

## HOW TO RESPOND TO ALLEGATIONS OF “UNAUTHORIZED PRACTICE OF LAW”?

Members of groups who are competent non-lawyers can assist other members of the group achieve the goals of the group or individual in court without being charged with "unauthorized practice of law". Laymen cannot be expected to know how to protect their rights when dealing with practiced and careful adversaries. (See, Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics. Brotherhood of Railway Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, 7, 84 S.Ct. 1113, 12 L.Ed.2d 89 (1964)(Laypersons can associate together under the First Amendment to help one another preserve and enforce rights granted them under federal laws and cannot be condemned as a threat to legal ethics or as unauthorized practice of law). See also, United Mine Workers v. Illinois Bar Association, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967); NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)(line of cases where U.S. Supreme Court held that a State may not pass statutes prohibiting the unauthorized practice of law or to interfere with the Right to Freedom of Speech, Association or Right to Redress Government for Grievances as secured by the First Amendment). Counsel of choice is also protected by the Ninth and Tenth Amendments, secured in the penumbra of these Amendments, particularly the Ninth Amendment, which is protected in the states. Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973)(this case also addressed the "capable of repetition, yet evades review" philosophy).

In the United States Supreme Court ruling in Brotherhood of Railway Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, 7 (1964):

"A State could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, cf. Gideon v. Wainwright, 372 U. S. 335, and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics. The State can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts to vindicate their legal rights. The right to petition the courts cannot be so handicapped."

See also, NAACP v. Button, 371 U.S. 415 (1963); Sperry v. Florida ex rel. Florida

Bar, 373 U.S. 379 (1963)(states may pass no laws on unauthorized practice of law).

The U.S. Department of Justice and Federal Trade Commission, which this letter will also be sent to, have addressed the use of non-lawyers to handle legal matters, and say that non-lawyers should be permitted to compete with attorneys. Competition will lead to lower prices, better products and services, and enhanced consumer choice. [http://www.ftc.gov/opp/advocacy\\_date.shtm](http://www.ftc.gov/opp/advocacy_date.shtm); [http://www.abanet.org/rppt/section\\_info/upl/FTCreProposedModelDefinition.pdf](http://www.abanet.org/rppt/section_info/upl/FTCreProposedModelDefinition.pdf); <http://www.ftc.gov/be/V070004.pdf>.

In its advocacy opinion letter to New York State Assemblywoman Helene E. Weinstein, dated April 27, 2007, the United States Justice Department/Federal Trade Commission stated the following with regard to New York Assembly Bill A01837 and A05596, <http://www.ftc.gov/be/V070004.pdf>:

"We are concerned that the proposed legislation, which would prevent non-attorneys from competing with attorneys in situations where there is no clear showing that non-attorney service providers have caused consumer harm, is not in the best interests of consumers."

The Justice Department and the FTC went on to say that they are entrusted with enforcing the federal antitrust laws:

" We work to promote free and unfettered competition in all sectors of the American economy. The United States Supreme Court has observed that "ultimately competition will produce not only lower prices, but also better goods and services. ' The heart of our national economic policy long has been faith in the value of competition. ".

Like all consumers, consumers of professional services benefit from competition and if competition to provide such services is restrained, consumers may be forced to pay increased prices or accept services of lower quality.

The Justice Department has obtained injunctions against other anticompetitive restrictions in professional associations' ethical codes and against other anticompetitive activities by associations of lawyers. See, United States v. Am. Bar Ass'n, 934 Supp. 435; Prof'l Eng'rs, 435 U.S. 679; United States v. Am. Inst. of Architects, 1990-2 Trade Cas. (CCH) Section 69, 256 (D.D.C. 1990); United States v. Society of Authors' Reps., 1982-83 Trade Cas. (CCH) 65, 210 (S.D.N.Y. 1982).

**Most significantly, the Justice Department and FTC found, a recent survey found**

**that complaints about unauthorized practice of law in most states did not come from consumers, the potential victims of harmful conduct, but from attorneys, who did not allege any specific claims of injury.** Deborah Rhode, Access to Justice: Connecting Principles to Practice, 17 GEO.J.LEGAL ETHICS 369, 407-08 n.24 (2004). See also HERBERT M. KRITZER, LEGAL ADVOCACY: LAWYERS AND NON LAWYERS AT WORK 50-51 (1998)(finding that in unemployment compensation appeals before the Wisconsin Labor and Industry Review Commission, "the overall pattern does not show any clear differences between the success of lawyers and agents"). See also, Joyce Palomar, The War Between Attorneys and Lay Conveyancers—Empirical Evidence Says "Cease Fire!", 31 CONN.L.REV. 423, 520 (1999).