Denver Law Review

Volume 9 | Issue 9 Article 3

January 1932

Dicta Observes

Dicta Editorial Board

DICTA

Vol. IX JULY, 1932 No. 9

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WHO MAY PRACTICE, AND WHAT CONSTITUTES THE PRACTICE OF LAW*

A review of bar journals and publications from the nation at large indicates a growing tendency eventually to return the practice of law to the hands of those only to whom it was entrusted when Coke and Blackstone were names far more familiar than they now are, and one State Supreme Court apparently has found it necessary, at least advisable, to define what constitutes the practice of law.

Undoubtedly the incorporation of the ever-increasing multitude of associations and agencies for the purpose of using the practice of law as a business, and placing it on a level with a grocery, department store, or manufacturing establishment—wholly disregarding that the law is a profession, the conduct of which must be kept on the highest plane—has caused the leaders of the bar to pause and consider whether it may not be time to find out where we are drifting.

When I refer to the practice of law as a business I mean the great number of agencies or associations which are ostensibly collection agents but which purchase accounts and thereby become directly and pecuniarily interested in the subject matter later to be discussed with a debtor or third party and in any litigation which may arise, which hire one or more attorneys at a fixed yearly salary to collect their pecuniary interest in the legal business which it is transacting.

It was recognized in the earliest days of the law that the counselor should have no pecuniary interest, other than his fee, in the matter entrusted to him, and champerty and maintenance were the barriers erected against the practitioner who

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otherwise might have disregarded the high ethics of his profession.

Nearly every state forbids one to practice law unless duly qualified and licensed, under penalty. Few states have thought it necessary to define the practice of law and it may become necessary for future legislatures, or state supreme courts, to follow the example of the Supreme Court of Georgia, in the recent case of Boykin, Solicitor General vs. Hopkins, et al, which practically changed the definition of what constitutes the practice of law in that state as it was fixed by the decision in Atlanta Title & Trust Co., vs. Boykin, 172 G. 437, in which the court confined the work of the lawyer to that *in the courts* and practically left the outside to anyone who desired to practice, but the recent case declares

"we are of the opinion that the practice of law at the time the application for charter in this case was made, was not confined to practice in the courts of this State; but was of larger scope, including the preparation of pleadings and other papers incident to any action or special proceedings in any court or other judicial body, conveyancing; the preparation of all legal instruments of all kinds whereby a legal right is secured; the rendering of opinions as to the validity or invalidity of the title to real or personal property, the giving of any legal advice; and any action taken for others in any matter connected with the law."

In that connection it is interesting to note the action of the General Assembly of Virginia for 1932. Prior to 1932 the practice of law in Virginia was apparently confined to acts done *in court* but the General Assembly this year broadened the scope so as to include

"improper solicitation of any legal or professional business or employment either directly or indirectly; also providing that contracts secured for attorneys by runners and cappers shall be void, and providing penalties therefor; defining a runner or capper as any person, firm, associate, or corporation acting in any manner or in any capacity as an agent for an attorney at law in the solicitation or procurement of business for such attorney at law, etc."

By analogy there is but little difference between the situation thus sought to be reached by the Virginia legislature, and the act of the various collection agencies in advertising that they maintain a legal department, or advertising the purchase and collection of accounts in which they have a pecuniary interest.

It is elemental, and fundamental, that a corporation or association cannot practice law for the reason that it cannot

comply with the requirements which are imposed upon individuals as prerequisites to enable them to obtain license to practice. The great weight of decisions of almost all of the states of this country agree with the above proposition in denying corporations the right to practice.

One collection agency in this city advertises that it maintains a legal department. Another agency sends out collection letters somewhat in simulation of process and in a column provided therefor lists the amount of the indebtedness and a fixed "docket fee" in addition and thus may mulct an ignorant or uninitiated individual. Another agency used to issue collection demands strongly simulating process but discontinued the form of the letters when complaint was referred to a grievance committee. Still other agencies offend in various ways.

There are numerous individuals who appear daily in our justice of the peace courts as assignees of claims, who prepare a complaint, try the issues of a case, assume to know the law and rules of practice, appeal an unfavorable decision to the county court and actually practice law without other qualification or license.

So far as Colorado is concerned, Sec. 6017 C. L. 1921, provides punishment for contempt of the supreme court for any unlicensed person who practices law in *courts of record.* Does the rule of strict construction of a penal statute permit unlicensed persons to practice in justice of the peace courts, the latter not being courts of record, or is the power of our Supreme Court sufficiently plenary to regulate and control the practice of law in the justice courts? Our constitution gives the Supreme Court a general control over all *inferior* courts, and Supreme Court Rule 83c forbids practice in justice of the peace courts of disbarred attorneys and applicants for admission to the bar rejected because unable to show good character. But, did the Supreme Court by the passage of that rule and its specific prohibition against a certain class of persons feel that there was a question of its power otherwise to regulate the practicing personnel of such courts?

It could hardly be so construed, as the disbarred attorney has resumed his role of a layman and the rejected applicant never has departed therefrom, and if such individuals can be barred from the justice courts for moral unfitness, lack of

preparation to acquire the mental qualifications requisite for admission to the bar of this state, as well as failure to become licensed to practice, should be sufficient to bar the rest of the laymen.

"Lawyers have been the object of criticism since first they made their appearance, but not until they had become group conscious and organized did they become articulate on this issue. In associations they began to discover their weaknesses and their strength. Once launched, the movement toward bar organization spread rapidly into a network of state and local associations and a national association. These associations, while they devote time to the discussion of problems inherent to the profession, and to matters social, give attention to definitions of professional objectives. They have formulated codes of ethics; they have been influential in setting standards for admissions to the bar; they have advocated the disbarment of undesirable members; and, through committees and representatives, they have pressed these issues before the courts. Many of their efforts, no doubt, are futile and ill-conceived. Much that is desirable they leave untouched and undone. But with all, they are today conscious, at least on the part of many of their leaders, that the bar must improve its situation in the public esteem or relinquish its position of leadership in public affairs. And with this there has come a feeling, faltering at first but growing in intensity, that one of the faults of the profession lies in the ethical and mental caliber of its membership".

(In the BAR EXAMINER, May 1932, by Albert J. Harno, Dean, College of Law, University of Illinois).

For many years the members of the legal profession swayed and guided the destinies of the nation and of the states, because the profession was held on a high plane and was so regarded, but in later days the attorney has acquired some disrepute. Efforts should be made looking towards the restoration of our profession to its former high estate. With proper co-operation the unlawful practice of the law can be stopped.

The Chicago Bar Association, aroused by charges of incompetency and corruption against judges and lawyers, has started four investigations to "rid the legal profession of any hint of racketeering." Vouchsafing absolute justice, leaders in the inquiry promised today to "vindicate any judge or lawyer who deserves it but to condemn those against whom conclusive evidence is found."

In 1931 changes in rules for admission to the bar were made in twenty-five states, the great majority of the changes making for higher standards, but when one learns from the

report of the Justice Court Committee (Dicta, June, 1932) that our justice court cases alone for the past two years averaged 690 civil cases monthly, one can appreciate that the effort of bar associations to restore the confidence of the people in the profession is meeting a serious obstacle when the law is being used as a business by corporations and individuals otherwise unqualified as counselors at law and certainly unlicensed and not permitted to practice in courts of record.

The broadest mind, and the most charitably inclined person will agree that the conduct of collection agencies and laymen-assignees as above related amounts to the practice of law as a business, and if such conduct cannot now be reached by statute, or by the power of a supreme court to regulate and control the practice of the law, it is time the legislature should enact statutes closing the justice of the peace courts to all except licensed attorneys, and defining what acts and conduct constitute the practice of law.

NOTICE

Mr. F. D. Stackhouse, Clerk of the Denver District Court calls attention to the following schedule and dates during which the various Judges will hold Court during the summer vacation period:

June 27th, 1932 to July 9th Inc., Judge Charles C. Sackman,
July 11th, 1932 to July 23rd Inc., Judge E. V. Holland,
July 25th, 1932 to Aug. 6th Inc., Judge Henley A. Calvert,
Aug. 8th, 1932 to Aug. 20th Inc., Judge J. C. Starkweather,
Aug. 22nd, 1932 to Sept. 3rd Inc., Judge George F. Dunklee.

All Divisions convene September 6th, 1932.