Michigan Law Review

Volume 40 | Issue 2

1941

ATTORNEY AND CLIENT - ILLEGAL PRACTICE OF LAW - ACTIVITIES OF INSURANCE INVESTIGATORS AND ADJUSTERS WHICH CONSTITUTE PRACTICE OF LAW

Jay W. Sorge
University of Michigan Law School

RECENT DECISIONS

ATTORNEY AND CLIENT — ILLEGAL PRACTICE OF LAW — ACTIVITIES OF INSURANCE INVESTIGATORS AND ADJUSTERS WHICH CONSTITUTE PRACTICE OF LAW — The defendant was an independent insurance adjuster and investigator who for more than seven years had been engaged in adjusting and investigating insurance claims for both insurance companies and claimants. He advertised in insurance periodicals and wrote letters to insurance companies to interest them in the service he rendered. He charged his clients on a fee basis and maintained his office at his own expense. Suit was brought to restrain him from practicing law without a license. *Held,* defendant could not give advice as to legal rights of either insurance company or claimant, but could communicate advice of counsel if he made the source clear, investigate facts surrounding a claim and communicate written statements of witnesses, fill in forms of release and select which of three forms to use, and appraise damages.[1] *State ex rel. Junior Association of Milwaukee Bar v. Rice,* 236 Wis. 38, 294 N. W. 550 (1940).

It seems clear that an insurance adjuster may investigate the facts of a claim and communicate written statements of witnesses to the insurance company without being subject to the charge of practicing law.[2] It also seems clear that the giving of advice to either company or claimant as to their legal rights does constitute the practice of law.[3] The middle ground between these two extremes is difficult to define.[4] According to the principal case the adjuster may not draw

[1] "We are unable to see why lay employees may make an appraisement of the damage to physical property where the liability is undisputed, but cannot do so where it is disputed. After all, the question of the amount of damage to an automobile . . . or other physical property, is not a question for legal experts but a question for mechanical experts in the particular line. . . ." Liberty Mutual Ins. Co. v. Jones, 344 Mo. 932 at 960, 130 S. W. (2d) 945 (1939).

[2] It would seem that the same criteria should apply whether the adjuster is an employee of the company or an independent investigator. It is the contention of the bar associations that it is the work done and not for whom it is done that should determine the nature of the service. The insurance companies argue that cases holding that independent adjusters are practicing law cannot be precedents where the adjuster is an employee of the company. Since the purpose of restricting the handling of legal matters to lawyers is to protect the public and since adjusters employed by the company do not hold themselves out as capable of handling claims, and are dealt with at arm's length by the injured parties, it is claimed that different rules as to what constitutes the practice of law should be followed in such cases. This would, however, lead to even greater confusion as to what activities of insurance adjusters constitute the practice of law. For a discussion upholding the view that a different standard should be applied in each of these circumstances, see 8 DUKE B. A. J. 23 (1940).

[3] Liberty Mutual Ins. Co. v. Jones, 344 Mo. 932, 130 S. W. (2d) 945 (1939). Modern courts generally agree that acts may constitute the practice of law which are not concerned with drawing up pleadings for court procedure or actually appearing in court. State ex rel. O'Dell v. Allen, 129 Ohio St. 151, 193 N. E. 650 (1934).

[4] For collection of cases, see BRAND, UNAUTHORIZED PRACTICE DECISIONS (1937).

up releases, covenants not to sue, or agreements for the settlement or compromise of claims,[5] although he may fill in the blanks of forms prepared by counsel.[6] There is a division among the authorities, however, as to whether the mere filling in of a blank form of deed or other printed legal instrument is practicing law.[7] The better view would seem to be that it is permissible for a layman to do the mere routine work of filling in such printed forms; the possibility of injustice or incompetency affecting the interests of the parties is not great since it is a mere mechanical process, and lawyers cannot expect that all transactions which involve the slightest knowledge of law will be set apart for them.[8] The principal case also permits an adjuster to select which of three forms to use in settling a claim. This result would be sound if no choice were possible because only one was applicable to the particular claim. The mechanical selection of the applicable form should not be deemed the practice of law. However, if all the forms were equally applicable to the type of claim under consideration, it would seem that the adjuster would be giving legal advice in choosing which form to use and that would clearly be objectionable.[9] The court also allowed

[5] Grand Rapids Bar Assn. v. Denkema, 290 Mich. 56, 287 N. W. 377 (1939); Drew's Estate, 32 Pa. D. & C. 297 (1938); Judd v. City Trust & Savings Bank, 133 Ohio St. 81, 12 N. E. (2d) 288 (1937). There is no indication in any of the cases cited that a layman could draw up a contract in which he would have to decide the legal phraseology and form to satisfy the particular circumstances without being considered to be practicing law.

[6] See Nelson, "Drafting of Real Estate Instruments: The Problem from the Standpoint of the Realtors," 5 LAW & CONTEM. PROB. 57 (1938), for a discussion of the filling in of prepared forms and the effect on the public, the bar, and the courts.

[7] "It would be an anomaly to hold that every individual, abstractor, realtor, banker . . . who fills out a blank deed, mortgage, bill of sale, contract, or such instrument and receives compensation therefor, is engaged in the practice of law." In re Matthews, 58 Idaho 772, 79 P. (2d) 535 (1938). Accord: Detroit Bar Assn. v. Union Guardian Trust Co., 282 Mich. 216, 276 N. W. 365 (1937); Cain v. Merchants Nat. Bank & Trust Co., 66 N. D. 746, 268 N. W. 719 (1936); American Automobile Assn. v. Merrick, (App. D. C. 1940) 117 F. (2d) 23.

Contra: Paul v. Stanley, 168 Wash. 371, 12 P. (2d) 401 (1932); L. Meisel & Co. v. National Jewelers' Board of Trade, 90 Misc. 19, 152 N. Y. S. 913 (1915), affd. 173 App. Div. 889, 157 N. Y. S. 1133 (1916). Judge Pound said, concurring in People v. Title Guarantee & Trust Co., 227 N. Y. 366 at 379, 125 N. E. 666 (1919), "I am unable to rest any satisfactory test on the distinction between simple and complex instruments. The most complex are simple to the skilled, and the simplest often trouble the inexperienced."

[8] "On the other hand appellants say that if the strict doctrine contended for by respondents be enforced, every railroad, bus, boat or airline agent who prepares a ticket for a traveler or a bill of lading or shipper's contract for freight shipper, fills in the blanks, and explains to the recipients his rights thereunder, is engaged in law business. So, too, of the bank or loan company employee who fills out a note or mortgage in dealing with a customer; of a policeman who tells you where you may park your car and how long . . . for there are legal rules applying to all such transactions." Liberty Mutual Ins. Co. v. Jones, 344 Mo. 932 at 959, 130 S. W. (2d) 945 (1939).

[9] "While some confusion seemingly has arisen with reference to the mere 'filling in of blanks' as it is expressed, there can be no doubt that the selection of the forms to be used and that the determination by the broker of the suitability and the adapta-

the adjuster to settle small claims without the approval of the company's counsel if it was more economical to settle than contest them.[10] If such claims are settled without regard to legal liability there would seem to be no basis to say that the adjuster was thereby practicing law; but if the adjuster should try to persuade the claimant to take a smaller amount, and use as his basis for argument the weakness of the claim,[11] there would be justification for a court's deciding that he was practicing law. The courts should endeavor to steer away from too stringent a rule by which every document of legal significance would have to be drawn and filled in by a lawyer. It is imperative, however, that the interest of the public in being assured of adequate and competent legal service should be protected,[12] as well as the interests of the lawyers in not having too great an invasion of laymen in the handling of legal matters.[13] The court seems to have reached a sound conclusion in the principal case, in general and to have provided a workable basis for determining what activities of insurance adjusters constitute the practice of law.

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bility of the form to the circumstances of the transaction involves the exercise of legal skill and learning." In re Gore, (Ohio Com. Pl. 1936) 9 Ohio Bar 432 at 434, affd. 58 Ohio App. 79, 15 N. E. (2d) 968 (1937).

[10] The insurance companies say that since a corporation can act through its agents in collecting claims the insurance company's agents act in an analogous capacity when they settle claims. There is a distinction, however, since collections are usually for liquidated sums and in settlement cases both the amount and liability are disputed. 8 DUKE B. A. J. 23 (1940). Clifford v. Wilcox, 175 Wash. 513, 27 P. (2d) 722 (1933); Creditors' Service Corp. v. Cummings, 57 R. I. 291, 190 A. 2 (1937). See also, American Automobile Assn. v. Merrick, (App. D. C. 1940) 117 F. (2d) 23.

[11] This would probably often be the case, since there is bound to be some variance in opinion as to what was the amount of the damages.

[12] The courts should also keep in mind that the more the work in connection with the settlement of claims has to be done by lawyers, the greater will be the expenses of the insurance companies, which will be passed on to the public in higher costs of insurance.

[13] "The demoralizing effect of the unauthorized practice of law upon the adherence by the bar to its code of ethics is no longer subject to dispute. The results which have been produced are a matter of history, susceptible of proof. Furthermore the field of demoralization is continually widening as the unauthorized practitioners extend the scope of their operation." Clark, "The Effect of Unauthorized Practice of Law Upon the Ethics of the Legal Profession," 5 LAW & CONTEM. PROB. 96 at 99 (1938).