

UNLICENSED PRACTICE OF LAW

Last revised: 5/24/2009

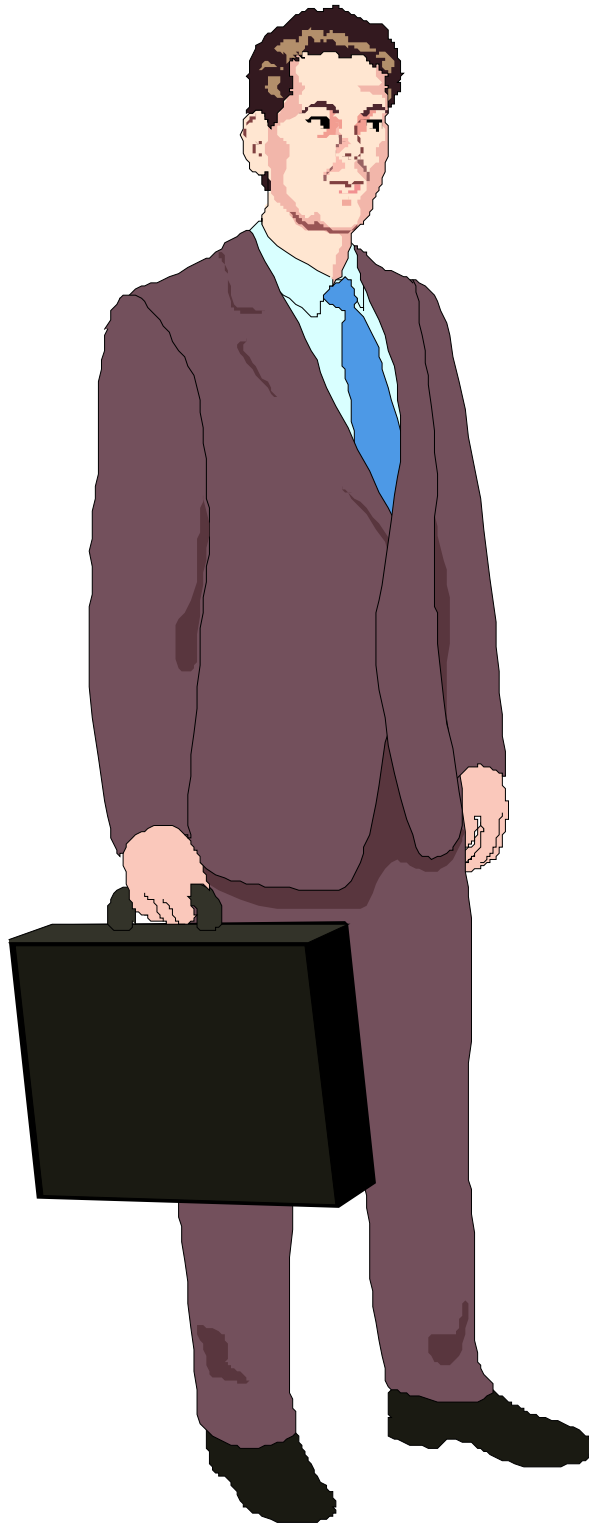


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1. Introduction

Those who have read the materials and information on our website frequently find themselves in the position of using them to litigate in a court of law in defense of the rights of their friends and family members. This can cause problems for them, because:

1. Information and resources on how to practice law without a license are not readily available.
2. Judges will try to unlawfully and frequently interfere with their ability to represent or assist others in legal matters.
3. The government-sanctioned corporate monopoly on law called the American Bar Association (ABA) may attempt to prosecute them for practicing law without a license.
4. Other members of the legal profession may look down upon them or discriminate against them based mainly upon the ignorance, prejudice, and false presumption generated in them by law schools that don't give them an adequate knowledge of law, legislative intent, or history.

This document will therefore provide copious authorities which allow freedom lovers everywhere to engage in the unlicensed RIGHT to practice law as "counselors at law", and to enjoy constitutional protections in said exercise that no state or federal court can lawfully interfere with. It will end with a series of questions for the government that you can present in court to the judge whenever he tries to argue that you are wrong. These questions are designed to silence the ignorance of foolish men about the subjects covered in this memorandum of law.

2. Licensing of Attorneys Generally

Lawyers are not a popular group among the general public, and the high price of legal services in part accounts for their poor reputation. A principal reason for those high prices is the lawyer's monopoly on providing legal services. Every state except Arizona has an "unauthorized practice of law" (UPL) statute that makes it illegal for anyone who does not meet the requirements set by state bars to render legal assistance. Lawyers invariably argue that UPL statutes serve the public interest. Wrote F. M. Apicella, J. A. Hallbauer, and R. H. Gillespy II in the American Bar Association Journal (1995), repealing UPL statutes "would result in the most unwary, guileless members of the public being incompetently represented and advised, if not victimized and defrauded."

But the notion that the best or only way to protect consumers of legal services is to prevent them from hiring people without bar membership is based on fundamental fallacies. First, it assumes that only governments can protect consumers. Second, it assumes that a government-sustained monopoly has no adverse effects that might offset purported benefits. And third, it ignores the mechanism that best protects the interests of all consumers—the free market.

All UPL statutes prohibit individuals from legally practicing law without bar membership. Bar membership, in turn, has four prerequisites for aspiring legal practitioners:

1. they must earn a college degree;
2. they must graduate from an approved law school;
3. they must pass the state's bar exam; and
4. they must convince the bar that they are "of good moral character."

Such criteria, however, did not always hold. According to Dietrich Rueschemeyer in *Lawyers and Their Society*, as late as 1951, 20 percent of American lawyers had not graduated from law school and 50 percent had not graduated from college.

Of licenses to practice law, the U.S. Supreme Court has said:

*A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection*239 Clause of the Fourteenth Amendment.* ^{FN5}
Dent v. State of West Virginia, 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623. Cf. *Slochower v. Board of Higher Education*, 350 U.S. 551, 76 S.Ct. 637, 100 L.Ed. 692; *Wieman v. Updegraff*, 344 U.S. 183, 73 S.Ct. 215, 97 L.Ed. 216. And see *Ex parte Secombe*, 19 How. 9, 13, 15 L.Ed. 565. A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. *Douglas v. Noble*, 261 U.S. 165, 43 S.Ct. 303, 67 L.Ed. 590; *Cummings v. State of Missouri*, 4 Wall. 277, 319-320, 18 L.Ed. 356. Cf. *Nebbia v. People of State of New York*, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940.

1 Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of
2 a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant
3 when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously
4 discriminatory. Cf. Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220.

5 FNS. We need not enter into a discussion whether the practice of law is a 'right' or 'privilege.' **Regardless of**
6 **how the State's grant of permission to engage in this occupation is characterized, it is sufficient to say that a**
7 **person cannot be prevented from practicing except for valid reasons.** Certainly the practice of law is not a
8 matter of the State's grace. Ex parte Garland, 4 Wall. 333, 379, 18 L.Ed. 366.
9 [Schwartz v. Board of Bar Exam of the State of New Mexico, 353 U.S. 232, 77 S.Ct. 752 (1957)]

10 **2.1 Occupational licensing is a Title of Nobility Prohibited by the United States Constitution** 11 **that Violates Equal Protection**¹

12 Occupational licensing upon attorneys acts as the equivalent of a Title of Nobility, which is prohibited by the Constitution
13 of the United States of America. One of the truly "sacred cows" of our society and a matter of great importance to all of us
14 is occupational licensing. You may not have previously thought about this issue in terms of the law of equality, but an
15 equality analysis is extremely relevant, even though a liberty of contract analysis would lead to the same conclusions. In
16 short, occupational licensing violates the unalienable right of equality.

17 The principles and concepts which are examined here apply to every kind of occupational licensing. In our nation today,
18 occupational licensing takes many forms, and is called by many names, such as certification, qualification, approval and
19 registration. Many kinds of professions, trades and occupations are licensed or regulated, including lawyers, physicians,
20 truck drivers, contractors and teachers.

21 Occupations are regulated or licensed at both the state and federal level. However, it does not really matter which level
22 applies for our purposes. The reason for that is two-fold. First, the law of the nature of equality applies to both state and
23 federal law. The Declaration of Independence establishes the legal context both for the nation and for every state. Both as a
24 matter of law, and as a matter of historical record, every state in the Union has bound itself to the legal framework
25 established by the Declaration. Second, the United States Constitution contains express language prohibiting both the
26 federal government and the states from granting any title of nobility.

27 Let us examine whether occupational licensing is a violation of the law of equality and is a form of title of nobility.
28 Consider the occupation most familiar to many of us, the legal profession. I submit that the present system of law school
29 accreditation and compulsory bar memberships, as well as the licensing of attorneys in general, is contrary to the law of
30 nature and is also unconstitutional.

31 This subject requires that we review the history of monopolies under the English common law. We generally have a wrong
32 view of monopolies today, which is evident by the way Congress has defined the law of antitrust. For example, the
33 Sherman Anti-Trust Act states:

34 "Every contract, combination . . . or conspiracy, in restraint of trade or commerce . . . is declared to be
35 illegal."²

36 Similarly, the Clayton Anti-Trust Act makes it illegal for businesses to charge different customers different prices for the
37 same goods or services, or to acquire another business whenever the effect is to lessen competition or to create a
38 monopoly.³ Essentially, these laws prohibit certain business contracts entered into by private parties.

39 But, in Blackstone's day, and in the world view of our American forefathers, a monopoly meant only one thing: an
40 exclusive privilege to engage in business which was granted by the king. In other words, every monopoly was created by
41 the civil ruler. A monopoly was not a private contract, or even a contractual issue, but a civil privilege, and therefore, an
42 equality issue. Thus, private parties could "corner the market," but they could never create a monopoly.

¹ Adapted from <http://www.lonang.com/conlaw/6/c67.htm>

² 15 U.S.C. §1 (1982).

³ 15 U.S.C. §§12-14 (1982).