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WHAT IS LAW PRACTICE?

Utah Defines a Lawyer's Job to Meet Middle-Class Legal Needs

BY STEPHANIE FRANCIS CAHILL

A new Utah law defines law practice as what happens in a courtroom. That's troublesome to the Utah State Bar, but not as troublesome as you might think.

The ABA also has tried to define law practice, drawing critics who fear it would be anti-competitive and lead to higher prices for consumers. But bar leaders in Utah say their law is meant to do just the opposite. It reflects a legislative attempt to improve advocacy for people who can't afford to pay attorney fees, yet make too much money to qualify for legal aid.

"This is an attention-getter," says Utah Rep. Stephen Urquhart, a St. George attorney and one of the bill's sponsors.

The law allows nonlawyers to perform out-of-court services such as real estate closings and preparation of wills. But the bar and the legislature hope they can come up with a better law—one without such a narrow definition—before this one goes into effect next year, says John C. Baldwin, executive director of the Utah State Bar.

UTAH'S DEFINITION

The Utah statute, set to take effect May 3, 2004, says:

1. The term "practice law" means appearing as an advocate in any criminal proceeding or before any court of record in this state in a representative capacity on behalf of another person.
2. Only persons who have been admitted by the supreme court of this state to practice law may practice or hold themselves out as licensed to practice law in this state.
3. A person may not use "J.D.," "Esq.," "attorney," or "attorney-at-law" on business cards, signs, advertisements, or official documents as those terms are used to indicate status as an attorney, unless licensed to practice law.

The law stemmed from a legislative spring cleaning a few years ago, Baldwin says, when lawmakers eliminated laws that contradicted the Utah Constitution, including one that conflicted with the state supreme court's authority.

"In the process, they erroneously extinguished some laws prohibiting the unauthorized practice of law," Baldwin says. This new law was supposed to fix that problem. But at the same time, legislators were focusing on the legal needs of Utah's middle class, which the U.S. Census defines as a household with an annual income of at least \$45,000. The state supreme court appointed a commission to study the issue.

"Some legislators weren't satisfied with the progress of that commission, so last session, they introduced H.B. 349," Baldwin says. "They said it was not really intended to define the practice of law, it was intended to force the issue of creating greater access."

Lish Whitson, a Seattle lawyer, chairs the ABA's Task Force on the Model Definition of the Practice of Law. He commends the Utah Legislature and state bar for their interest in affordable legal services, but disapproves of the legislature's tactics.

"I've read the law, and I was fairly appalled," he says. "It just seems to me that it's a mischievous way to accomplish a goal. It's one of those clever knee-jerk things that perhaps could have been better thought through."

Baldwin says the law was also supposed to "force the bar to come to the table and come up with more specific ideas." Debra Moore, a Salt Lake City lawyer, chairs the Utah State Bar Task Force on Delivery of Legal Services, formed in July to do just that. She says the group will issue a final report soon, and it will include research from five focus groups. Moore says the focus groups expressed feeling a lack of control and access to the legal system. The groups also said they distrusted attorneys and didn't understand what lawyers do.

"People didn't always recognize when they even had a legal problem," Moore says. "They were afraid the services would cost more than they could afford, or more than it was worth to them."

Moore's group is likely to recommend that lawyers start negotiating more affordable fees and offering alternatives such as flat-fee billing and unbundled legal services, where attorneys only perform part of the work and the client handles the rest. Moore says the bar and Utah attorneys need to communicate with nonlawyers to let people know such services may be available.

"It's my premise that attorneys already do deliver services on an unbundled basis. What they don't do is advertise their willingness to do it," Moore says. "People see all the advertisements and have a sense that legal help is plentiful, but they don't know how to sort through and find the right attorney who is willing to work with them."

Charles Robert Brown, a Salt Lake City attorney who handles tax and business law matters, says the billing rate for a "top-level" Utah lawyer is between \$250 and \$300 an hour. Households that have a combined income of \$45,000 may not be able to afford too many hours of service at that price, but Brown says that he and many of his colleagues are willing to work with people. A member of the ABA's House of Delegates, Brown says he's disappointed that the ABA has not done more to help the middle class afford legal services.

"It has to be done," he says. "We're getting pressure to do so, and it's the right thing to do."

The ABA has a Standing Committee on Delivery of Legal Services, and the Litigation Section recently established a Modest Means Task Force. This year, ABA President Alfred P. Carlton Jr. created the Presidential Commission on Access to Lawyers and the Task Force on Lawyers Center for Personal Legal Services and Client Development.

"It's our hope that these two [presidential] initiatives will lead to better communication with our members about available ABA resources and create new resources as well, to help lawyers better serve clients of modest means," says Boston lawyer Mary K. Ryan, chair of the delivery of legal services committee.

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