



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #10

To supplement the materials you previously received, attached are comments from the Family Law Section and the Real Property Law Section in support of the legislative proposal from the Committee on Unlawful Practice of Law.

New York State Bar Association

One Elk Street, Albany, New York 12207 • 518/463-3200 • <http://www.nysba.org>



Resolutions

Family Law Section, New York State Bar Association

Opinions expressed are those of the Section preparing this resolution and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates.

December 21, 2011

To: NYSBA Executive Committee and House of Delegates

From: NYSBA Family Law Section

Re: Reports for January 26-27, 2012
Committee on Standards of Attorney Conduct
Committee on Unlawful Practice of Law

RESOLUTION #1

Committee on Standards of Attorney Conduct: Proposed amendments to (i) Rule 4.2 to address contacts with represented adversaries by lawyers proceeding *pro se* or represented by counsel and to (ii) Rule 1.2 (g) to expand a cross-reference to other rules. The report supports the position that the referenced Rules of Professional Conduct be amended to address application of the “no contact rule”, which bars a lawyer from contacting an adversary represented by counsel, to situations in which the lawyer is personally a party to a matter, either proceeding *pro se* or represented by counsel.

RESOLVED, that the NYSBA Family Law Section supports the following amendment, which would add a subsection (d) :

(d) A lawyer who is acting *pro se* or is represented by counsel in a matter is not subject to paragraph (a), and may communicate with a represented person pursuant to paragraph (b) without providing notice to counsel, provided such represented person is a member of the same family or household as defined by FCA 812.

The Family Law Section believes the amendment is necessary to protect our lawyer clients going through their own divorces or other family law issues who, absent intricate knowledge of the RPC, will be unwittingly subjected to disciplinary action for speaking with their represented spouses and/or members of their family or household who are parties to the same action.

RESOLUTION #2

Committee on Standards of Attorney Conduct: The second portion of the report supports amendment of Rule 1.2(g) to update a cross reference to the appropriate section of the Rules.

RESOLVED, that the NYSBA Family Law Section is in favor of the above stated portion of the report regarding the amendment of Rule 1.2(g), without comment.

RESOLUTION # 3

Committee on Unlawful Practice of Law: Proposal to enact new section 485-a and amend sections 486 and 495(3) of the Judiciary Law. The report supports the position that the current statute regarding the unauthorized practice of law, which cannot be prosecuted as anything more severe than a misdemeanor, should be amended to allow for a felony charge where there is clear financial injury or personal harm to members of the public.

RESOLVED, that the NYSBA Family Law Section is in favor of the above report, without comment.

Resolutions prepared by: Ronnie Schindel, Mitchell Cohen, Adam Wolff, NYSBA Family Law Section Delegates to the NYSBA House of Delegates.

Approved by: Vote of NYSBA Family Law Section Executive Committee: December 19, 2011.

Chair of the Section: Bruce J. Wagner

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Memorandum in Support

REAL PROPERTY LAW SECTION

December 21, 2011

AN ACT to amend the Judiciary Law, in relation to practicing or appearing as an attorney-at-law without being admitted and registered

LAW AND SECTIONS REFERRED TO: new Judiciary Law Section 485-a and amended sections 486 and 495 of the Judiciary Law

THE REAL PROPERTY LAW SECTION SUPPORTS THIS PROPOSAL.

The Real Property Law Section of the New York State Bar Association supports the Committee on the Unauthorized Practice of Law affirmative legislative proposal, in relation to making the unauthorized practice of law a felony in certain cases.

This proposal would amend the Judiciary Law to make the unauthorized practice of law a class E felony, rather than a misdemeanor, where a person violating sections 478, 484, 486 and 495 of the Judiciary Law causes another person to suffer monetary loss or damages exceeding one thousand dollars or other damage resulting from impairment of a legal right to which he or she is entitled according to law. We believe that this updating of the law will serve to be an additional deterrent to the unlawful practice of law and represents a modern, scalable and proportionate penalty for cases of serious injury and damage resulting from illegal acts of unlicensed persons. It will enable local and state law enforcement agencies to more effectively protect consumers from entities and individuals who seek to advise and represent the interests of others without proper qualifications, training and licensing.

The felony upgrade in cases of serious injury and damage will equalize the criminal offense level for the unlawful practice of law in those cases with the felony level imposed in all cases on over 75 other regulated professional undertakings in New York, as regulated by the New York State Education Law. We believe that the unlawful practice of law is a crime of at least equal magnitude and significance to those licenses and regulated under the Education Law. The upgrade to felony status will also serve to protect the time-honored integrity of the legal profession in New York State. The proposed increased penalty for practicing law without a license would be commensurate with the penalty attached to such violations in almost every state in the nation.

The proposed upgrade in criminal status of violations of the Judiciary Law will also act as a deterrent to those seeking unearned profit and leverage over consumers' real property assets in mortgage and foreclosure scams, other illegal real estate schemes and transactions where legal representation is important to protect the consumer. The potential for indictment and multiple agency prosecution will more effectively deter unscrupulous and nefarious non-fiduciaries from taking advantage of the public. The ability to obtain Grand Jury indictments for felony violations of the Judiciary law will permit and justify local prosecutors to expend valuable resources on important consumer protection oriented investigations and prosecutions.

The Real Property Law section **SUPPORTS** this bill as an important and appropriate consumer protection measure.

Person who prepared this Memorandum: Karl B. Holtzschue, Esq.

Section Chair: Heather C. M. Rogers, Esq.