

LAW PRACTICE: Individual merchant is not practicing law when representing himself in a court of record. Collection agency is practicing law when attempting to collect an account of a merchant in the magistrate court on a contingent basis.



January 28, 1958

Honorable George Q. Dawes  
Prosecuting Attorney  
Iron County  
Ironton, Missouri

Dear Mr. Dawes:

This will acknowledge receipt of your request for an opinion which, for sake of brevity, we shall restate:

You inquire if a collection agent is practicing law without a license, in view of Section 484.010, RSMo 1949, if said agent takes over the collection of accounts of a merchant on a 50% contingent basis and does not remit to said merchant until judgment has been entered and he has fully collected said account. Furthermore, said agent files a pleading in the magistrate court indicating that he has purchased the account and sets out his claim praying for judgment of the full amount of the account. You further inquire if an individual merchant may personally file his claim in the magistrate court for a delinquent account, and the clerk get out a summons on the claim to creditors, and judgment rendered in the cause.

Section 484.010, RSMo 1949, defines the practice of law as well as law business. Said section reads:

"1. 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.

"2. 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

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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."

Section 517.180, RSMo 1949, relating to magistrate courts, provides that any plaintiff or defendant, except infants or persons of unsound mind, may appear and conduct their suit or defense either in person or by attorney. However, they may not appear by agent.

Prior to 1941, Section 2593, RSMo 1939, relating to justice of peace practice, authorized not only the principal and attorney to appear and conduct a suit for a principal, but it could also be done by an agent of the principal. The General Assembly, in 1945, amended said statute and an agent is no longer included in the statute authorizing him to represent a principal.

A justice of the peace court was not considered a court of record, but the Legislature has now declared by statute that a magistrate court is a court of record. Section 476.010, RSMo 1949.

In G.J.S., Vol. 7, Section 16, pages 724, 725, the general principle is stated that one not licensed to practice law cannot represent a client in a court of record as attorney or agent. Section 16 reads, in part:

"In the absence of constitutional or statutory authority, a person who has not been admitted as an attorney cannot practice law, as by representing a client, in a court of record, either as an attorney or as the agent of his client. A person who has no right to practice law directly cannot do so indirectly by employing licensed attorneys to practice for him."

In Clark v. Austin, 101 S.W.2d 977, 1.c. 982, the court lays down a general rule or yardstick to determine whether or not one is engaged in the practice of law, as follows:

"It would be difficult to give an all-inclusive definition of the practice of law, and we will not attempt to do so. It will be sufficient for present purposes to say that one is engaged in the practice of law when he, for a valuable consideration, engages in the business of advising persons,

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firms, associations, or corporations as to their rights under the law, or, appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies, and there, in such representative capacity, performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law. Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged, performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law. Rhode Island Bar Association et al. v. Automobile Service Association, 55 R.I. 122, 179 A. 139, 100 A.L.R. 226; People ex rel. Illinois Bar Association et al. v. People's Stock Yards State Bank, supra; Fitchette v. Taylor, 191 Minn. 582, 254 N.W. 910, 94 A.L.R. 356; In re Duncan, 83 S.C. 186, 65 S.E. 210, 24 L.R.A. (N.S.) 750, 18 Ann. Cas. 657; Boykin v. Hopkins, 174 Ga. 511, 162 S.E. 796."

In Liberty Mut. Ins. Co. v. Jones, 130 S.W. 2d 945, 1.c. 955 [8-12], the court held that while a layman may represent himself in court, he cannot, even on a single occasion, represent another, whether for a consideration or not. In so holding, the court said:

"It must be admitted that many definitions of the 'practice of law' include acts done both in and out of court, including services where no litigation is in prospect. Nevertheless there are fundamental differences between the practice of law - in the sense of court work - and law business. While a layman may represent himself in court, he cannot even on a single occasion represent another, whether for a consideration or not. And a corporation cannot represent itself in court at any time but must appear by attorney. On the other hand the doing of any single act out of court in a representative capacity that a lawyer might do will not necessarily convict a layman of engaging in

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the law business. The very term itself implies that he must have engaged in the business or held himself out, as some cases say. Illustrative decisions are cited in the margin. The holding out may be evidenced by repeated acts indicating a course of conduct, or by the exaction of a consideration."

It would appear that so long as the merchant is appearing in his own behalf he is not in violation of any of the foregoing statutes. However, no agent who is not a licensed attorney can represent another. In view of the fact that the collecting agency has not purchased the account of said merchant, but is taking on the collection on a contingent basis, it definitely is attempting to practice law, contrary to said statutes.

#### CONCLUSION

Therefore, it is the opinion of this department that no violation of the law has been committed by an individual merchant filing a claim for himself in the magistrate court in the collection of an account. However, no collection agency which is not licensed to practice law may file and prosecute a claim of an individual merchant in the magistrate court on a contingent basis.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

ARR:mw

John M. Dalton  
Attorney General