



## Case Western Reserve Law Review

---

Volume 8 | Issue 4

---

1957

# Unauthorized Practice of Law by Collection Agencies

Donald W. Farley

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

---

### Recommended Citation

Donald W. Farley, *Unauthorized Practice of Law by Collection Agencies*, 8 W. Res. L. Rev. 492 (1957)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol8/iss4/5>

This Note is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

# WESTERN RESERVE LAW REVIEW

Member of the National Conference of Law Reviews

Published for THE FRANKLIN THOMAS BACKUS SCHOOL OF LAW  
by THE PRESS OF WESTERN RESERVE UNIVERSITY, Cleveland 6, Ohio

## EDITORIAL BOARD

JERRY B. HELWIG, *Editor-in-Chief*

### *Associate Editors*

William J. Schafer III

Lawrence Tucker

Patricia A. Wilbert

Gary A. Banas  
Robert A. Bostuck  
John P. Falcone  
Donald W. Farley  
David Freed

Gerald N. Gordon  
Raymond E. Griffiths  
Norman S. Jeavons  
Robert W. Jones  
Karl A. Limbach

Clifford M. Lytle, Jr.  
James C. McGrath  
James F. O'Day  
Ronald M. Rubenstein  
Roger A. Scott

WALTER PROBERT, *Faculty Adviser*

HUGH A. ROSS, *Associate Faculty Adviser*

## NOTES

### *Unauthorized Practice of Law By Collection Agencies*

#### INTRODUCTION

A problem vital to the future of the legal profession is the practice of law by unauthorized individuals and by corporations.<sup>1</sup>

It is paradoxical, but nevertheless a fact, that when a lawyer is needed to untangle a mess created as the result of unauthorized practice, the victim, more often than not, rages against the law. The lawyer of course is the symbol of the law, and to hear the victim later tell it, it is something like

<sup>1</sup> That a corporation may not practice law is established by both statute and common law. OHIO REV. CODE § 1701.04 provides in its applicable part that "A corporation may be formed for any purpose or purposes, other than the carrying on the practice of any profession. " An oft cited case in which a corporation was forbidden to practice law without reference to a statute is that of *In re Co-operative Law Co.*, 198 N.Y. 479, 483, 92 N.E. 15, 16 (1910) The court said:

The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. There would be neither contract nor privity between him and the client and he would not owe even the duty of counsel to the actual litigant.

this, "And I had to pay that damn lawyer so much to get title to my own property."<sup>2</sup>

Among those engaged in such practice are banks, trust companies, collection agencies, realtors and accountants. Every lawyer interested in the preservation of the integrity of his profession should feel duty bound to acquaint himself with this problem and learn how he can best cope with it. There are certain general principles regarding the unauthorized practice of law which apply whether the practice is by an individual or a corporation. While these principles are embodied in this note, the basic purpose of the author is to review the handling of the problem with specific reference to collection agencies.

#### RIGHT OF ATTORNEYS TO ACT

It is the attorney who must first judge the merits of any case and decide whether or not suit should be commenced. Once it has been determined to bring suit, the attorney, as an officer of the court, must aid the court in the proper application of the law to the case. Both the litigant and the court have a right to expect that the attorney will be able to perform these duties. But "persons unlearned in the law can neither aid a litigant nor the court."<sup>3</sup>

The strict regulation of a profession such as law is in the public interest, for if left uncontrolled it might develop methods and practices inimical to the public welfare.<sup>4</sup> The public interest demands that no person hold himself out to the public as qualified to render legal services for others unless he is in fact so qualified.<sup>5</sup> Thus the right to practice law is a privilege or franchise not open to every person. It is a privilege of a personal nature, limited to persons of good moral character, possessing special qualifications ascertained and certified after a long course of study, both general and professional. It is conferred only for merit, cannot be assigned or inherited, but must be earned by hard study and good conduct.<sup>6</sup> The possession of these qualifications is evidenced by a license.

The primary purpose of the license is to protect the public. A secondary purpose is protection to the person practicing the particular profession, and to encourage them to better prepare for that service.<sup>7</sup>

<sup>2</sup> Green, *Unauthorized Practice as it Affects Public Relations*, 28 OHIO BAR 686 (1955).

<sup>3</sup> Nelson v. Smith, 107 Utah 382, 386, 154 P. 2d 634, 637 (1944).

<sup>4</sup> *In re Lyon*, 301 Mass. 30, 16 N.E.2d 74 (1938).

<sup>5</sup> Bump v. District Court, 232 Iowa 623, 5 N.W.2d 914 (1942); Bay County Bar Ass'n v. Finance System Inc., 345 Mich. 434, 76 N.W.2d 23 (1956).

<sup>6</sup> State *ex rel.* McKittrick v. C.S. Dudley & Co., 340 Mo. 852, 102 S.W.2d 895 (1937); Land Title Abstract and Trust Co. v. Dworken, 129 Ohio St. 23, 193 N.E. 650 (1934); *In re Morse*, 98 Vt. 85, 126 Atl. 550 (1924).

<sup>7</sup> State *ex rel.* Freebourn v. Merchants' Credit Service, 104 Mont. 76, 104, 66 P. 2d

The practice of law is not a business. Allowing persons to make it such by their unauthorized acts tends to bring the legal profession into disrepute.<sup>8</sup> It makes futile any attempts to maintain high standards of education, training, character and strict accountability for unprofessional acts.<sup>9</sup> Licensed attorneys, therefore, not only have a right to bring suit against one engaged in the unauthorized practice of law for the protection of their own interests, but also have a duty to do so in order to preserve the integrity of the profession for the benefit of the public.<sup>10</sup>

#### SERVICES COLLECTION AGENCIES MAY PERFORM

Collection agencies perform functions which are both convenient and necessary in the business world of today. That they are equipped to perform such functions is not questioned nor does the business of collecting claims in and of itself constitute the practice of law.<sup>11</sup> Such agencies may solicit claims from creditors and collect them by sending out personal collectors or by sending dun notices through the mail, and they may do so on a commission basis.<sup>12</sup>

It has been held that such agencies may use blank notes, drafts, mortgages and similar blanks obtainable at any book store, the filling out of which *requires no particular legal knowledge* and which is done as a part of the general business of the agency without specific charge.<sup>13</sup> One court has said that a collection agent may be authorized by a creditor to employ an attorney to represent the creditor, and if the authorization is unlimited, he can even agree upon the compensation to be paid for the attorney's services. Under this arrangement, however, the creditor rather than the agency becomes the client and *all control* over the claim must be transferred to the attorney and removed from the agency.<sup>14</sup> In Massachusetts it was held that a collection agent could threaten the debtor with suit by the creditor providing the creditor *expressly* directed the agent to

---

337, 343 (1937); *modified by*, *Rae v. Cameron*, 112 Mont. 159, 114 P. 2d 1060 (1951)

<sup>8</sup> *State Bar v. Retail Credit Ass'n*, 170 Okla. 246, 37 P. 2d 954 (1934).

<sup>9</sup> For the Ohio requirements see: Rule XIV, The Supreme Court of Ohio, Admission to the Bar; Rule XXVIII, The Supreme Court of Ohio, Rules of Professional Conduct; OHIO REV. CODE §§ 4705.01 to 4705.06. The statute prohibiting the false representation of oneself as an attorney is OHIO REV. CODE § 4705.07

<sup>10</sup> *Bump v. Barnett*, 235 Iowa 308, 16 N.W. 2d 579 (1944)

<sup>11</sup> *Public Service Traffic Bureau v. Haworth Marble Co.*, 40 Ohio App. 255, 178 N.E. 703 (1931)

<sup>12</sup> *State ex rel. McKittrick v. C.S. Dudley & Co.*, 340 Mo. 852, 102 S.W. 2d 895 (1937); *Goodman v. Provident Credit Co.*, 10 Ohio Op. 77, 25 Ohio L. Abs. 492 (C.P. 1937).

<sup>13</sup> *Depew v. Wichita Ass'n of Credit Men*, 142 Kan. 403, 49 P. 2d 1041 (1935)

<sup>14</sup> *State ex rel. District Attorney v. Lytton*, 172 Tenn. 91, 110 S.W. 2d 313 (1937)

do so without any advice to that effect by the agent himself. Such measures do not constitute the practice of law even if used habitually.<sup>15</sup>

The practice of law is not limited to the conduct of cases in court. It essentially involves the performance of legal services for others, usually for gain, and includes the giving of legal counsel and advice, the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings before judges and courts. It also embraces conveyancing and the preparation of legal instruments of all kinds by which legal rights are secured and which require the application of legal skill.<sup>16</sup>

#### UNAUTHORIZED PRACTICES BY COLLECTION AGENCIES

Ultimately, the determination of what acts do constitute the practice of law is exclusively for the courts. The courts, apart from any statute, have inherent power to inquire into the conduct of any person, individual, lay agency or corporation, to determine whether he or it is usurping the functions of an officer of the court and illegally engaging in the practice of law.<sup>17</sup> Therefore, the best means of ascertaining the unauthorized practices of collection agencies is to study the leading cases in the area.

A corporation, the avowed object of which was the "collection of accounts and bills receivable due its members and subscribers," was found to be guilty of the unauthorized practice of law in *State ex rel. Lundin v. Merchants' Protective Corp.*<sup>18</sup> In reaching its conclusion the court looked beyond the articles of incorporation to the actual conduct of the business. It found that the corporation's membership certificates recited that the members were entitled to free legal advice in all matters, business and personal, to be given by attorneys *retained by the corporation*. The attorneys were compensated by the payment of one dollar of each ten dollar membership fee solicited and received by the corporation.

In a California case against the same corporation, the court found that the attorneys so retained were really the agents of the corporation which hired them and not the agents of the clients who were the members. Thus, the corporation attempted to do indirectly that which it was for-

<sup>15</sup> *In re Lyon*, 301 Mass. 30, 16 N.E. 2d 74 (1938).

<sup>16</sup> *People ex rel. Lawyers' Inst. v. Merchants' Protective Corp.*, 189 Cal. 531, 209 Pac. 363 (1922); *Eley v. Miller*, 7 Ind. App. 529, 34 N.E. 836 (1893); *In re Lyon*, 301 Mass. 30, 16 N.E. 2d 74 (1938); *Judd v. City Trust and Savings Bank*, 133 Ohio St. 81, 12 N.E. 2d 288 (1937); *Land Title Abstract and Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650 (1934); *Nelson v. Smith*, 107 Utah 382, 154 P. 2d 634 (1944).

<sup>17</sup> *In re Morse*, 98 Vt. 85, 126 Atl. 550 (1924); *Richmond Ass'n of Credit Men Inc. v. Bar Ass'n*, 167 Va. 327, 189 S.E. 153 (1937).

<sup>18</sup> 105 Wash. 12, 177 Pac. 694 (1919).

bidden to do directly practice law. The court found that to be an evasion which the law will not tolerate.<sup>19</sup> Approval of such an evasion would allow both the corporation and the attorney together to do that which neither is legally authorized to do alone. The corporation could solicit the business which the attorney could not do, and the attorney could enforce the claims in court which the corporation could not do.<sup>20</sup> A corporation may not practice law even though all of its directors and officers are duly licensed attorneys.<sup>21</sup>

The use of simulated process by collection agencies has drawn considerable attention from the courts. Judge Welch provides an apt description of these documents in his opinion in *State Bar v. Retail Credit Ass'n*.

Such documents are prepared with generous use of large black type, large red type, and glaring underscoring of legal phrases, with very conspicuous seals attached. They are designed to terrorize the individual addressed, and to present to him as a monster of retribution the law, the courts of justice, and various and sundry processes, some legal and judicial, and some extrajudicial, and unknown to the law, and all claimed by defendants (a collection agency) to be subservient to defendants in carrying out their threats. While it is hardly possible that any such threats should be taken seriously by an enlightened people, that is no argument that such association has the right to engage in such chicanery in the name of the law, and under the pretense of legal and judicial sanction, and with a pretended authority and privilege to so employ and use legal and judicial process and procedure.<sup>22</sup>

Such parodies of the orderly process of law should never be permitted. Certainly no attorney would be allowed to adopt such tactics.<sup>23</sup> In some states their use has been prohibited by criminal statute.<sup>24</sup>

<sup>19</sup> *People ex rel. Lawyers Inst. v. Merchants' Protective Corp.*, 189 Cal. 531, 209 Pac. 363 (1922)

<sup>20</sup> *Richmond Ass'n of Credit Men Inc. v. Bar Ass'n*, 167 Va. 327, 189 S.E. 153 (1937)

<sup>21</sup> *People ex rel. Los Angeles Bar Ass'n v. California Protective Corp.*, 76 Cal. App. 354, 244 Pac. 1089 (1926).

<sup>22</sup> 170 Okla. 246, 248, 37 P.2d 954, 956 (1934).

<sup>23</sup> *Bump v. Barnett*, 235 Iowa 308, 16 N.W.2d 579 (1944); *In re Weiss*, 176 Atl. 924 (Pa. 1935); *In re Swihart*, 42 S.D. 628, 177 N.W. 364 (1920)

<sup>24</sup> OHIO REV. CODE § 2901.39 provides in its applicable portion that:

No person shall knowingly send, deliver, mail, or in any manner cause to be sent, delivered, or mailed, any paper or document simulating or intended to simulate a summons, complaint, warrant, writ, or other court process of any kind, with intent to obtain from another person any money, article of personal property, or other thing of value.

Also see N.Y. PEN CODE §§ 551, 551a. The following examples of simulated processes are taken from *Bump v. Barnett*, 235 Iowa 308, 310, 16 N.W. 2d 579, 581 (1944)

Entitled in red ink

"Final Notice Before Legal or Statutory Action," giving the title, "W

In *Depew v. Wichita Ass'n of Credit Men*<sup>25</sup> the Kansas Supreme Court held that the filing of mimeographed bills of particulars in justice of the peace courts, where attorneys were not required, was such a preparation of legal instruments as to constitute the unauthorized practice of law. The same result has been reached with regard to the use of blanks

---

Thomas Barnet v. \_\_\_\_\_, (naming debtor) which paper advised debtor that "Public Service and the party of the first part" were sending the notice "in order that you may make satisfactory arrangements with the proper authority, W Thomas Barnett, assignee, plaintiff and show good and sufficient cause why such action should not be brought for the purpose of securing judgment for the sum of \$\_\_\_\_\_ account of \_\_\_\_\_ (name of creditor) original creditor. Said judgment to be collected and enforced with powers, privileges and penalties given by law at the full discretion of the aforesaid W Thomas Barnett, assignee, Pltff." The paper was impressed with a red seal, "Public Service, W Thomas Barnett," and at the bottom appeared this curious language:

"Know All Men by These Presents."

"Resolved, and be it enacted, that Plaintiff shall not commence, or cause to be commenced, any court action, with the judgment thus obtained, and in all cases shall give the party or parties against whom judgment is proposed to be taken, a notice of not less than ten (10) days from the commencement of such action, and it's further required that a copy of this special resolution shall be displayed with the service of such notice."

"The laws of this state provide that all persons found guilty of obtaining goods or anything of value under false pretense or misrepresentation shall be punished by fine or imprisonment, or both, as the cases shall be."

Another form used by Barnett:

State of Iowa  
County of Polk

\_\_\_\_\_ (name of creditor)

W Thomas Barnett, Assignee

vs.

\_\_\_\_\_ Debtor

Creditor,

Amount Due \$\_\_\_\_\_

To the above named debtor:

You are hereby notified that the said creditor is about to institute legal proceedings for the garnishment against you and your employer in the courts having jurisdiction over the subject matter. You and your employer will be summoned to appear before said courts. Your employer's time books will be summoned into court by subpoena duces tecum to show what is due you and that so much of same may be applied toward the payment of this debt as provided by statute.

Any arrangement as to settlement you may wish to make in avoidance of the proceedings above mentioned should be consummated at this office within a period of 5 days from the date hereof.

Dated at Des Moines, Iowa, this 15th day of March, 1944.

(SEAL)

W Thomas Barnett, Assignee  
503 Southern Surety Building  
Des Moines 9, Iowa  
Ph. 3-5265

<sup>25</sup> 142 Kan. 403, 49 P. 2d 1041 (1935).

and the sending of solicitations of proof of claims and powers of attorney in bankruptcy proceedings.<sup>26</sup>

Representations in the letterhead of a collection corporation that it had attorneys in its employ and could garnish wages and attach property was held to be the practice of law without a license in *State ex rel. Freebourn v. Merchants' Credit Service, Inc.*<sup>27</sup> The form used by the defendant corporation was an alleged assignment of the claim to the corporation which authorized it to bring suit in its own name as the real party in interest and to select, engage and compensate the attorney. The handling of the suit and settlement of it were left to the discretion of the corporation. The court held that an assignment for the purpose of collection was merely a simulated assignment and in the absence of an express statute such assignee was not the real party in interest, but was merely representing the assignors and practicing law.<sup>28</sup>

A careful reading (of the assignment) discloses that it is a mere cloak to screen the ulterior purpose of the assignee to authorize it to appear in court without an attorney. It is a mere subterfuge calculated to deceive the court and to authorize an unauthorized person to appear for the corporation in a court which requires an authorized attorney to make such appearance.<sup>29</sup>

There are several leading cases which hold that an assignment, even for purposes of suit, does qualify the assignee as the real party in interest. This principle is immediately restricted, however, to casual assignments for purposes of procedural convenience. These courts too refused to allow such assignments to be used as a subterfuge to circumvent the policy of the courts and the legislatures as to the unauthorized practice of law.<sup>30</sup>

---

<sup>26</sup> As to the problem of solicitation of claims in bankruptcy as the practice of law and the power of state courts to control it, there is some confusion. For a list of cases pro and con see, XVII Unauthorized Practice News, No. 1, p. 17 (1951)

<sup>27</sup> 104 Mont. 76, 66 P. 2d 337 (1937), *modified by*, *Rae v. Cameron*, 112 Mont. 159, 114 P. 2d 1060 (1941)

<sup>28</sup> This is the very point on which *Rae v. Cameron* modified the *Freebourn* case. For other cases holding that an assignee for purposes of collection only is not a real party in interest see: *Gaffney v. Tammany*, 72 Conn. 701, 46 Atl. 156 (1900); *Abrams v. Cureton*, 74 N.C. 523 (1876); *Brown v. Ginn*, 66 Ohio St. 316, 64 N.E. 123 (1902)

<sup>29</sup> *State ex rel. Freebourn v. Merchants' Credit Service*, 104 Mont. 76, 106, 66 P. 2d 337, 344 (1937); *modified by*, *Rae v. Cameron*, 112 Mont. 159, 114 P. 2d 1060 (1941)

<sup>30</sup> *Bump v. Barnett*, 235 Iowa 308, 16 N.W. 2d 579 (1944), *Bay County Bar Ass'n v. Finance System Inc.*, 345 Mich. 434, 76 N.W. 2d 23 (1956); *Nelson v. Smith*, 107 Utah 382, 154 P. 2d 634 (1944). The *Bay County* case contains an excellent discussion of case law with reference to the unauthorized practice of law by collection agencies. *Contra*, *Clark v. Andrews*, 109 Cal. App. 2d 193, 240 P. 2d 330 (1952); *Cohn v. Thompson*, 128 Cal. App. 783, 16 P. 2d 364 (1932); *Washington State Bar Ass'n v. Merchants' Rating and Adjusting Co.*, 183 Wash. 611, 49



An Ohio common pleas court has held that even a *purported* outright sale of a claim to a collection agency for cash and a note promising to pay a creditor a stipulated percentage of any sums recovered, does not make such assignee a real party in interest so that he may maintain suit in his own name.<sup>31</sup> The test of whether or not a person is using such assignments to carry on the business of practicing law is not the volume or number of transactions but rather the intent to engage in the business as a profession. Proof of numerous transactions coupled with evidence of solicitation and advertising "makes irresistible the conclusion that the individual is regularly engaged in the practice."<sup>32</sup>

Where such assignments were solicited by a lay agency with the understanding that suit would be instituted by it and collection would be enforced by legal process, the agency was guilty of the unauthorized practice of law. It was falsely holding itself out as ready, willing and able to practice law and perform the office of an attorney.<sup>33</sup> Where, in addition, the agency's fee was to be a percentage of the amount collected upon the claim assigned, the contract was held champertous and unenforceable, and it was immaterial whether the champertor was an attorney or not.<sup>34</sup> Where the action was brought by the champertor in his own name as assignee, the champerty could be interposed by the debtor as a defense.<sup>35</sup>

In *Bump v. Barnett*<sup>36</sup> the Iowa court held that despite a statute making it unnecessary to be an attorney to practice in a justice of the peace court, a lay agency still could not make a business of practicing in such courts. It held that the purpose of the statute was not to encourage the growth of "justice court lawyers." In fact, since the justices themselves may not be lawyers, it would seem even more important that those regularly appearing in such courts be well versed in the law. An Ohio common pleas court, after mentioning the concurrent jurisdiction of common pleas and justice of the peace courts over claims of from one hundred to three hundred dollars, presented this interesting possibility:

If the contention of the defendant were sustained it would present

---

P. 26 (1935). In his opinion in the *Bay County* case Chief Justice Dethmers distinguished all three of these cases.

<sup>31</sup> *Goodman v. Provident Credit Co.*, 10 Ohio Op. 77, 25 Ohio L. Abs. 492 (C.P. 1937).

<sup>32</sup> *Bump v. Barnett*, 235 Iowa 308, 16 N.W. 2d 579, 583, (1944)

<sup>33</sup> *Berk v. State*, 225 Ala. 324, 142 So. 832 (1932); *State ex rel. v. Retail Credit Men's Ass'n.*, 163 Tenn. 450, 43 S.W. 2d 918 (1931)

<sup>34</sup> *Bump v. Barnett*, 235 Iowa 308, 16 N.W. 2d 579 (1944); *Reece v. Kyle*, 49 Ohio St. 475, 31 N.E. 747 (1892).

<sup>35</sup> *Davy v. Fidelity and Casualty Ins. Co.*, 78 Ohio St. 256, 85 N.E. 504 (1908).

<sup>36</sup> 235 Iowa 308, 16 N.W. 2d 579 (1944).

the peculiar situation wherein one prosecuting or defending an action in a justice court for three hundred dollars would not be practicing law while one engaged in the prosecution or defense of an action in the Court of Common Pleas in the sum of one hundred dollars would be engaged in the practice of law. Such a conclusion in the judgment of the court would not be founded upon law, logic or reason.<sup>37</sup>

The court enjoined a layman from further practice in justice courts.

As has already been seen, a collection agency may not do indirectly that which it is forbidden to do directly. Courts have held that such an agency is no less guilty of practicing law when it hires and in any way controls a licensed attorney, than when it attempts to perform the office itself. What one cannot legally do himself he cannot do through his agents. The relation of attorney and client is one of trust and confidence and no third party can be permitted to intervene between them in any way.<sup>38</sup> The employment of an attorney by the agency, for its client, is the practice of law whether the attorney is paid a salary or a fee by the agency. In either case he remains the employee of the agency and not of the client.<sup>39</sup> An attempt to evade this conclusion was thwarted in *State ex rel. McKittrick v. C. S. Dudley & Co.*<sup>40</sup> There, the agency stated to the client that the corporation's services would not include legal work but when the corporation decided that a particular claim could be collected only by suit, it requested the client to select an attorney. If the client failed to select one the corporation did so itself. It informed such attorney that he would be paid sixty per cent of the legal fee paid to the corporation by the client. All correspondence was to be sent to the corporation and not to the client. The court held that this intervention constituted the attorney the agent of the corporation and not of the client. In a recent Kansas case, moreover, the collection of an attorney's fee from the client and the retention of any portion of it by such an agency, was held not in accord with good ethics.<sup>41</sup>

Injunction is a proper remedy for the unauthorized practice of law.<sup>42</sup>

<sup>37</sup> *Erskine v. Smith*, 31 Ohio L. Abs. 488, 492 (C.P. 1940)

<sup>38</sup> *Berk v. State*, 225 Ala. 324, 142 So. 832 (1932); *In re Shoe Manufacturer's Protective Ass'n, Inc.*, 295 Mass. 369, 3 N.E. 2d 746 (1936); *Bay County Bar Ass'n v. Finance System Inc.*, 345 Mich. 434, 76 N.W. 2d 23 (1956); *United Radio Inc. v. Cotton*, 61 Ohio App. 247, 22 N.E. 2d 532 (1938); *State ex rel. v. Retail Credit Men's Ass'n*, 163 Tenn. 450, 43 S.W. 2d 918 (1931); *Nelson v. Smith*, 107 Utah 382, 154 P. 2d 634 (1944)

<sup>39</sup> *State ex rel. v. Retail Credit Men's Ass'n*, 163 Tenn. 450, 43 S.W. 2d 918 (1931)

<sup>40</sup> 340 Mo. 852, 102 S.W. 2d 895 (1937).

<sup>41</sup> *Depew v. Wichita Ass'n of Credit Men*, 142 Kan. 403, 49 P.2d 1041 (1955).

<sup>42</sup> *Bump v. Barnett*, 235 Iowa 308, 16 N.W. 2d 579 (1944); *Depew v. Wichita Ass'n of Credit Men*, 142 Kan. 403, 49 P.2d 1041 (1935); *State Bar v. Retail Credit Ass'n*, 170 Okla. 246, 37 P. 2d 954 (1934); *Nelson v. Smith*, 107 Utah 382, 154 P. 2d 634 (1944).

This equitable remedy is not barred by the existence of a statute making such practice criminal.<sup>43</sup>

#### ACTION BY ATTORNEYS

The problem is obvious but the question of what "that damn lawyer" can do about it remains. A reading of the foregoing cases impresses one with the fact that many of the objectionable acts of the collection agencies concerned could not have been carried on without the aid of attorneys who were willing to accept "sweetheart" arrangements with the offending agencies, and who allowed themselves to be used and advertised by such agencies. These attorneys present the greatest danger to the legal profession. Their acts are unprofessional and in violation of the canons of professional ethics.<sup>44</sup>

Members of the bar interested in preserving and promoting the stature of the legal profession would do well to follow the course of action outlined by Merritt W Green of the Ohio Bar Association.<sup>45</sup> Mr. Green recommends that besides being aware of the problem and learning what constitutes unauthorized practice, an attorney should never permit his name or his services to be used in aid of or to make possible unauthorized practice. Affirmatively, he should have the courage and the integrity to document and transmit to his bar association *every* incident of unauthorized practice which comes to his attention.

#### PREVENTION OR PROSECUTION

Much can be done to prevent unauthorized practice by the continuing education of the bar and by joint information meetings with representatives of the various groups whose normal business practices are closely related to the practice of law.<sup>46</sup> As strict a line as possible should be drawn between legitimate business practices and the practice of law, but it should not be presumed that those engaged in unauthorized practices are acting in bad faith. In many instances such persons are merely mis-

<sup>43</sup> *Dworken v. Apartment House Owners Ass'n*, 38 Ohio App. 265, 176 N.E. 577 (1931); *State Bar v. Retail Credit Ass'n*, 170 Okla. 246, 37 P. 2d 954 (1934); *Washington State Bar Ass'n v. Washington Ass'n of Realtors*, 41 Wash. 2d 697, 251 P. 2d 619 (1952).

<sup>44</sup> Turley, *Realism and Romanticism in the Philosophy of Illegal Practice*, 20 TEXAS B. J. 23 (1957); Canons of Professional Ethics of the American Bar Ass'n, especially canons 27, 34, 35, and 47. Rule XXVIII, Supreme Court of Ohio, Rules of Professional Conduct, which "commends" the canons of the American Bar Ass'n. This rule supplements but not not supplant the canons of the American Bar Ass'n. according to *In re Petition of the Committee on Rule 28*, 29 Ohio N. P. (n.s.) 291 (Ct. App. 1932).

<sup>45</sup> 27 OHIO BAR 1046 (1954).

<sup>46</sup> Peluso, *An Unlawful Practice Program That Works*, 26 N.Y. BAR BULL. 67 (1954).