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UNAUTHORIZED PRACTICE OF LAW

By TAYLOR E. GRONINGER*

At first blush, many people are inclined to regard lawyers solely as "fee grabbers," who protest against corporations such as banks and trust companies, collection agencies, real estate agencies, other lay agencies and laymen, practicing law.

But proper consideration of the matter should convince all fair-minded people that such lawyers, aside from the fee question, are acting in the interest* of the public welfare.

Under our plan of government, all powers of government are divided into three departments—one of which is the judicial, and to this department is given the judicial power—the highest power in government.

Lawyers are a necessary part of the judicial system. They take an oath of office and become officers of the court. They are subject to the Court's rules and discipline. They put in motion judicial power and take active part in judicial proceedings. Finally, they are the Court's aids in the administration of justice—the highest function of all courts.

Only natural persons can be licensed to practice law because only such can sustain the confidential relation of attorney and client; and only such can discharge a lawyer's duty to his client and to the court, in administering justice.

Public welfare demands that the practice of law, medicine, dentistry and the other professions, which require years of study and preparation, be a matter of purely personal right.

So, courts have ruled a corporation can neither practice law itself nor hire lawyers to do so for it any more than it can practice medicine or dentistry by hiring doctors or dentists to practice medicine or dentistry for it.

The practice of law is not a money-making business open to all, as is the grocery or shoe business. It is a personal right and privilege limited to those of good moral character

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and of professional qualifications, acquired through years of hard study.

The right is in the nature of a franchise conferred by the State for merit; to be exercised for the general welfare of the State; and is a property right subject to injunctive protection.

This right cannot be inherited, purchased or assigned, but must be an earned right, maturing after years of study and good conduct. The right attaches to the individual and ends with his death.

This right cannot be had by a corporation for several reasons (in addition to statutory inhibitions) :

- (1) A corporation (an artificial person) can not possess professional qualifications nor have a good moral character;
- (2) A corporation can not take the lawyer's oath of office and become an officer of the court;
- (3) A corporation can not be subject to court discipline;
- (4) A corporation can not sustain the relation of trust and confidence that must exist between an attorney and client; and
- (5) A corporation can not aid the court in the administration of justice.

Nor can the right to practice law be given a corporation to employ competent lawyers to practice law for it, because a lawyer owes an undivided allegiance to his client. The lawyer employed by a corporation to practice law for it owes his first allegiance to his employer—the corporation.

A lawyer must have but one master to serve, and that—his client.

His allegiance to his client can not be divided. Therefore, he can not serve his employer, if a corporation, first, and the litigant (client) second. Public protection and welfare demand that this be not done. And the bar, an institution of the highest usefulness in this country, ever jealous of law and order, would be degraded by permitting corporations to employ lawyers, however competent, to practice law for them.

Banks, trust companies, collection agencies, real estate agencies, notaries public and other lay agencies have their

legal spheres and should limit their activities to their lawful fields. The welfare of the State demands that they desist from those practices that fall in the realm of the practice of law.

And, lest we forget: Recent history teaches the fallacy of banks and trust companies thinking they can engage in business outside their spheres; and the financial losses of their depositors furnish convincing proof of such fallacy.

The health of the citizens of the State can no more be entrusted to "witch doctors" than law and order, or the legal rights of our citizens, can be placed in the custody of lay agencies, strangers often to America's greatest legal word—justice.

The citizens of Indiana should know they are deeply interested in the bar of Indiana and the courts. For the judicial system of the State affords the final refuge of citizens in the protection of their legal rights and the redress of their wrongs.

The practice of law is not a contest of wits. It is the application of established legal principles to a given state of facts. Its final goal is justice.

What is the practice of law? For the lack of a more explicit definition, the following approved by the American Bar Association is here offered:

"The practice of law is any service, involving legal knowledge, whether of representation, counsel or advocacy, in or out of court, rendered in respect of the rights, duties, obligations, liabilities, or business relations of the one requesting the service."

It is to be especially noted here that the practice of law is not limited to court proceedings.

The unauthorized practice of law is rendering the service described in the foregoing definition without being licensed to practice law.

To render such service without being licensed constitutes a contempt of court because the wrongdoer affronts the court by usurping a privilege solely within the power of the court

to grant; and to render such service is an invasion of a right belonging to duly licensed attorneys.

The determination of what constitutes practice of the law is a "judicial function"; and regardless of statutes, courts have the inherent power to protect the judiciary, the administration of justice, their officers and the right of licensed attorneys—against all unauthorized practice of the law.

Legislative enactments may aid the courts in the discharge of this judicial function; but such enactments can not limit or curtail the power of the courts in the exercise of the function, for this would be usurpation of judicial power by the legislative department, and legislation resulting from such usurpation is unconstitutional and void.

The Bar of Indiana has not been as alert in the effort to stop the unauthorized practice of law as have the bars of other states of the Union. The interest of attorneys in this matter needs arousing.

Mr. George E. Brand, of the Detroit (Mich.) Bar, has rendered a valuable service to the legal profession in collecting the many decisions of the country on the subject in his very excellent volume, "Unauthorized Practice Decisions." A copy of this book should be accessible to the members of every local bar association of Indiana. Recently, the Indianapolis Bar Association purchased ten copies for the use of its Committee of Unauthorized Practice of the Law.

The book contains 237 cases, all except two of which are in jurisdictions other than Indiana.

These cases, covering over 700 pages of decisions, deal with banks, trust companies, collection agencies, real estate agencies, automobile associations, adjusters, ambulance chasers, undertakers, notaries public, ex-justices of the peace, a probate court clerk, *et al.*—charged with the unauthorized practice of law.

The remedies used were injunction, contempt citation and *quo warranto*.

A brief reference to a couple of decisions digested by Brand may stimulate interest in the many other decisions of his excellent book:

(1) In Idaho, an ex-probate judge, of five years' service as such judge but who had never been admitted to the practice of law in any court of the state, and who gave legal advice and attended to legal matters for several years after leaving the probate bench, was fined \$250.00 for contempt of court. A statute of Idaho made it contempt of court to practice law without having been admitted to the bar.

(2) In Florida, the defendant in the case was the clerk of the county Judge's court (the court of probate). She was charged with practicing law by advising others as to the law concerning decedents' estates, estates of minors and insane persons and by preparing various papers involving legal knowledge and skill in their preparation. She made no charge for such legal work other than to collect the fees prescribed by law.

The court entered a permanent injunction against her, restraining her from practicing law in any manner and particularly from doing the things charged against her as aforesaid.

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