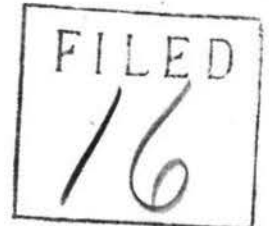


LAW PRACTICE: Agent may appear in justice court in representative capacity, but not for valuable consideration.

November 14, 1939

11-14

Honorable Paul N. Chitwood  
Prosecuting Attorney  
Reynolds County  
Centerville, Missouri



Dear Sir:

We acknowledge your request for an opinion under date of September 2nd, as follows:

"What appears to me to be the illegal practice of law in this county, is quite prevalent. There is hardly a case filed in justice court but what there is from one to two or more laymen appearing for parties, and attempting to act as lawyers in the cases.

Now I know that there are a new set of Supreme Court Rules, regulating the bar, and I do know that it is a criminal offense to practice law without a license, but not having access to the latest opinions of the courts, on just how far a layman may go and not be violating this law, I do not know. Under 1929 revised statutes, it did not appear to be an offense for a layman to appear in a Justice of the Peace Court, and without pay.

It is sincerely hoped that appearing in a justice court is what has been defined as 'law business', and a violation of the law. This practice has gotten too common in this county and should be stopped; and will be stopped if the parties are actually violating the law. Your opinion in this matter is earnestly requested."

Section 2207, R. S. Mo. 1929, provides who may appear and conduct suits before justices' courts:

"Any plaintiff, except infants, may appear and conduct his suit either in person or by agent or attorney."

Section 2210 R. S. Mo. 1929, provides who may appear and defend suits before justices' courts:

"Every defendant in any suit, except infants, may appear and defend the same, in person or by agent or attorney."

In the case of Crescent Furniture Company, 28 Mo. App. 210, l. c. 213, the court said:

"A person can prosecute or defend in our courts either in person or by attorney, and in justices' courts he can do it by an agent who is not an attorney. \* \* \* \* \* The statute merely enables an agent, who is not an attorney, to conduct for his principal a proceeding just as he would do it if he were an attorney."

Section 11692, R. S. Mo. 1929, defines the terms "practice of law" and "law business" as follows:

"The 'practice of the law' is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.

The 'law business' is hereby defined to be and is the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever."

It is to be noted that in order to constitute the "practice of the law", the appearance must be before a "court of record".

Section 1826, R. S. Mo. 1929, sets out the courts of record in this state.

"The supreme court of the state of Missouri, the courts of appeals, the circuit courts, the county courts and the probate courts in this state shall be courts of record, and shall keep just and faithful records of their proceedings."

Justices' courts, not being courts of record, the appearance of an agent who is not an attorney, to conduct or defend a suit for his principal, would not constitute the "practice of the law".

When, however, an agent who is not an attorney appears in a justice court to conduct or defend a suit for his principal, and he acts "in a representative capacity" and "for a valuable consideration" he is clearly engaged in the "law business" which is forbidden by Section 11693, R. S. Mo. 1929, and punishable as a misdemeanor.

## Section 11693 provides:

"No person shall engage in the 'practice of law' or do 'law business,' as defined in section 11692, or both, unless he shall have been duly licensed therefor, and while his license therefor is in full force and effect, nor shall any association or corporation engage in the 'practice of the law' or do 'law business' as defined in section 11692, or both. Any person, association or corporation who shall violate the foregoing prohibition of this section shall be guilty of a misdemeanor and upon his conviction therefor shall be punished by a fine not exceeding one hundred dollars and costs of prosecution and shall be subject to be sued for treble the amount which shall have been paid him or it for any service rendered in violation hereof by the person, firm, association or corporation paying the same within two years from the date the same shall have been paid and if within said time such person, firm, association or corporation shall neglect and fail to sue for or recover such treble amount, then the state of Missouri shall have the right to and shall sue for such treble amount and recover the same and upon the recovery thereof such treble amount shall be paid into the treasury of the state of Missouri. It is hereby made the duty of the attorney-general of the state of Missouri or the prosecuting attorney of any county or city in which service of process may be had upon the person, firm, association or corporation liable hereunder, to institute all suits necessary for the recovery by the state of Missouri of such amounts in the name and on behalf of the state."

For a discussion as to what constitutes "valuable consideration" under Section 11692, supra, see *State v. St. Louis Union Trust Company*, 335 Mo. 845, 74 S. W. (2d) 348, 1. c. 355.

September 12, 1939

From the foregoing, we are of the opinion that an agent who is not an attorney may appear in a representative capacity in a justice court to conduct or defend suits for a principal, but if said appearance is for a "valuable consideration" same constitutes "law business" and is punishable as a misdemeanor under Section 11693, R. S. Mo. 1929.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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