

DO THE NORTH CAROLINA UNAUTHORIZED PRACTICE OF LAW STATUTES SERVE THEIR PURPOSE?

North Carolina Commission on the Administration of Law and Justice
Legal Professionalism Committee
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Purpose of UPL Statutes

*“Though the **UPL** rules vary among the states, these laws generally make it illegal for anyone who is not admitted to a state’s legal bar to provide any type of legal assistance. UPL rules purport to protect consumers by maintaining the integrity and competence of people who render legal services. **The rules properly aim to protect consumers from nonlawyers who fraudulently present themselves as qualified legal services providers. However, in the name of providing protection to consumers, UPL rules have the effect of creating a monopoly for the legal profession. . . .**”*

Matthew Longobardi, *Unauthorized Practice of Law and Meaningful Access to the Courts: Is the Law Too Important to Be Left to Lawyers?* 35 *Cardozo L. Rev.* 2043, 2045 (2014)

North Carolina

- The North Carolina UPL statutes, enacted in 1931, are found in Chapter 84 of the General Statutes – “Attorneys at Law.”
- The practice of law is defined by statute as: “performing any legal service for any other person, firm or corporation, with or without compensation” (N.C.G.S. § 84-2.1).
- N.C.G.S. § 84-5 prohibits the practice of law by corporations.
- N.C.G.S. § 84-5.1 makes an exception for certain non-profit corporations (*i.e.*, Legal Aid).
- Violation of the North Carolina UPL statutes is a crime (N.C.G.S. § 84-7).

The Role of the North Carolina State Bar

- The State Bar is empowered to investigate and sue to enjoin alleged violators of the UPL (N.C.G.S. § 84-37).
- The State Bar has established an “Authorized Practice of Law Committee.”
- 29 of the 31 members of the committee are lawyers.

Two Questions

Do the North Carolina Unauthorized Practice of Law Statutes Serve Their Purpose?

Or have they become, instead, a mask for anticompetitive interests and conduct by lawyers?

Capital Associated Industries v. Roy Cooper, in his official capacity as Attorney General, et al., No. 15-83 (M.D.N.C. filed Jan. 23, 2015)

Which one of these four cannot provide legal services to members of the non-profit associations for whom they work?

- (1) A lawyer employed by the NAACP?
- (2) A lawyer employed by a union?
- (3) A lawyer employed by a non-profit trade association of businesses, in states other than North Carolina?
- (4) A lawyer employed by a non-profit trade association of business in the state of North Carolina?

Supreme Court Precedents

- *NAACP v. Button*, 371 U.S. 415 (1963)
- *Brotherhood of Trainmen v. Virginia*, 377 U.S. 1 (1964)
- *United Mine Workers v. Illinois State Bar Association*, 389 U.S. 217 (1967)
- *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576 (1971)
- *In re Primus*, 436 U.S. 412 (1978)

United States Constitution

- First Amendment: “Congress shall make no law . . . abridging freedom of speech.”
- Fourteenth Amendment: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

NAACP v. Button

1963

- NAACP sued to enjoin enforcement of Virginia statute forbidding solicitation of legal work.
- NAACP employed 15 staff attorneys to assist members in assertion of legal challenges against race discrimination.
- Chapter 33 abridges the freedoms of the First Amendment, protected against state action by the Fourteenth.

NAACP v. Button

“A final observation is in order. Because our disposition is rested on the *First Amendment* as absorbed in the Fourteenth, we do not reach the considerations of race or racial discrimination which are the predicate of petitioner’s challenge to the statute under the *Equal Protection Clause*. That the petitioner happens to be engaged in activities of expression and association on behalf of the rights of Negro children to equal opportunity is constitutionally irrelevant to the ground of our decision. The course of our decisions in the *First Amendment* area makes plain that its protections would apply as fully to those who would arouse our society against the objectives of the petitioner. . . . For the Constitution protects expression [*445] and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social utility of the ideas and beliefs which are offered.”

Brotherhood of Railroad Trainmen v. Virginia State Bar

1964

Virginia State Bar sued union, claiming UPL statutes prohibited union referrals to panel of attorneys screened by the union.

Held: First and Fourteenth Amendments protect the right of union members to obtain legal advice and referrals from the union.

United Mine Workers of America v. Illinois State Bar

1967

Union employed attorneys to assist member in litigation.

Illinois State Bar sued, claiming violations of UPL.

Held: “We hold that the freedom of speech, assembly, and petition guaranteed by the First and Fourteenth Amendments gives petitioner the right to hire attorneys on a salary basis to assist its members in the assertion of their legal rights.”

United Transportation Union v. State Bar of Michigan

1971

Railroad union referred members to Chicago attorneys who agreed to limit fees to 25% of FELA recoveries.

“In the context of this case we deal with a cooperative union of workers seeking to assist its members in effectively asserting claims under the FELA. But **the principle here involved cannot be limited to the facts of this case.** At issue is the basic right to group legal action, a right first asserted in this Court by an association of Negroes seeking the protection of freedoms guaranteed by the Constitution. **The common thread running through our decisions in *NAACP v. Button*, *Trainmen* and *United Mine Workers* is that [HN5] collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the *First Amendment*.** However, that right would be a hollow promise if courts could deny associations of workers or [*586] others the means of enabling their members to meet the costs of legal representation. That was the holding in *United Mine Workers*, *Trainmen* and *NAACP v. Button*. The injunction in the present case cannot stand in the face of these prior decisions.”

In re Primus

1987

The South Carolina Bar charged a member with improper solicitation for her advice and referral of a potential client to the ACLU for assistance.

Held: The public reprimand issued by the Bar to the attorney violated the First and Fourteenth Amendments.

Capital Associated Industries

- Nonprofit trade association of employers
- Primarily human resources/employment advice
- Licensed, North Carolina attorneys
- Wants those attorneys to be able to provide legal advice to members of the association through the licensed, North Carolina attorneys employed by CAI

CAI v. AG

- Unsuccessful effort to obtain cooperation or assistance from State Bar
- Unsuccessful efforts to obtain amendment to UPL statutes
- Suit filed January 2015
- State filed motion to dismiss (denied)
- State Bar intervened
- CAI filed motion for preliminary injunction (denied)
- State then filed motion for judgment on pleadings (under advisement)

CAI v. AG

- The State Bar, in response to CAI's Complaint, asserts that "there are rational reasons for prohibiting corporations from practicing law."
- In the case of a non-profit trade association that wishes to have its licensed North Carolina attorneys provide legal advice to its North Carolina membership, what are those "rational reasons?"

UPL Statutes

- The North Carolina UPL statutes create a monopoly – only licensed attorneys can provide legal advice.
- Monopolies mean higher prices.
- Higher prices force consumers to make one of two choices:
 - (1) Pay the higher price, or
 - (2) Do without the service.

Affordable Legal Services

- Affordable legal services are in the best interest of consumers and the justice system.
- Affordable legal services are not in the best economic interest of lawyers who, with the benefit of UPL statutes, hold a monopoly.
- Affordable legal services are an important component to business competitiveness in global markets.

CAI's Objective:
Affordable Legal Services for its Membership

- Trade associations deliver cost effective services to members.
- Many legal questions are routine – but unique to the member.
- An attorney familiar with the legal questions that businesses commonly ask can provide quicker, less expensive, more experienced advice than can a law firm attorney.

Conclusions

- These are the legitimate concerns to be addressed by the UPL statutes: competence and quality; accuracy; and affordability.
- The UPL statutes should be revised and comprehensively re-written.
- The enforcement of UPL statutes should be carried out by consumers; not lawyers.
- The “LegalZoom” bill is a band-aid on a bullet hole.
- We can figure this out.