University of Richmond Law Review

Volume 19 | Issue 3 Article 6

1985

Virginia: The Unauthorized Practice of Law Experience

Michael L. Rigsby

VIRGINIA: THE UNAUTHORIZED PRACTICE OF LAW EXPERIENCE

*Michael L. Rigsby**

In the early days of America's development, the attorney-at-law was little needed. While law was a popular study, the pioneering nature of the settlers dictated that each look out for his own interests. Delegation to counsel was unnecessary.[1]

By the 1600s, however, attorneys had made their presence so strongly known that popular resistance developed against the profession. A 1658 Virginia statute recognized the status of attorney-at-law but denied the attorney the opportunity to earn a living by practicing the profession. The law provided that no attorney should "pleade in any courte of judicature within this collony, or give councill in any cause, or controvercie whatsoever, for any kind of reward or profitt."[2]

Despite this somewhat hostile public attitude toward the profession, it did flourish. The need for a trained legal profession arose as commerce developed among the several states and between the colonies and Great Britain. Thus, by July 4, 1776, a trained bar existed in virtually all the colonies.[3] The practice of law was not necessarily limited to those trained or licensed to practice law. John Adams noted the problems brought by an undisciplined bar when he wrote that "[l]ooking about me in the Country, I found the practice of Law was grasped into the hands of Deputy Sheriffs, Pettifoggers, and even Constables, who filled all the writts upon Bonds, promissory notes, and Accounts, received the Fees established for Lawyers, and stirred up many unnecessary Suits."[4]

---

* Staff Attorney, Virginia State Bar; B.S., 1967, Virginia Polytechnic Institute; J.D., 1970, T.C. Williams School of Law. This article is adapted from a speech presented in a Symposium on Legal Ethics at T.C. Williams School of Law on November 16, 1984.

1. *See generally* B. SCHWARTZ, THE AMERICAN HERITAGE HISTORY OF THE LAW IN AMERICA (1974).

2. *Id.* at 16.

3. *Id.* at 17.

4. *Id.* In Virginia, however, it appears that as early as 1835 the practice of law was limited to those obtaining a license pursuant to statute. *See Ex parte* Fisher, 33 Va. (6 Leigh) 619 (1835).

I. Modern Experience

A. *The Background to Limitations on the Practice of Law*

The Virginia Supreme Court first addressed the issue of the unauthorized practice of law in *Bryce v. Gillespie*.[5] In that case, Dr. E.C. Bryce authorized Samuel A. Pusey, trading as Pusey Company, a collection agency, to pursue a claim against Marie E. Gillespie. Mr. Pusey obtained a civil warrant for forty-six dollars against Ms. Gillespie. The court dismissed the warrant because, among other reasons, Mr. Pusey was not a lawyer.

The Virginia Supreme Court noted that the right of an individual to appear in court on his own behalf is fundamental and inalienable; however,

> [t]he right to have some one else appear and speak for one, or the right of such other to appear in the courts as a representative of a litigant is not an inalienable right. To represent another in the courts is not a right but a privilege, to be granted and regulated by law for the protection of the public.[6]

Several years later, in the case of *Richmond Association of Credit Men v. Bar Association*,[7] the court had the opportunity to consider the question of whether the collection agent could employ an attorney to pursue the creditor's claim in court. The court concluded that such conduct was prohibited and observed that

> [t]he right to practice law is in the nature of a franchise from the State, conferred only for merit. It cannot be assigned or inherited, but must be earned by hard study and good conduct. . . . No one can practise [sic] law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. It is not a lawful business except for members of the bar who have complied with all the conditions required by statute and the rules of the courts. As these conditions cannot be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in.[8]

---

5. 160 Va. 137, 168 S.E. 653 (1933).
6. *Id.* at 144, 168 S.E. at 655.
7. 167 Va. 327, 189 S.E. 153 (1937).
8. *Id.* at 334-35, 189 S.E. at 157.

Thus, certain principles emerged in the unauthorized practice area. First, the public interest demanded that only those trained and licensed be authorized to practice law. Second, the attorney-client relationship was a highly personal one, imbued with fidelity, trust and commitment to service.[9]

In 1938, the Virginia General Assembly authorized the Supreme Court of Virginia to define by rule the practice of law.[10] The court did so immediately by promulgating a rule which encompassed the principles announced in *Bryce* and *Richmond Credit Men*, and also offered both general and specific guidance.[11] The court instructed that "[t]he relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is none the less practicing law though such person may employ others to whom may be committed the actual performance of such duties."[12] For a bank to prepare a will for a bank patron, for example, either through its own house counsel or through a privately-retained law firm, would be an unauthorized practice of law. To permit otherwise would allow the injection of a third party between the attorney and his client.

The legislation further authorized the court to prescribe a Code of Ethics for the legal profession and to prescribe procedures for disciplining the attorney who violated that code.[13] Further, the Virginia State Bar was created "to act as an administrative agency of the Court for the purpose of investigating and reporting the violation of such rules and regulations as are adopted by the Court under this article . . . ."[14] The court then adopted a regulatory scheme which required the Bar to investigate allegations of the unauthorized practice of law,[15] permitted the Bar to enjoin members of the bar from assisting the furtherance of unauthorized practice,[16] and authorized the issuance by the Bar of advisory opinions.[17]

---

9. *Id.* at 335, 189 S.E. at 157.
10. VA. CODE ANN. § 54-48 (Repl. Vol. 1982).
11. VA. SUP. CT. R. I, 171 Va. xvii-xviii (1938), *reprinted in* 205 Va. 1011-12.
12. *Id.* at xvii, 205 Va. at 1012.
13. VA. CODE ANN. § 54-48 (Repl. Vol. 1982).
14. *Id.* § 54-49.
15. VA. SUP. CT. R. IV, § 13, 205 Va. 1040-42 (1961).
16. *Id.* II, § 47 (Canon 47), 171 Va. xxxv (1938), *reprinted in* 205 Va. 1025 (provided that "[n]o lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.").
17. *Id.* IV, § 10, 205 Va. 1039 (1960).

Virginia's definition of the practice of law provides that one engages in the practice when he undertakes the duties and obligations of an attorney, even though he employs someone else to actually perform the legal services.[18] Since Canon 47 of the original Code of Ethics enjoined an attorney from aiding in the unauthorized practice of law, a number of attorneys asked for opinions from the Bar relating to their professional association with non-attorneys. From those inquiries came a series of unauthorized practice of law opinions delineating the permissible parameters of association with non-professionals.[19] Some of the unauthorized practice opinions were noteworthy in that they did not appear to involve an attorney's participation in the questioned subject matter.[20] The inquirer had no risk of being disciplined for violating Canon 47 and the committee's opinions simply established boundaries for the legal monopoly. A body of law developed, honored by the legal profession, which affected the ability of a number of enterprises to do business. Notwithstanding the correctness of those opinions, the opinion-making process did not afford those affected an opportunity to comment or offer opposing views before the opinion became fiat. This "closed shop" approach to issuing unauthorized practice opinions would prove troublesome later.

B. *Constitutional Considerations*

Competing with the underlying principle of a personal relationship between attorney and client is the freedom of speech and assembly guaranteed by the first and fourteenth amendments to the

---

18. *Id.* I, 171 Va. xvii-xviii (1938), *reprinted in* 205 Va. 1011-12.

19. For instance, a member of the bar could not receive a claim for collection from a collection agency. Virginia State Bar Comm. on the Unauthorized Practice of Law, Opinion 4 (1939) [hereinafter cited as UPL Op.]. Nor could he receive a claim for collection from a real estate agent for the collection of rents. UPL Op. 26 (1954). Other opinions relating to the attorney-collection agent relationship are UPL Op. 30 (1958); UPL Op. 22 (1947); UPL Op. 12 (1940); UPL Op. 6 (1939).

20. A bank cashier was prohibited from preparing a deed of trust on a preprinted form for a bank customer. UPL Op. 1 (1939). The president of a corporation was enjoined from preparing a bill of particulars in a suit brought by the corporation. UPL Op. 10 (1940). The United Mine Workers of America could not employ an attorney on a salary basis to represent all its members in their claims for compensation before the Industrial Commission. UPL Op. 24 (1948) and UPL Op. 23 (1947). A trust company could not prepare a will, through its counsel, for a customer of the company, even if the company was named executor. UPL Op. 31 (1958). A title insurance company could not issue its title insurance commitment, binder or policy directly to an unrepresented non-lawyer. UPL Op. 43 (1974). However, the title insurance company could issue title insurance if the non-lawyer had counsel. UPL Op. 44 (1974).

United States Constitution. In a series of cases commencing with *NAACP v. Button*,[21] the United States Supreme Court considered the legality of an injunction issued against the NAACP. The injunction prohibited the organization from advising its members to seek the assistance of particular lawyers concerning litigation.[22] The Court recognized the state's legitimate interest in regulating the practice of law to protect the public and preserve respect for the administration of justice. The exercise of this state interest could, and indeed did, result in a significant impairment of one's associational freedom and access to the courts. Thus, in *NAACP*, state interest gave way to constitutional rights of assembly.

After *NAACP*, the Court decided *Brotherhood of Railroad Trainmen v. Virginia State Bar*.[23] *Trainmen* was distinguishable from *NAACP* only in that it involved a labor union. The union referred its injured members to selected attorneys which it felt were competent to provide needed services at a reasonable fee. Again, an injunction was issued against the union for the unauthorized practice of law, and again the Court found the state interest must give way to the Trainmen's right to assemble and aid one another in time of need.

Three years later, in *United Mine Workers v. Illinois State Bar*,[24] the union employed salaried staff counsel to represent its members in job-related illnesses and accidents. The Court again concluded that the right of assembly was superior to the state's interest of preventing the unauthorized practice of law and held that

> [w]e start with the premise that the rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected, both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." . . . The First Amendment would, however, be a hollow promise if it left government free to destroy or erode its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. We have therefore repeatedly held that laws which actually affect the exercise of these vital rights cannot be sus-

21. 371 U.S. 415 (1963).
22. In some instances, the organization paid its members' legal fees. *Id.* at 419-21.
23. 377 U.S. 1 (1964).
24. 389 U.S. 217 (1967).

> tained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil.[25]

United Transportation Union v. State Bar of Michigan[26] concluded the series of cases. In this case, the union directed its members with possible claims under the Federal Employer's Liability Act to selected attorneys who agreed to represent the members for a fee not to exceed twenty-five percent of the amount recovered. Prior to the commencement of this practice, the membership's experience was that privately retained counsel frequently charged fees between forty and fifty percent of the amount recovered, and the competency of counsel was not consistently good. The Supreme Court observed that

> [t]he common thread running through our decisions in *NAACP v. Button*, *Trainmen* and *United Mine Workers* is that 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 others the means of enabling their members to meet the costs of legal representation.[27]

Thus, by 1971 the unauthorized practice opinion-making process was compelled to consider the opinion's impact upon the associational rights of those affected. Although never challenged, the Bar's earlier opinions regarding labor unions would not have withstood constitutional scrutiny.

C. *The Antitrust Problem*

Unauthorized Practice of Law (UPL) Opinion 43 held that for a title company to issue a title insurance policy, binder, or commitment to a non-lawyer customer would be an unauthorized practice of law.[28] The committee considered the representation that the policy, binder or commitment would be based upon a title search conducted by the title company by its own employees and the is-

25. *Id.* at 222 (citations omitted).
26. 401 U.S. 576 (1971).
27. *Id.* at 585-86.
28. UPL Op. 43 (1974).

sued document would contain the following bold face language:

> THIS IS A TITLE INSURANCE (COMMITMENT) (POLICY) (BINDER) AND IS NOT A TITLE OPINION. THERE MAY BE MATTERS OF RECORD OR NOT OF RECORD WHICH AFFECT THE PROPERTY DESCRIBED IN SCHEDULE A, WHICH ARE NOT LISTED IN SCHEDULE B, AND WHICH THE COMPANY HAS DETERMINED TO ACCEPT AS AN UNDERWRITING RISK.

Notwithstanding that title insurance was insurance for indemnification[29] and the policy boldly proclaimed that it was not an opinion as to the status of title, the committee concluded

> it must be assumed that a borrower or purchaser is primarily interested in the adequacy of title to the realty and secondarily interested in indemnification upon failure of such title. . . .
>
> . . . .
>
> Therefore, . . . because of the understanding with which it is received by non-lawyers (lenders as well as borrowers or purchasers), the furnishing of such policy by Company directly to a non-lawyer would necessarily constitute "furnish[ing] to another advice or service under circumstances which imply [its] possession and use of legal knowledge or skill." Consequently, under the general definition of the practice of law such conduct by Company would constitute the practice of law.[30]

The problem with the UPL opinion was three-fold: It failed to accept that title insurance policies are only that and not title opinions; it was developed without input from the title insurance industry; and it reached certain understandings on the part of borrowers, vis-a-vis title insurance, in the absence of any empirical data.[31]

The consequence of such an opinion was that a non-attorney purchaser of real estate, no matter how sophisticated he or she might be in real estate matters, could not buy title insurance di-

---

29. The opinion cited VA. CODE ANN. § 30.1-20 (Repl. Vol. 1981), which defined title insurance as "insurance against loss by reason of liens and encumbrances upon property, defects in the title thereto, and other matters affecting the title to property or the right to the use and enjoyment thereof, and insurance on the condition of the title to property and the status of any lien thereon."

30. UPL Op. 43 (1974).

31. *Id.*

rectly from the title company. UPL Opinion 44[32] concluded that title insurance could be purchased directly from the title company if the

> Company's issuance of title policies to non-lawyers is limited to issuance of such policies *only* upon request from an attorney representing the party to whom the policy would be issued. [Then,] Company's proposed conduct would not constitute the unauthorized practice of law. Clearly, the presence of the attorney eliminates the evil against which the proscription is directed: reliance by laymen upon services which are implicitly offered to him as the product of legal knowledge or skill.[33]

The committee approached this question with the public interest in mind, believing that many real estate buyers would rely upon title insurance as a legal opinion that the title to the acquired property was good. To protect the uninformed public from this risk, interjection of an attorney into the real estate conveyancing process was necessary. In theory the uninformed public would then become informed, and its interests protected.

Contemporaneous with UPL Opinions 43 and 44, the Bar issued Legal Ethics Opinion 177.[34] This opinion concluded that it would be unethical for an attorney to issue a title opinion to his client based solely upon a title examination performed by a title insurance company. The opinion incorporated UPL Opinion 44 by reference. As a result, an attorney could not utilize a title company's work product as a basis for a title opinion, and a consumer could only obtain a title policy if he employed an attorney for that purpose.[35]

The Surety Title Insurance Agency brought suit against the Bar as a result of these opinions, contending that the process by which the opinions were issued was anticompetitive.[36] The insurance company asserted that the Bar's practice of issuing unauthorized practice of law and legal ethics opinions, coupled with the Bar's threat of disciplinary sanctions against its members, illegally re-

32. UPL Op. 44 (1974).
33. *Id.*
34. Virginia State Bar Legal Ethics Comm., Withdrawn Formal Op. 177 (1974).
35. *Id.*
36. Surety Title Ins. Agency, Inc. v. Virginia State Bar, 431 F. Supp. 298 (E.D. Va. 1977), *vacated*, 571 F.2d 205 (4th Cir.), *cert. denied*, 436 U.S. 941 (1978).

strained commerce in violation of the Sherman Act.[37] Surety Title Insurance Agency did not challenge the correctness of any of these opinions, but rather the method by which these opinions were adopted.

The Bar argued that while its process may be anticompetitive, it enjoyed a "state action" exemption from the antitrust laws.[38] The court rejected this premise and discerned that

> [t]he "threshold inquiry" is whether the contested activity is *compelled* by the state acting as sovereign. . . . State authorization, approval, encouragement, or participation in restrictive activity does not confer antitrust immunity. . . . A negative answer to this threshold question terminates the analysis and no immunity would be afforded the defendant. . . . The use of the terms "threshold inquiry," "state action of the type the Sherman Act was not meant to proscribe", and "further inquiry" by the *Goldfarb* Court strongly suggest that an affirmative answer demands further analysis.[39]

A further analysis satisfied the Virginia Supreme Court that the state interest advanced by the advisory opinion process paled in comparison to the economic harm it created, and the process was declared in violation of the antitrust laws.

Although the decision in *Surety Title* was ultimately vacated and remanded,[40] its holding and those of other opinions cited therein gave the Bar sufficient reason to reexamine its opinion-making process. The Bar had already experienced one costly defeat in *Goldfarb v. Virginia State Bar*;[41] therefore, the time was right to review the advisory opinion process and, where appropriate, revamp the process.

---

37. 15 U.S.C. §§ 1-2 (1982).

38. *See* Parker v. Brown, 317 U.S. 341 (1943). The marketing program adopted under the California Agricultural Prorate Act which eliminated competition was held not to violate the commerce clause since the program regulated a state industry of local concern. In discussing the "state action" exemption to the commerce clause, the Court held that "the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate commerce with respect to matters of local concern, on which Congress has not spoken." *Id.* at 360.

39. *Surety Title*, 431 F. Supp. at 306 (citations omitted).

40. 571 F.2d 205 (4th Cir. 1978).

41. 421 U.S. 773 (1975) (minimum fee schedule maintained by the state and local bar associations, and enforced through disciplinary action constitutes price-fixing and violates the Sherman Act).

D. *The Current Procedure*

The current procedure for adopting advisory opinions is found in Rule 10 of the Virginia Supreme Court Rules of Court.[42] The Standing Committee on the Unauthorized Practice of Law[43] must send to the Council of the Virginia State Bar[44] for review any opinions which it concludes constitute the unauthorized practice of law.[45] Likewise, anyone who disagrees with the opinion he or she receives from the Standing Committee on the Unauthorized Practice of Law may appeal that decision to the council.[46]

Public notice must be given of all opinions sent to the council for review.[47] This is done through press releases and published notices in the Bar's house journal, *Virginia Bar News*.

Any interested party may submit comments to the Bar regarding a proposed opinion within thirty days of the issuance of the press release.[48] The attorney general and the Bar counsel are also directed by law to file comments within thirty days of the release.[49] At this point, the opinion is mature for consideration by the council, which may accept, reject or modify the opinion.[50]

If the council approves the opinion and it contains findings of the unauthorized practice of law, then the opinion, along with the record, must be sent to the Virginia Supreme Court for review.[51] Another press release is issued and, as a matter of practice,[52] all parties who submitted comments to the council are advised of the transmission to the Virginia Supreme Court. Upon acceptance or modification by the Virginia Supreme Court, the opinion becomes a court decision.[53]

---

42. VA. SUP. CT. R. Pt. 6, § IV, ¶ 10 (1984).

43. Part II, Article VII of the Virginia State Bar By-Laws creates a Standing Committee on the Unauthorized Practice of Law. The committee is comprised of seven members, four of whom are members of the council and two of whom are non-attorneys. VIRGINIA STATE BAR, VIRGINIA STATE BAR PROFESSIONAL HANDBOOK 92 (1984).

44. The Virginia State Bar exercises its powers through a council composed of members elected from each of several judicial circuits of the Commonwealth and members appointed by the Supreme Court of Virginia. VA. SUP. CT. R. Pt. 6, § IV, ¶ 5 (1984).

45. *Id.* ¶ 10(c)(iv).

46. *Id.* ¶ 10(c)(v).

47. *Id.* ¶ 10(d)(i).

48. *Id.* ¶ 10(e)(i).

49. *Id.* ¶ 10(e)(ii) and (iii).

50. *Id.* ¶ 10(f).

51. *Id.* ¶ 10(g)(i).

52. *Id.* ¶ 10(g)(ii).

53. *Id.* ¶ 10(g)(v).

The openness of the process is designed to meet objections raised in *Surety Title*. The process affords ample opportunity for criticism and discussion of a proposed opinion. The objective is to foster and encourage meaningful dialogue so that the council and the court may truly balance the state's public interest with that of the private sector.[54]

II. THE OPINIONS

With the adoption of Rule 10 by the Virginia Supreme Court in 1978, the Unauthorized Practice Committee embarked upon a project of reviewing and resurrecting its earlier UPL opinions.[55] In doing so, the committee clustered the opinions into nine broad categories and developed a body of thought in the format of the Code of Professional Responsibility. Thus, when ultimately approved by the court, the rules were in the format of Unauthorized Practice Rules (UPRs) and Unauthorized Practice Considerations (UPCs).[56] Underlying all of these rules, however, was the same definition of the practice of law announced by the court forty years earlier: "The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is nonetheless practicing law though such person may employ others to whom may be committed the actual performance of such duties."[57]

The unauthorized practice rules have considered the principles developed through earlier litigation and made adjustments where appropriate. Recognition of *NAACP v. Button*[58] and its progeny is found in UPC 1-5 which provides in part that "[a] lawyer who is

---

54. The opinions of the committee and council are advisory only and have no legal effect, nor are they binding on any judicial or administrative tribunal. *Id.* ¶ 10(c)(vi), (f)(iv).

55. The court's order in *Surety Title* had set aside all the UPL opinions previously adopted by the committee or council.

56. *See* VA. SUP. CT. R. Pt. 6, § I:
Rule 1 Practice Before Tribunals
Rule 2 Lay Adjusters
Rule 3 Collection Agencies
Rule 4 Estate Planning and Settlements
Rule 5 Tax Practice
Rule 6 Real Estate Practice
Rule 7 Title Insurance
Rule 8 Trade Associations
Rule 9 Administrative Agency Practice

57. *Id.* at Definitions (A).

58. 371 U.S. 415 (1963). *See supra* notes 21-22 and accompanying text.

duly authorized or licensed to practice law in Virginia and is regularly employed on a salary basis by a corporation . . . in the course of his employment may not *normally* represent before a tribunal customers or patrons of his employer."[59] Implicit in this statement is the notion that certain representations of customers or patrons are permitted. For instance, a collection agency may now make referrals of claims on behalf of a creditor to a lawyer under certain circumstances,[60] and a title insurance company or agency may now issue its product directly to a consumer without the involvement of a lawyer.[61] Nevertheless, the Virginia Supreme Court has firmly grasped the principle that the relation of attorney and client is direct and personal and no third party can intervene.

III. ENFORCEMENT

A state may engage in anticompetitive practices.[62] To be exempt from the proscriptions of the Sherman Act,[63] however, the state's activity must be affirmatively mandated and actively enforced.[64]

Perhaps the most extreme—albeit effective—example of sovereign intervention to prevent the unauthorized practice of law occurred

> in 457 B.C., when Kosko, Mikado of Japan, arrested and beheaded the leaders of an association formed to settle the estates of wealthy subjects. In the view of the sovereign, the persons who offered to provide such services did not have the qualifications or conscience essential to such a confidence or trust.[65]

In Virginia, the investigation and enforcement of unauthorized complaints and rules may take several routes. It is a misdemeanor to practice law without a license,[66] so a prosecution could be initiated by the commonwealth's attorney for the jurisdiction in which

---

59. VA. SUP. CT. R. Pt. 6, § I, UPC 1-5 (emphasis added).
60. *Id.* at UPR 3-102.
61. *Id.* at UPR 7-101(c).
62. Parker v. Brown, 317 U.S. 341, 350 (1943).
63. 15 U.S.C. §§ 1-2 (1982).
64. *Cf. Parker*, 317 U.S. at 352.
65. Horsley, *Report on the Unauthorized Practice of Law*, VA. BAR NEWS, Aug. 1979, at 12. Recognition of conscience, good moral character and sound legal education are also essential elements in the Virginia licensed attorney. *See* VA. SUP. CT. R. Pt. 6, § I, Introduction and § II EC 3-1.
66. VA. CODE ANN. § 54-44 (Repl. Vol. 1982).

the offense occurred. It is also possible for a private attorney to apply to the circuit court for the jurisdiction in which the offending conduct occurred for the issuance of a writ of quo warranto.[67] This procedure asks the subject by what right he engages in the questioned activity; in the absence of a legally acceptable answer, an injunction will be issued.

The most frequently used process thus far has been a cooperative effort by the Virginia State Bar and the Attorney General's Office. Rule 10(h)[68] provides a precise procedure for the investigation of unauthorized practice complaints by the Bar. Complaints are made to the Bar and investigated by the Bar staff. Thereafter, a report is submitted to the Unauthorized Practice Committee which may decide the issue on the strength of the report or decide to conduct a hearing. If the committee concludes that probable cause exists to believe that the person complained of is engaged in the unauthorized practice of law,

> the Committee shall direct the Executive Director to forward all investigation, copies of any records, and a summary of the Committee's findings to the Attorney General of Virginia with a request that the conduct be enjoined and/or that any other remedy available under the Code of Virginia be pursued.[69]

The Attorney General's Office may then either seek an injunction through the quo warranto process[70] or initiate a criminal prosecution.[71]

IV. Conclusion

Restricting the practice of law to those duly licensed by the state is a legitimate and proper exercise of the state's police power. The restriction serves two purposes: (1) it insures that persons rendering legal services are qualified to do so, and (2) it subjects persons rendering such services to the Virginia Code of Professional Responsibility.[72] This power cannot, however, be exercised in a vac-

67. Va. Code Ann. § 8.01-636 (Repl. Vol. 1984).
68. Va. Sup. Ct. R. Pt. 6, § IV, ¶ 10(h).
69. *Id.* at ¶ 10(j)(ii).
70. Va. Code Ann. § 8.01-636 (Repl. Vol. 1984).
71. *Id.* § 2.1-124 (Repl. Vol. 1979 & Cum. Supp. 1984) (statute applied in Fisher v. Coleman, 486 F. Supp. 311 (W.D. Va. 1979)).
72. *See* Surety Title Ins. Agency, Inc. v. Virginia State Bar, 431 F. Supp. 298, 307 (E.D. Va. 1977), *vacated*, 571 F.2d 205 (4th Cir.), *cert. denied*, 436 U.S. 941 (1978).

uum. The right to petition for redress of grievances and an openness to the public in the opinion-making process must be recognized. The Bar has achieved this through the promulgation of Rule 10,[73] which opens the entire opinion-making procedure to scrutiny by all. Throughout this introspective analysis, however, there remains one basic, irrefutable premise: the public is best served when only those properly trained in law and licensed by the state are permitted to provide legal services. This is the purpose of a regulatory scheme and in the absence of a legislative statement to the contrary, the premise will no doubt remain the polestar by which the unauthorized practice of law opinions are developed.

73. VA. SUP. CT. R. Pt. 6, § IV, ¶ 10.