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Further Light on the Practice of Law

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+ + + *Dicta Observes* + + +

FURTHER LIGHT ON THE PRACTICE OF LAW*
In Alabama

The Legislature of Alabama passed an Act regulating and defining the practice of law, approved July 20, 1931.

It is interesting to note that the practice of law by individuals and collection and adjustment agencies and bureaus in that line of business, is covered by paragraph (d) of Section 2 of the Act which reads as follows: "Whoever * * *

(d) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense; is Practicing Law."

On May 26, 1932, the Supreme Court of Alabama affirmed the Circuit Court of Jefferson County in excluding and prohibiting Bernard Berk, a collection agent, from the practice of law in the collection business until he has become a lawyer. (*State of Alabama, ex rel, R. Dupont Thompson vs. Bernard Berk.*)

In affirming the judgment the Supreme Court held that it is the practice of law per se whenever the collection agent as a vocation solicits for adjustment, collection or compromise of defaulted, controverted or disputed accounts, claims or demands, he not being at that time an employee in the ordinary sense of the holder of the claim, and in the handling of such claim the collector threatens suit, collects collection fees from the debtor, or whenever in his judgment expedient he turns over *to his attorney* his claim for prosecution in court.

The Act of the Legislature above referred to is specific in including the Justice of the Peace Court as a tribunal where one may not practice law unless licensed so to do.

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*By ROY O. SAMSON, of the Denver Bar.

In Washington

Sager Stanley was a resident of Woodland, Cowlitz County, Washington. He was a notary public and a licensed and bonded real estate agent and broker. He had

"engaged in the business of drawing various instruments for compensation, prepared community property agreements for compensation, and in connection with the preparation of such instruments he advised clients that upon the death of one of the parties to the agreement the property would accrue to the other without the necessity of probating the estate. He had drawn wills for compensation and had been paid for drawing many warranty and quitclaim deeds. If the clients did not know what kind of a deed they wanted, he advised them of the different kinds. He prepared claims of lien for others and gave advice as to the place and time they should be filed and upon whom and when they should be served. He also drew conditional sales contracts, informed clients under what conditions the property was being sold and the respective rights of the parties. He advised clients of the necessity, time and place of filing chattel mortgages and conditional sales contracts. He drew other contracts for compensation. He believed he had the right to draw articles of incorporation and would do it for compensation. He gave legal advice for nothing."

Stanley was thereafter made defendant in a suit to enjoin him from practice of law without a license. The superior court of Cowlitz County found that the conduct of the defendant in so carrying on his business was practicing law, and enjoined him therefrom.

The decree of the court, however, was without prejudice to the right of the defendant so long as he remained a duly authorized Notary Public to take acknowledgments and affidavits and to do the necessary scrivener work in connection therewith and to draw up simple deeds, simple mortgages and simple contracts and similar simple instruments.

An appeal was taken from that portion of the decree and the Supreme Court held that in view of the proof that Stanley was giving legal advice, the trial court erred in holding that the decree should be without prejudice to his right to draw simple deeds, simple mortgages, simple contracts and similar simple instruments and that that portion of the decree from which appellant had appealed was erroneous and should not have been embodied therein, and the case was remanded with instructions to modify the decree in accordance with the opinion. (*Paul et al vs. Stanley,* 12 Pacific (2nd) 401.)

In Oklahoma

Oklahoma seeks an interpretation of the practice of law by collection agencies and presents the following situation:

"A corporation was organized as a so-called Credit Exchange, for the purpose of furnishing its stockholders or members with credit information and collection service. It secures its business from its members and solicits business houses, professional men and others, who have accounts to be collected, to become stockholders or "members." It does a very large collection business and, when ordinary methods of collection fail, secures permission from the creditor to start suit. The suit is started in a municipal court of inferior jurisdiction by employees who are not lawyers, who file the necessary pleadings, and where there is no appearance, take default judgments.

This Credit Exchange retains a firm of attorneys, who furnish it general advice, attend to its corporate matters, draft forms for it, and attend to the general legal work that comes up in connection with the operation and conduct of its business.

If there is an appearance in the cases which the Credit Exchange has sued, the matter is set for trial and the firm of attorneys is engaged to handle the contested case and secure judgment. These attorneys bill the exchange for their services in each case, the amount of which bill is added to the charge made to the client by the exchange."

The question is presented as to whether the attorneys may properly accept employment to try these contested cases, or whether their employment by such a lay intermediary, who solicits business for itself (and, indirectly, for these lawyers) is prohibited by Canon 35. It is argued that the lawyers are not assisting the Credit Exchange to practice law, because it is contended that the work done by the credit exchanges and its lay employees, in preparing the pleadings, filing suit, etc., in the municipal court, is not practicing law. In support of this position it refers to an opinion of the attorney-general of the state, who holds that one may practice in the *municipal court* in question without being a duly licensed attorney, though that opinion admits that the question had not been directly passed upon by the supreme court of the state.

A lawyer is rendering professional services, when he tries an action in a court of law irrespective of whether or not the statutory law governing that particular court prohibits any one, other than lawyers and litigants, from conducting such trials.

The conduct described in the question states a clear case of the professional services of a lawyer being controlled and

exploited by a lay agency and such conduct is contrary to Canon 35. The express exemption from condemnation in Canon 35 of "The established custom of receiving commercial collections through a lay agency" has no application since an actual trial in a "court of law" is not a "commercial collection," even though the subject matter of such trial may be the same as that of an attempted commercial collection.

In addition the committee is of the opinion that the institution of suits on behalf of others in *any* court of law is "practicing law," irrespective of whether the statutory law governing that particular court prohibits the institution of such suits by persons other than lawyers or not. Lawyers should not aid or participate in any way in the practice of law by laymen or lay agencies, nor should they in any way sanction the same or profit therefrom. The conduct described in the question is improper, for the attorneys, by their actions, are fostering the practice of law by a lay agency, as well as aiding therein and profiting therefrom.

(From opinions of Committee of American Bar Association on Professional Ethics: Okla. State Bar Journal, June, 1932.)

In Massachusetts—Judiciary vs. Legislative Control

On March 29, 1932, the Massachusetts State Senate submitted to the Supreme Judicial Court of that state certain questions relating to a bill dealing with the admission of persons to practice law. In answer to the Senate the court stated among other things:

"There is nothing in the Constitution, either in terms or by implication, to indicate an intent that the power of the judiciary over the admission of persons to become attorneys is subject to legislative control. . . . The inherent jurisdiction of the judicial department over attorneys, although recognized by statute, is nevertheless inherent and exists without a statute. . . . Numerous statutes have been passed making provision in aid of the judicial department in reaching a proper selection of those qualified for admission as attorneys to practice in the courts. . . . They have been enacted to enable the courts to perform their duties. They have been enacted, also, in the exercise of the police power to protect the public from those lacking in ability, falling short in learning, or deficient in moral qualities, and thus incapable of maintaining the high standard of conduct justly to be expected of members of the bar. . . . Statutes respecting admissions to the bar, which afford appropriate instrumentalities for the ascertainment of qualifications of applicants, are no encroach-

ment on the judicial department. They are convenient, if not essential. . . . When and so far as statutes specify qualifications and accomplishments, they will be regarded as fixing the minimum and not as setting bounds beyond which the judicial department cannot go. . . ."

In Colorado

"It is elementary that a corporation can only appear by an attorney. A corporation is incapable of personal appearance. . . . A wise public policy has uniformly maintained these or similar statutory provisions regulating the practice of law for the protection of citizens and litigants in the administration of justice, against the mistakes of the ignorant, on the one hand, and the machinations of unscrupulous persons, on the other, and as long as these salutary provisions remain as the law of the state for our guidance, we cannot allow an action to be commenced and prosecuted through the courts by one who is denied the privilege of an attorney and counselor at law." (*Bennie vs. Triangle Ranch Company,* 73 Colorado @ 588.)

It is the opinion of the writer, however, that in all of these collection agency situations, where the attorney is a salaried employee of the agency, it is not possible to reach a point where the attorney can divest himself of his relation of paid employee and assume his character of the disinterested attorney and counselor. The agency practices law when it pays an employee to perform legal services on its behalf and for its direct pecuniary benefit, and the role of paid employee or agent cannot be discarded as a matter of convenience.

In General

A recent publication by Frederick C. Hicks, Professor of Law, Yale University, "Organization and Ethics of Bench and Bar," contains a very complete resume of cases dealing with the unauthorized practice of law. More than twenty-five pages are devoted to the subject and reference is made to cases in California, New York, Tennessee, Georgia and Illinois, with a great number of additional cases cited.

Make the most of yourself, for that is all there is of you.—*Emerson.*

The function of culture is not merely to train the powers of enjoyment, but first and supremely for helpful service.—*Bishop Potter.*

Be a life long or short, its completeness depends on what it was lived for.—*David Starr Jordan.*

July 20, 1932.

Mr. Hamlet J. Barry,
Chairman of the Special Committee of the Denver Bar Association on Elimination of Unnecessary Delay in Procedure,
904 Equitable Building,
Denver, Colorado.

My dear Mr. Barry:—

Your letter under date of March 30, 1932, addressed to me, was duly received and contents noted, together with the report of your special committee, consisting of Kenneth Robinson, Carle Whitehead, Bentley McMullin, Louis A. Hellerstein and yourself, as Chairman, also the minority report signed by Carle Whitehead.

The said report was presented by me to the next meeting of the Judges en banc, considered and discussed at some length, and the matter was held over for further consideration. I further call your attention to the fact that the articles referred to under paragraph 5(c) by Carle Whitehead, Esq., in collaboration with Albert L. Vogl, Esq., appearing in the January issue of "Dicta" on page 76, and also the article by Hudson Moore of the Denver Bar, appearing in the March issue of "Dicta" on page 129, were also considered and the matter came on for further consideration before the Court en banc on the 14th day of April, 1932.

I wish to express to you and each member of the Committee, also to Mr. Albert L. Vogl and Mr. Hudson Moore, the appreciation of the Court for your manifest and painstaking care in preparing this report and these articles, which have been carefully considered and given the attention they deserve. However, after consideration of the subject, the Court en banc was unanimously of the opinion that the practice as laid down by our Code of Civil Procedure and the Rules of Practice of the District Court of this district, as heretofore printed and revised to date, are better—all things considered—than the changes suggested.

Among the reasons spoken of by one or more of the Judges, are as follows:—

1. In our opinion, there is no needless delay at the present time in civil trials resulting from the filing of successive motions and demurrers. Such motions and demurrers can be promptly noticed for hearing and heard with the result that notwithstanding the great majority of them are overruled as not well taken, but nevertheless, the argument, discussion and citation of authority usually results in a better understanding of the case by Court and counsel.

2. The point should not be overlooked that some reasonable delay in getting to issue is not, on the whole, time lost as it gives litigants an opportunity to consult with their respective counsel, and through them, with each other, with the result that, on the whole, the records of the Court show that many times as many cases are settled amicably and compromised after suit has been filed than are actually contested.

3. Referring particularly to the so-called "Single Calendar System" as contrasted with the "Multiple System", as referred to in Mr. Hudson Moore's said article, it is said among other things on page 132 that "The stock objection to the Single Calendar System is that a judge who hears a motion or demurrer is best qualified to try all issues in the case". The consensus of opinion of the Court en banc was that that objection as applied to this Court under present conditions is well taken.

4. In connection with the foregoing, it may be that the "Single Calendar System" may work very satisfactorily in some jurisdictions where they have a greater volume of business, and a greater number of judges, such as Chicago, Illinois or Los Angeles, California, but we understand from hearsay, through attorneys and other information, that those courts that operate under this "Single Calendar System" are much farther behind with the dispatch of their business relatively, than this Court.

5. We are unanimously of the opinion, after checking over our dockets and records of the Clerk's Office, that there is no "needless delay" in getting cases at issue and trial where the attorneys in the cases avail themselves of their right and privilege to promptly move for the setting and hearing of each motion and demurrer as soon as it is filed, and promptly

moving for setting the case for trial to court or jury as soon as the case is at issue.

6. Among the objections considered by the Judges en banc to the "Single Calendar System" is the fact that that would entirely eradicate and change our system of assigning of cases to different Divisions in open Court by lot, as provided by Rule 2 of the Court Rules, which in our opinion is working very satisfactorily, both to Court and counsel.

Respectfully submitted,

GEO. F. DUNKLEE,
Presiding Judge of the
District Court.

AN APOLOGY

Dicta regrets that in the last issue the author of the article entitled "New Provisions of the Revenue Act of 1932 Relative to Federal Income Taxes" was noted as "Arthur J. Lindsay" instead of "Alexander J. Lindsay," who was the writer of the same.

DICTA DISSERTATIONS

Our destiny is our own and it must be worked out—perhaps in fear and trembling—in our own way. If there be a cherished American doctrine the controlling question must be: Is it right? If yea, then let us stand by it like men; if nay, have done with it and move forward to other issues.—*William McKinley.*

Let us not concern ourselves about how other men will do their duties, but concern ourselves about how we shall do ours.—*Lyman Abbott.*

However good you may be you have faults; however dull you may be you can find out what some of them are, and however slight they may be you had better make some—not too painful, but patient efforts to get rid of them.—*Ruskin.*

You are either a magnet that attracts all things bright, desirable, healthy and joyous—or one that draws all things disagreeable, gloomy, unhealthy and destructive.—*Quigley.*