was held to be practicing law without a license. It was held immaterial where such practice was carried on, whether in an office, before a court, or before an administrative body. *People ex rel Chicago Bar Association v. Goodman*, 366 Ill. 346, 8 N.E. (2d) 941 (1937).

Another example of the unauthorized practice of the law is found in the offering, by various organizations, to furnish legal advice to members by an attorney employed by the organization. This practice is often carried on by unions, automobile associations and protective corporations. Where the defendant automobile service club charged its members fees and in consideration of these fees agreed to furnish legal counsel free of charge the practice was enjoined on the theory that one who cannot practice law himself cannot employ an agent to do it for him and that the club was engaged in selling legal advice and assistance. *Rhode Island Bar Association v. Automobile Service Association*, 55 R.I. 122, 179 Atl. 139 (1935). *In Re Maclub of America, Inc.*, 295 Mass. 45, 3 N.E. (2d) 272 (1936).

In a suit for compensation for services as a law clerk the plaintiff showed that he had handled matters in justice courts and had conducted uncontested probate matters for his attorney employer. The estate of the attorney alleged as a defense that these services were illegal and therefore the plaintiff was not entitled to recover for them. The court held that this was the practice of law by a layman. The work of a law clerk, said the court, should be limited to work of a preparatory nature such as research, investigation of details, assemblage of data, and such other work as will assist the employing attorney in carrying the matter to a completed product, whether by his personal examination and approval thereof or by additional effort on his part. But this work must be such as loses its separate identity and is merged in the product of the attorney. *Ferris v. Snively*, 172 Wash. 167, 19 P. (2d) 942 (1933).

The Committee on the Unauthorized Practice of Law of the American Bar Association reports that much of this unauthorized practice is voluntarily abandoned by laymen after conferences and discussion with various groups of laymen, such as real estate brokers, trust companies and auditors. The committee has stated its policy in such matters to be the "Endeavoring, through full discussion of unauthorized practice problems, to secure, wherever possible, the cooperation of national associations of laymen in the acceptance of principles relating thereto." *Report of the Standing Committee on Unauthorized Practice of Law* (1940).

ROBERT P. HAMM.