The Unauthorized Practice of Law: A Texas Review

"All persons not members of the State Bar are prohibited from practicing law in this state . . . ." — Tex. Rev. Civ. Stat. Ann. art. 320a-1, § 10(a) (Vernon Supp. 1982).

BY GREGORY S. C. HUFFMAN

Power to Regulate the Practice of Law

Because of the need to protect the public from persons not competent to practice law, the state has a clear right to regulate the practice of law.[1]

> As society has become more compact the law has necessarily become more complex, requiring increased skill in its application. The Legislature in recognition of this fact has from time to time increased the prelegal and legal attainments required for admission to the Bar. These safeguards have been deemed necessary by the Legislature to protect the public against the loss of their liberty and property rights through ill advice from incompetent practitioners. It is readily apparent that it would serve no useful purpose to require high standards of efficiency from members of the legal profession if those who have not attained these standards of efficiency are to be permitted to practice the arts of the profession. . . . The State has a vital interest in the regulation of the practice of law for the benefit and protection of the people as a whole . . .[2]

But the need, and justification, for the regulation of the practice of law is finite and limited.

> Lawyers are not like the river barons of the middle ages who exacted tribute from commerce because of their strategic location of [sic] the arteries of trade. The rule limiting the practice of law to trained and qualified persons is founded upon the principle of public benefit and protection. The rule, however, does not go beyond the principle upon which it is based and should not be extended beyond the requirements of the common good.[3]

Having received the franchise to practice law because of superior competence and ethics, a lawyer's right to practice law is considered a privilege which can be withdrawn when such competence or ethics is lacking.[4] And because competence and ethical character are personal in nature, an attorney may not delegate the right to practice law to another.[5]

The state's power to regulate the practice of law resides in both the judicial and legislative branches.[6] The judiciary, however, retains primary governance over the courts and interpretation of the laws, and the Legislature's power to regulate the practice of law is only secondary and in aid of the judiciary's power.[7]

As between state and federal regulation of the practice of law, the federal takes precedence to the extent state regulation is incompatible with federal legislation or duly-authorized federal regulations.[8] If federal law is silent, the state is free to regulate practice before federal bodies.[9]

Defining the Practice of Law

The Legislature in the 1979 State Bar Act has provided a general definition of the practice of law:

> For purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on behalf of clients before judges in court as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.[10]

This provision is derived from earlier court decisions.[11]

Unlike article 430a of the former Penal Code, article 320a-1, §19(a) does not include compensation as an element of the practice of law. Dictum in *Hexter Title & Abstract Co. v. Grievance Committee*[12] had suggested that a person who provides legal services for free is not practicing law.[13] Decisions in other cases, however, have held that the practice of law is determined by the type of service provided, and not by whether compensation is received or not.[14] The reasoning in the latter cases is the more persuasive.

> Wrong legal advice by a layman is equally injurious whether given for or without consideration or compensation.[15]

A. Litigation

The statutory definition in article 320a-1, §19(a) is clear, as was the prior case law,[16] that preparing pleadings and litigating actions for others constitutes the practice of law. The courts have even gone so far as to rule that a pleading filed by a non-lawyer representing a client is a nullity,[17] and that entrusting a non-lawyer with the handling of a litigation is negligence as a matter of law.[18]

A non-lawyer does have the right, under both state and federal law, to represent himself *pro se*.[19] Except as noted below, that right does not extend to corporations[20] or to partnerships,[21] which must be represented in litigation matters by lawyers. An exception allowing corporations to use non-lawyer, employee representatives in Small Claims Court has been created by construction of Tex. Rev. Civ. Stat. Ann. article 2460a, §2.[22] This exception does not apply to justice of the peace courts when not acting as small claims courts,[23] although the newly-promulgated

Texas Rule of Civil Procedure 747a expressly allows "authorized agents" to represent clients in justice of the peace courts in certain types of forcible entry and detainer suits.[24] Texas Rule of Civil Procedure 739 had been earlier interpreted to allow a non-lawyer agent to file, but not prosecute, a forcible entry and detainer suit in justice of the peace court.[25]

One of the more litigated questions concerning laymen's litigation-related activities has been the investigation of claims. An investigator who advises a client on legal rights clearly violates the statute.[26] It has also been held that an investigator given discretion to settle claims also violates the statute.[27] The mere ascertainment or investigation of facts, on the other hand, is not the practice of law.[28]

B. Administrative Agencies

Under the former Penal Code provision, laypersons were not prohibited from practicing before "non-judicial" agencies such as the Railroad Commission, because of an interpretation of the wording of article 430a.[29] The present and former versions of article 320a-1 have not been similarly limited by their language. An attorney general's opinion had suggested that the issue of layperson representation under the former version of article 320a-1 be addressed on an agency-by-agency basis, weighing the danger and benefit to the public for each type of representation.[30] This approach seems reasonable under the current version of article 320a-1 as well, although the issue of construction should primarily be whether the representation in question requires "the use of legal skill or knowledge."[31]

The attorney general in Opinion H-974,[32] relied heavily on whether or not the agency itself allowed non-lawyers to appear as representatives. It would seem that courts similarly should defer to administrative expertise in this area, except where the agency has acted in a clearly erroneous manner in allowing or barring non-lawyers as representatives.[33]

Regulations allowing non-lawyers to practice before federal agencies preempt article 320a-1, to the extent that such regulations are within the authority given the federal agency.[34]

C. Legal Advice and Drafting of Legal Documents

As indicated in the definition of the practice of law in article 320a-1, §19(a), legal services encompass drafting for others documents "the legal effect of which under the facts and conclusions involved must be carefully determined," as well as the giving of legal advice.[35]

> The practice of law is not confined to cases conducted in court. In fact, the major portion of the practice of many capable lawyers consists of work done outside the courts.[36]

Many of the early cases involved title companies and delineated the boundaries of law practice in real estate matters. Real estate contracts, releases of liens, conveyances of real estate and title opinions have all been construed as being within the statute.[37] In *Hexter Title & Abstract Co. v. Grievance Committee*,[38] the court held that a title company was not justified in drawing real estate documents even where those documents would have some impact on the title insurance policy to be issued and even where the title company used licensed lawyers to draft the documents.[39] In *Rattikin Title Co. v. Grievance Committee*,[40] a court found conveyancing purportedly done by a law firm to be illegal, where the law firm personnel and title company personnel were the same.[41]

A real estate broker is not allowed to draw real estate documents for others,[42] at least where the broker is not a party to the document.[43] Nor may a notary public draw real estate documents for others.[44] If a layman, however, does draft a document for another, the document will not necessarily be invalid,[45] unlike the situation of a pleading drawn by a layman.[46]

Even though a title company insures title, it is not allowed to issue title opinions for others because title opinions are the practice of law.[47] The prohibition applies even where the title company has lawyer employees who prepare the title opinion.[48] But a corporation is not prohibited from hiring its own legal department to furnish to the corporation internal opinions and advice.[49]

Article 320a-1 also prohibits non-lawyers from preparing wills and trusts and other legal instruments for others,[50] or in advising concerning the need for such documents.[51] The sale of a will form which makes specific testamentary requests has been held to violate the statute, the First Amendment notwithstanding.[52]

Another type of legal instrument, the drafting of which has been held to be the practice of law, is articles of incorporation.[53] Because the secretary of state has suggested a form for articles of incorporation, accountants and others often assume that they can advise their clients to incorporate and can prepare the form and submit it

for filing. The assumption unfortunately ignores the need for expert advice on the significant legal consequences of incorporation and on specific language to be used in certain types of articles of incorporation. The Texas State Board of Public Accountancy itself acknowledges that an accountant, unless also a licensed lawyer, cannot prepare articles of incorporation for a client.[54]

Although tax advice clearly is the practice of law,[55] it may also properly fall within the practice of accountancy.[56] In years past, attorneys and accountants have conferred as to a proper dividing line between accountancy and law and have set forth guidelines in that regard.[57] Such guidelines have now been amended,[58] but both versions provide some guidance for those interested in discerning a traditional dividing line between the two professions.

Enforcement of the Statute

At least under prior law, a number of state agencies and private parties had standing to enjoin the unauthorized practice of law. Included in that number were the State Bar Unauthorized Practice of Law Committee,[59] the State Bar Grievance Committees,[60] the State Bar General Counsel,[61] and private attorneys.[62] Non-lawyers have not been allowed to sue for injunctions against the unauthorized practice of law, at least where they have shown no pecuniary loss,[63] or where they could avoid injury by not dealing with the defendant.[64]

The 1979 State Bar Act has confused somewhat the issue of standing. The new statute clearly gives the State Bar Unauthorized Practice of Law Committee standing to file suit and provides for the establishment of "local Unauthorized Practice of Law committees to aid and assist."[65] The new statute also empowers the State Bar general counsel to investigate and prosecute actions to enjoin persons from practicing law, when requested to do so "by any unauthorized practice of law committee or by a grievance committee."[66] The new act is silent concerning the right of individual lawyers and State Bar Grievance Committees to bring their own suits to enjoin the unauthorized practice of law by non-lawyers.[67] Whether standing for individual lawyers and the grievance committees will be held to conflict with the current statute will have to await judicial construction in a future case.

Although the State Bar Unauthorized Practice of Law Committee is authorized to enforce article 320a-1, §19 by filing suit, it is forbidden to issue advisory opinions.[68] For members of the State Bar, the Professional Ethics Committee is available for advisory opinions, but only as to the question of whether or not the lawyer's conduct constitutes aiding and abetting the unauthorized practice of law[69] as forbidden by Disciplinary Rule 3-101.[70] A non-lawyer's best available source of advice concerning this statute is his own attorney.

* The author appreciates the assistance of William L. Banowsky in helping to research the authorities cited in this article.

1. *Bryant v. State*, 457 S.W.2d 72 (Tex. Civ. App. — Eastland 1970, writ ref'd n.r.e.); *Hughes v. Fort Worth Nat'l Bank*, 164 S.W.2d 231 (Tex. Civ. App. — Fort Worth 1942, writ ref'd). In *Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex. Civ. App. 1908, writ dism'd) the court, in holding that attorneys in fact are not constitutionally or legislatively entitled to practice law on behalf of others, traces the state's regulation of the practice of law in Texas back to the 19th century.

2. *Hexter Title & Abstract Co. v. Grievance Comm.*, 179 S.W.2d 946, 948 (Tex. 1944). *Accord* State Bar of Texas, Ethical Considerations on Code of Professional Responsibility [hereinafter cited as State Bar of Texas Ethical Considerations] EC 3-1, 3-3 and 3-5 (1972).
3. *Southern Traffic Bureau v. Thompson*, 232 S.W.2d 742, 749 (Tex. Civ. App. — San Antonio 1950, writ ref'd n.r.e.).
4. *State Bar of Texas v. Heard*, 603 S.W.2d 829 (Tex. 1980); *Hankamer v. Templin*, 143 Tex. 572, 187 S.W.2d 549 (1945); *State v. Arnett*, 385 S.W.2d 452 (Tex. Civ. App. — San Antonio 1964, writ ref'd n.r.e.).
5. *Clements v. State*, 141 Tex. Crim. 108, 147 S.W.2d 483 (1940) (lawyer's employee may not practice law). The rule in *Clements* does not prevent a lawyer from delegating tasks to non-lawyer employees where the lawyer maintains a direct relationship with his client, supervises the delegated work, and retains complete professional responsibility for the work product. State Bar of Texas Ethical Consideration EC 3-6; State Bar of Texas General Guidelines for the Utilization of the Services of Legal Assistants by Attorneys, 45 Tex. B. J. 325 (1982). *See* State Bar of Texas, Comm. on Interpretation of the Code of Professional Responsibility [hereinafter cited as State Bar of Texas Ethics Comm.], Op. 401 (1982) and State Bar of Texas, Comm. on Interpretation of the Canons of Ethics [hereinafter cited as State Bar of Texas Ethics Comm.], Op. 276 (1963).
6. *Bryant v. State*, 457 S.W.2d 72 (Tex. Civ. App. — Eastland 1970, writ ref'd n.r.e.).
7. *Id*; *Grievance Comm. v. Dean*, 190 S.W.2d 126 (Tex. Civ. App. — Austin 1945, no writ). The Texas Supreme Court exercised its constitutional power over the practice of law by issuing its own order following the passage of the State Bar Act of 1979, ratifying that statute and thereby eliminating possible discrepancies between the court's previous orders and the new legislative statute. *See* Order, 583-584 S.W.2d XXXIII (Tex. 1979).
8. *Sperry v. Florida*, 373 U.S. 379 (1963) (state law must yield to federal regulation allowing non-lawyers to practice before the United States Patent Office).
9. *Id.*
10. Tex. Rev. Civ. Stat. Ann. art. 320a-1, §19(a) (Vernon Supp. 1982).
11. *See, e.g., Davies v. Unauthorized Practice of Law Comm.*, 431 S.W.2d 590 (Tex. Civ. App. — Tyler 1968, writ ref'd n.r.e.); *Stewart Abstract Co. v. Judicial Comm'n*, 131 S.W.2d 686 (Tex. Civ. App. — Beaumont 1939, no writ). The State Bar Act prior to 1979 did not contain a definition of the practice of law. Article 430a of the former Penal Code, however, provided a very lengthy and detailed definition. *See* 1933 Tex. Gen. Laws 835-38. Article 430a was repealed in 1949 when the unauthorized practice of law was removed as a criminal offense on the statute books. 1949 Tex. Gen. Laws 548.
12. 179 S.W.2d 946, 951 (Tex. 1944).
13. *See also Rattikin Title Co. v. Grievance Comm.*, 272 S.W.2d 948, 951 (Tex. Civ. App. — Ft. Worth 1954, no writ) (dictum); Op. Tex. Att'y Gen. No. 0-3602 (1941).
14. *Grievance Comm. v. Dean*, 190 S.W.2d 126 (Tex. Civ. App. — Austin 1945, no writ); *Grievance Comm. v. Coryell*, 190 S.W.2d 130 (Tex. Civ. App. — Austin 1945, writ ref'd w.o.m.).
15. *Grievance Comm. v. Coryell*, 190 S.W.2d 130, 131 (Tex. Civ. App. — Austin 1945, writ ref'd w.o.m.). The issue of compensation most recently surfaced in two cases involving a *pro bono* organization, and appears to have been causal of the courts' reluctance to rule that the organization was improperly practicing law. *See Touchy v. Houston Legal Found.*, 432 S.W.2d 690 (Tex. 1968); *Scruggs v. Houston Legal Found.*, 475 S.W.2d 604 (Tex. Civ. App. — Houston [1st Dist.] 1972, writ ref'd).
16. *See Davies v. Unauthorized Practice of Law Comm.*, 431 S.W.2d 590 (Tex. Civ. App. — Tyler 1968, writ ref'd n.r.e.); *Quarles v. State Bar of Texas*, 316 S.W.2d 797 (Tex. Civ. App. — Houston [1st Dist.] 1958, no writ), *cert. denied*, 368 U.S. 986 (1962); *Stewart Abstract Co. v. Judicial Comm'n*, 131 S.W.2d 686 (Tex. Civ. App. — Beaumont 1939, no writ).
17. *Globe Leasing, Inc. v. Engine Supply and Machine Service*, 437 S.W.2d 43 (Tex. Civ. App. — Houston [1st Dist.] 1969, no writ).
18. *American Express Co. v. Monfort Food Distributing Co.*, 545 S.W.2d 49 (Tex. Civ. App. — Houston [14th Dist.] 1976, no writ). The attorney general has also ruled that agreements with non-lawyers to undertake tax collection efforts can be illegal. Op. Tex. Att'y Gen. Nos. 0-197 (1939) and 0-934 (1939). But an insurance company, which assumed the defense of a policyholder's case under a non-waiver agreement, did not violate the statute, at least under former Penal Code article 430a. *Utilities Ins. Co. v. Montgomery*, 138 S.W.2d 1062 (Tex. 1940).

19. Tex. Const. art. I, §10; Tex. R. Civ. P. 7; 28 U.S.C. §1654 (1966); *see* Fed. R. Civ. P. 4(a) and 11.
20. *Turner v. Am. Bar Ass'n*, 407 F.Supp. 451 (N.D. Tex. 1975), *aff'd sub nom., Pilla v. Am. Bar Ass'n*, 542 F.2d 56 (8th Cir. 1976); *Paul Stanley Leasing Corp. v. Hoffman*, 651 S.W.2d 440 (Tex. App. — Dallas, 1983, no writ); *Globe Leasing, Inc. v. Engine Supply and Machine Service*, 437 S.W.2d 43 (Tex. Civ. App. — Houston [1st District] 1969, no writ). *Cf.* Op. Tex. Att'y Gen. No. 0-261 (1939). An anomalous case is *Dietzel v. State*, 131 Tex. Crim. 279, 98 S.W.2d 183 (1936), which found no violation of the former criminal statute by a layman who wrote a demand letter for his corporate employer, representing himself to be an attorney. That decision seemed to rely on an exception in the former statute, an exception which has not been carried forward into the current statute.
21. *Turner v. Am. Bar Ass'n*, 407 F. Supp. 451 (N.D. Tex. 1975), *aff'd sub nom., Pilla v. Am. Bar Ass'n*, 542 F.2d 56 (8th Cir. 1976) (construing 28 U.S.C. §1654); Op. Tex. Att'y Gen. No. JM-62 (1983) (in context of bail bonding, extending rule in *Globe Leasing, supra* note 20, to partnerships).
22. *See* Op. Tex. Att'y. Gen. Nos. MW-392 (1981), MW-312 (1981), H-538 (1975) and C-82 (1963).
23. *See* Op. Tex. Att'y. Gen. Nos. C-283 (1964) and 0-647 (1939).
24. The attorney general in Op. Tex. Att'y. Gen. No. JM-56 (1983) has opined that construing Rule 747a to allow non-attorneys to represent clients would be unconstitutional because in putative conflict with Tex. Rev. Civ. Stat. Ann. article 320a-1, §19 (Vernon Supp. 1982). The opinion's conclusion is questionable in light of the line of cases holding that the Texas Supreme Court (which promulgated Rule 747a) has primary constitutional governance over the practice of law in courts. *See, e.g., Banales v. Jackson*, 601 S.W.2d 508 (Tex. Civ. App. — Beaumont), *motion to reverse den'd*, 610 S.W.2d 732 (Tex. 1980); *Bryant v. State*, 457 S.W.2d 72 (Tex. Civ. App. — Eastland 1970, writ ref'd n.r.e.); *Grievance Comm. v. Dean*, 190 S.W.2d 126 (Tex. Civ. App. — Austin 1945, no writ). The attorney general had earlier opined that the State need not be represented by a lawyer in fact-finding administrative proceedings before justices of the peace to suspend a citizen's driver's license. Op. Tex. Att'y. Gen. No. M-653 (1970).
25. Op. Tex. Att'y Gen. No. MW-235 (1980).
26. *Quarles v. State Bar of Texas*, 316 S.W.2d 797 (Tex. Civ. App. — Houston [1st Dist.] 1958, no writ), *cert. denied*, 368 U.S. 986 (1962); *see J. R. Phillips Inv. Co. v. Road District No. 18*, 172 S.W.2d 707 (Tex. Civ. App. — Waco 1943, writ ref'd).
27. *Southern Traffic Bureau v. Thompson*, 232 S.W.2d 742 (Tex. Civ. App. — San Antonio 1950, writ ref'd n.r.e.).
28. *Id.*; *Lang v. Fritze*, 54 S.W.36 (Tex. Civ. App. 1899, no writ).
29. *See Carr v. Stringer*, 171 S.W.2d 920 (Tex. Civ. App. — Fort Worth 1943, writ ref'd w.o.m.).
30. *See* Op. Tex. Att'y Gen. No. H-974 (1977) (non-lawyer representation before the State Board of Insurance and Industrial Accident Board found to be permitted by each agency and hence deemed not the unauthorized practice of law).
31. *See* Tex. Rev. Civ. Stat. Ann. article 320a-1, §19(a) (Vernon Supp. 1982).
32. *Supra* note 30.
33. *Compare Indus. Accident Bd. v. O'Dowd*, 298 S.W.2d 657 (Tex. Civ. App. — Austin), *rev'd on other grounds*, 303 S.W.2d 763 (Tex. 1957) (implicitly approving Industrial Accident Board's authorization of non-lawyer representatives) *with Stewart Abstract Co. v. Judicial Comm'n*, 131 S.W.2d 686 (Tex. Civ. App. — Beaumont 1939, no writ) (disapproving interpretation of State Board of Insurance's regulations as authorizing title insurers to

practice law, as being outside the power of the Board).

34. *Sperry v. Florida*, 373 U.S. 379 (1963); *Grace v. Allen*, 407 S.W.2d 321 (Tex. Civ. App. — Dallas 1966, writ ref'd n.r.e.) (New York statute preempted by U.S. Treasury Department regulation allowing non-lawyer representation in tax protests). *See also* State Bar of Texas Ethics Comm., Op. 276 (1963) (following *Sperry v. Florida*).
35. *Accord Davies v. Unauthorized Practice of Law Comm.*, 431 S.W.2d 590 (Tex. Civ. App. — Tyler 1968, writ ref'd n.r.e.). In *Cortez v. Unauthorized Practice of Law Comm.*, No. 05-84-00072-CV (Tex. App. — Dallas, May 25, 1984, writ requested) (not yet reported), the court held that the application of this definition in the context of the preparation of Immigration & Naturalization Service forms was a question for the jury on which expert testimony could be adduced.
36. *Hughes v. Fort Worth Nat'l Bank*, 164 S.W.2d 231, 234 (Tex. Civ. App. — Ft. Worth 1942, writ ref'd).
37. *O'Neal v. Ball*, 351 S.W.2d 670 (Tex. Civ. App. — Waco 1961, writ ref'd n.r.e.); *Rattikin Title Co. v. Grievance Comm.*, 272 S.W.2d 948 (Tex. Civ. App. — Fort Worth 1954, no writ); *Grievance Comm. v. Coryell*, 190 S.W.2d 130 (Tex. Civ. App. — Austin 1945, writ ref'd w.o.m.); *Grievance Comm. v. Dean*, 190 S.W.2d 126, (Tex. Civ. App. — Austin 1945, no writ); *Stewart Abstract Co. v. Judicial Comm'n*, 131 S.W.2d 686 (Tex. Civ. App. — Beaumont 1939, no writ).
38. 179 S.W.2d 946 (Tex. 1944).
39. The court in *Hexter* went on to rule that the statute encompasses the preparation of simple, as well as complex, legal instruments. "The most complex are simple to the skilled, and the simplest often trouble the inexperienced." 179 S.W.2d at 953 (quoting *People v. Title Guarantee & Trust Co.*, 227 N.Y. 366, 125 N.E. 666, 670 (1919) (concurring opinion)).
40. 272 S.W.2d 948 (Tex. Civ. App. — Ft. Worth 1954, no writ).
41. *See also San Antonio Bar Ass'n v. Guardian Abstract & Title Co.*, 291 S.W.2d 697 (Tex. 1956) (discussing factors in intermingling). *But see Amarillo Abstract and Title Co. v. Unauthorized Practice of Law Comm.*, 332 S.W.2d 349 (Tex. Civ. App. — Amarillo 1960, writ ref'd n.r.e.) (law practice separate even though lawyer owned title company, because lawyer's clientele obtained independently); State Bar of Texas Ethics Comm., Op. 42 (1951) (independent lawyer on premises apparently without intermingled personnel not a violation).
42. *Sherman v. Bruton*, 497 S.W.2d 316 (Tex. Civ. App. — Dallas 1973, no writ).
43. *Cf. Elliott v. Henck*, 223 S.W.2d 292 (Tex. Civ. App. — Galveston 1949, writ ref'd n.r.e.); *Caneer v. Martin*, 238 S.W.2d 828 (Tex. Civ. App. — Waco 1951, writ dism'd).
44. *See* Op. Tex. Att'y Gen. No. 0-3602 (1941). Indeed, because a "notario publico" in Mexico is apparently empowered to perform more than ministerial tasks, Texas law, to prevent confusion or deception, prohibits a notary public from advertising in Spanish without an express disclaimer that the notary is not a lawyer. Tex. Rev. Civ. Stat. Ann. art. 5949, §5(b) (Vernon Supp. 1982).
45. *Brevard v. King*, 400 S.W.2d 576 (Tex. Civ. App. — Austin 1966, writ ref'd n.r.e.); *Wyche v. Works*, 373 S.W.2d 558 (Tex. Civ. App. — Dallas 1963, writ ref'd n.r.e.).
46. *See Globe Leasing, Inc. v. Engine Supply and Machine Service*, 437 S.W.2d 43, (Tex. Civ. App. — Houston [1st Dist.] 1969, no writ).
47. *Grievance Comm. v. Coryell*, 190 S.W.2d 130 (Tex. Civ. App. — Austin 1945, writ ref'd w.o.m.); *Grievance Comm. v. Dean*, 190 S.W.2d 126 (Tex. Civ. App. — Austin 1945, no writ); Op. Tex. Att'y Gen. No. 0-3602 (1941); *see* State Bar of Texas Ethics Comm., Op. 253 (1962) (discussing distinction between abstractor's certificate and title opinion).
48. *Hexter Title & Abstract Co. v. Grievance Comm.*, 179 S.W.2d 946 (Tex. 1944).
49. *Stewart Abstract Co. v. Judicial Comm'n.*, 131 S.W.2d 686 (Tex. Civ. App. — Beaumont 1939, no writ).
50. *Davies v. Unauthorized Practice of Law Comm.*, 431 S.W.2d 590 (Tex. Civ. App. — Tyler 1968, writ ref'd n.r.e.); *Grievance Comm. v. Coryell*, 190 S.W.2d 130 (Tex. Civ. App. — Austin 1945, writ ref'd w.o.m.); *Grievance Comm. v. Dean*, 190 S.W.2d 126 (Tex. Civ. App. — Austin 1945, no writ). *See also* Op. Tex. Att'y Gen. Nos. 0-1560 (1939) and 0-831 (1939).
51. *See* State Bar of Texas Ethics Comm., Op. 373 (1974).
52. *Palmer v. Unauthorized Practice of Law Comm.*, 438 S.W.2d 374 (Tex. Civ. App. — Houston [14th Dist.] 1969, no writ). The same court went on to suggest that the sale of lease and deed forms by stationery stores is not illegal. 438 S.W.2d at 376.
53. *Davies v. Unauthorized Practice of Law Comm.*, 431 S.W.2d 590 (Tex. Civ. App. — Tyler 1968,

writ ref'd n.r.e.); Op. Tex. Att'y Gen. No. 0-977 (1939) (C.T. Corporation cannot prepare articles of incorporation for others); *see also* Op. Tex. Att'y Gen. No. 0-1233 (1939) (attorney for C.T. Corporation cannot prepare applications to do business in Texas for others).

54. *See* Tex. State Bd. Pub. Accountancy, 4 Texas State Board Report 8 (1981).
55. *Davies v. Unauthorized Practice of Law Comm.*, 431 S.W.2d 590 (Tex. Civ. App.—Tyler 1968, writ ref'd n.r.e.); *Palmer v. Unauthorized Practice of Law Comm.*, 438 S.W.2d 374 (Tex. Civ. App. — Houston [14th Dist.] 1969, no writ); Op. Tex. Att'y. Gen. No. M-150 (1967).
56. *See Grace v. Allen*, 407 S.W.2d 321 (Tex. Civ. App. — Dallas 1966, writ ref'd n.r.e.) (accountant may give tax advice under New York law where incidental to his accounting work or to his license to practice before the Internal Revenue Service); *compare* 31 C.F.R. §§10.2(a), 10.3(b) and 10.32 (1983). Op. Tex. Att'y Gen. No. O-5086 (1943), prohibiting accountants from preparing others' income tax returns, now seems clearly invalid under Treas. Reg. §301.7701-15(3), T.D. 7675, 1980-1 C.B. 318, and *Sperry v. Florida*, 373 U.S. 379 (1963).
57. *See* American Bar Association and American Institute of Certified Public Accountants, Statement of Principles Relating to Practice in the Field of Federal Income Taxation (1951), *reprinted in* 53 A.B.A.J. 549 (1967).
58. *See* American Bar Association and American Institute of Certified Public Accountants, Statement on Practice in the Field of Federal Income Taxation and Estate Planning (1981), *reprinted in* 36 Tax Lawyer 26 (1982).
59. *Amarillo Abstract & Title Co. v. Unauthorized Practice of Law Comm.*, 332 S.W.2d 349 (Tex. Civ. App. — Amarillo 1959, writ ref'd n.r.e.).
60. *Hexter Title & Abstract Co. v. Grievance Comm.*, 179 S.W.2d 946 (Tex. 1944).
61. *Quarles v. State Bar of Texas*, 316 S.W.2d 797 (Tex. Civ. App. — Houston 1958, no writ), *cert. denied*, 368 U.S. 986 (1962).
62. *Touchy v. Houston Legal Found.*, 432 S.W.2d 690 (Tex. 1968).
63. *See Thompson v. Larry Lightner, Inc.*, 230 S.W.2d 831 (Tex. Civ. App. — San Antonio 1950, writ ref'd n.r.e.).
64. *See Southern Traffic Bureau v. Thompson*, 232 S.W.2d 742 (Tex. Civ. App. — San Antonio 1950, writ ref'd n.r.e.). However, a person sued by a non-lawyer for fees for the legal services rendered by the non-lawyer need not pay, because the contract for such fees is illegal. *Hughes v. Fort Worth Nat'l Bank*, 164 S.W.2d 231 (Tex. Civ. App. — Fort Worth 1942, writ ref'd); *J. R. Phillips Inv. Co. v. Road Dist. No. 18*, 172 S.W.2d 707 (Tex. Civ. App. — Waco 1943 writ ref'd); *cf. Elliott v. Henck*, 223 S.W.2d 292 (Tex. Civ. App. — Galveston 1949, writ ref'd n.r.e.) (citing to former Penal Code article 430a, §7). Recovery has been denied even where the person being sued is a lawyer who breached a fee-splitting agreement with the non-lawyer by retaining both shares of the fees. *See Red v. McComb*, 119 S.W.2d 707 (Tex. Civ. App. — Beaumont 1938, no writ).
65. Tex. Rev. Civ. Stat. Ann. art. 320a-1, §19(b) (Vernon Supp. 1982). The statute does not indicate if the local committees must be a part of and under the supervision of the State Committee or if local bar associations may create their own committees to bring litigation.
66. Tex. Rev. Civ. Stat. Ann. art. 320a-1, §9(c) (Vernon Supp. 1982).
67. Section 20(a) of article 320a-1 and section 2 of the Texas Supreme Court's order of June 19, 1979, 583-584 S.W.2d XXXIII, do have carry-over provisions for prior State Bar rules, unless "in conflict" with the new statute. Because the State Bar rules authorize Grievance Committees to file unauthorized practice of law suits, *see* Supreme Court of Texas Rules Governing the State Bar of Texas art. XIII, pt. A (1971), Grievance Committees should continue to have standing, especially in light of their at least indirect standing to sue by virtue of section 9(c) of the current statute.
68. Supreme Court of Texas (Nov. 17, 1980).
69. *See* State Bar of Texas Ethics Comm., Op. 276 (1963) (Committee will not advise on the general issue of unauthorized practice of law).
70. Supreme Court of Texas, Rules Governing the State Bar of Texas art. XII, §8 (Code of Professional Responsibility) DR 3-101 (1973).

Politics has got so expensive that it takes lots of money to even get beat with.

—Will Rogers, 1931

Gregory L. Hufham has served three terms as chairman of the State Bar of Texas Unauthorized Practice of Law Committee. A graduate of Harvard Law School, he is a partner with the law firm of Thompson & Knight in Dallas.