

STATE OF NEBRASKA EX REL. COMMISSION ON UNAUTHORIZED
PRACTICE OF LAW, RELATOR, v. M.A. YAH, DOING
BUSINESS AS PARENTAL RIGHTS, RESPONDENT.

796 N.W.2d 189

Filed April 22, 2011. No. S-10-882.

1. **Rules of the Supreme Court: Attorneys at Law.** The Nebraska Supreme Court has the inherent power to define and regulate the practice of law and is vested with exclusive power to determine the qualifications of persons who may be permitted to practice law.
2. ____: _____. The inherent power of the Nebraska Supreme Court to define and regulate the practice of law includes the power to prevent persons who are not attorneys admitted to practice in this state from engaging in the practice of law.
3. **Attorney and Client: Actions.** A legal proceeding in which a party is represented by a person not admitted to practice law is considered a nullity and is subject to dismissal.
4. **Rules of the Supreme Court: Attorneys at Law.** Pursuant to its inherent authority to define and regulate the practice of law in Nebraska, the Nebraska Supreme Court has adopted rules specifically addressed to the unauthorized practice of law.

Original action. Injunction issued.

Sean J. Brennan, Special Prosecutor, for relator.

M.A. Yah, pro se.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, McCORMACK,
and MILLER-LERMAN, JJ.

PER CURIAM.

This is an original action to enjoin the unauthorized practice of law. We conclude that the injunction should issue.

BACKGROUND

On May 24, 2010, the Nebraska Supreme Court's Commission on Unauthorized Practice of Law (Commission) filed a petition for injunctive relief against M.A. Yah, doing business as Parental Rights (Respondent). The Commission alleged that it had received complaints that Respondent was engaging in the unauthorized practice of law within the State of Nebraska and that it had investigated such complaints and found them to have merit. Specifically, the Commission alleged that from June 1,

2009, until the date of the filing of the petition, Respondent had engaged in the unauthorized practice of law in that

(A) the Respondent is giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to which it is given;

(B) the Respondent has been selecting, drafting, or completing, for another entity or person, legal documents which affect the legal rights of the entity or person.

The Commission further alleged that pursuant to Neb. Ct. R. § 3-1014(F) (rev. 2008), it sent Respondent written notice of its findings and offered Respondent an opportunity to enter into a written consent agreement to refrain from engaging in the unauthorized practice of law, but he declined to enter into a consent agreement and continued to engage in the unauthorized practice of law. Based upon the allegations of the petition, the Commission requested this court to invoke the procedures set forth at Neb. Ct. R. § 3-1015(C) through (F) and enjoin Respondent “from engaging in the unauthorized practice of law in the State of Nebraska under threat of punishment pursuant to the contempt powers of this Court and assess costs of the proceedings against the Respondent.”

Respondent was served with a copy of the petition and summons on June 9, 2010. He filed an answer admitting that he is a resident of Nebraska and conducts business in this State, but denying the material allegations of the petition. On the Commission’s motion, this court appointed a hearing master pursuant to § 3-1015(F). On November 9, the hearing master conducted an evidentiary hearing at which Respondent appeared telephonically at Respondent’s request. Following the hearing, the hearing master filed a report which included the following findings of fact (citations to the record are omitted):

1. Respondent is a resident of the State of Nebraska and conducts business in Douglas County, Nebraska.
2. Respondent is not licensed to practice law in the State of Nebraska.

3. At all pertinent times, up until October of 2010, the Respondent conducted business as Parental Rights at 1941 South 42nd Street, Suite 410 in Omaha, Douglas County, Nebraska. In . . . a complaint filed in a case styled *M.A. Yah, Parental Rights, Plaintiff, v. Jane Burk* [sic], *et al.*, filed in the District Court of Douglas County, Nebraska, and found at Docket 1105 No. 408, Respondent himself alleges that he does business as Parental Rights and holds himself out as specializing in services related to domestic relations cases.

4. On or about August 28, 2009, the Respondent entered into a written agreement denominated as an “Agent/Client Agreement” with Glen Krueger under which Respondent agreed, for the sum of \$1,425.00 to prepare a “Complaint for Custody” and to file the same in the District Court of Douglas County.

5. Pursuant to the “Agent/Client Agreement,” the Respondent prepared what was entitled a “Complaint for Custody” and filed the same in the District Court of Douglas County, Nebraska in a case styled *Glen Krueger v. Ashley McDermott* and filed at Docket 1099 No. 165. On page three of the “Complaint for Custody” it indicates that the pleading was prepared by Parental Rights, P.O. Box 390945, Omaha, Nebraska 68139. The post office box is the same post office box listed on the business card of [Respondent], Regional Manager for Parental Rights.

6. In September of 2009, Mr. Krueger contacted Catherine Mahern, a professor of law at Creighton University and Director of the clinical program, who was volunteering at the self-help desk in the Douglas County Courthouse. Mr. Krueger stated to Ms. Mahern that [Respondent] had prepared the “Complaint for Custody” described above and provided him with legal advice on issues and process regarding the case. Mr. Krueger told Ms. Mahern that, pursuant to the “Agent/Client Agreement”, he had made at least one payment in addition to the initial payment made at the time of execution of the agreement. Mr. Krueger confirmed the identity

of [Respondent] to Ms. Mahern through a review of mug shots that had been provided by the Sheriff's Department to the Douglas County District Court Clerk.

7. Respondent also drafted pleadings in a case styled *Danner v. Barnes*, in the District Court of Douglas County, Nebraska, at Docket 1101 No. 388. A "Complaint for Visitation" filed on or about November 4, 2009, in that case shows at the bottom thereof that it was prepared by Parental Rights, P.O. Box 390945, Omaha, NE 68139. Thereafter, in the same case, an "Amemded [sic] Motion for Temporary Allowance With Notice of Hearing" was likewise filed on or about the 8th day of December, 2009, with a notation that it was prepared by Parental Rights, P.O. Box 390945, Omaha, NE 68139.

8. Respondent also prepared pleadings in a case styled *State of Nebraska on behalf of itself and minor child Quartez A. Joplin, Plaintiff, v. Timothy M. Thompson, Jr., Defendant*, filed in the District Court of Lancaster County, Nebraska, as Case No. CI 05-1365. In the court file, there is a pleading entitled "Application to Modify" filed on behalf of Defendant Timothy M. Thompson, Jr., dated the 21st day of December, 2009, which contains a notation at the end to the effect that it was prepared by Parental Rights, P.O. Box 390945, Omaha, NE 68139. Thompson appeared in Court on the motion, which had not been set for a hearing, and provided to District Court Judge Karen Flowers a business card of the individual who had prepared the pleadings on his behalf. The business card is that of [Respondent], Regional Manager for Parental Rights, with the same post office box 390945 as appears at the foot of the filed "Application to Modify."

9. On at least two occasions, Respondent was identified as the individual filing pleadings on behalf of third parties. In the case of *State of Nebraska, et al., v. Lamensia Epperson*, filed in the Douglas County District Court as Case No. 1009-084, personnel at the Douglas County District Court Clerk's office, who were familiar with Respondent, confirmed that he personally filed a pleading to modify an earlier decree and award Epperson

custody of her children. Similarly, in a case styled *Butler v. Butler*, filed in the Douglas County District Court as Case No. 1091-049, personnel from the office of the Douglas County District Court Clerk confirmed that Respondent had filed an application to modify on behalf of Mr. Breyland Butler. Ms. Mahern confirmed, through conversations with Mr. Butler, that Mr. Butler learned of Respondent through an advertisement in the Thrifty Nickel, contacted Respondent, and entered into an agreement for at least \$1,400.00 for which Respondent would prepare and file pleadings on his behalf in the case. Mr. Butler confirmed that Respondent prepared the pleadings and filed the same.

10. On at least two occasions, Respondent has filed actions in the Douglas County Court, Civil/Small Claims Division, seeking payment for the provision of legal services. In a case styled *M.A. Yah v. Howard W. Dial, Jr.*, filed as Case No. SC-09-1367 in the Douglas County Court, Civil/Small Claims Division, on December 2, 2009, Respondent alleged that “the Defendant promised to pay [Respondent] the sum of \$1,625.00 to file a Complaint for Custody; . . .” Similarly, in a case styled *M.A. Yah v. Rosetta L. Bush*, filed as Case No. SC 09-1368 on December 14, 2009, in the Douglas County Court, Civil/Small Claims Division, Respondent alleged that “Rosetta Bush signed a contract hiring [Respondent] to prepare and file a joint custody complaint, for the sum of \$1,425.00. After the complaint was filed, the Defendant made a couple of payments, then quit paying [Respondent], breaking the written contract.”

11. The issue of Respondent possibly engaging in the unauthorized practice of law was brought to the attention of the [Commission] in September of 2009. On or about December 8, 2009, counsel for the [Commission] wrote to Respondent providing him a summary of the information received and requesting information on his organization so that the [Commission] could make a determination as to whether or not Respondent fell within any of the exceptions contained in the Rules on Unauthorized

Practice of Law. By letter dated January 14, 2010, the Respondent replied, setting forth his position and contending, with arguments worthy of a true pettifogger, that his actions did not constitute the practice of law. Thereafter, on February 1, 2010, pursuant to direction of the [Commission], [the Commission's] counsel advised Respondent that [the Commission] found Respondent's actions to be in violation of the Supreme Court's Rules on the Unauthorized Practice of Law. That same letter requested Respondent to voluntarily cease his activities. Subsequent to transmittal of this letter to Respondent, [the Commission's] counsel received a phone call from Respondent who advised [the Commission's] counsel that "I ain't ceasing and desisting."

12. As recently as September 8 of 2010, Respondent prepared pleadings on behalf of a third party. In the case of *State v. Quincey Mothershed*, filed in the District Court of Douglas County, Nebraska, at Docket 1068 No. 166, the Respondent, pursuant to a written agreement with Mr. Mothershed, prepared documents to provide Mr. Mothershed with custody or access to his children.

Based upon these findings, the hearing master concluded "beyond any reasonable doubt that Respondent, who is not licensed to practice law in the state of Nebraska, has provided legal advice, drafted pleadings on behalf of others to be filed in court, and filed pleadings in courts of the state of Nebraska on behalf of third parties." The hearing master rejected Respondent's contention that he merely furnished legal forms, noting that the pleadings which Respondent prepared "were drafted for the particular circumstances of the case" and that "implicit in the drafting of these documents is the advice provided as to what pleading to use, what it should contain, where to file it and, in some instances, actual filing by the Respondent himself." The hearing master further concluded that Respondent engaged in such activities for compensation, noting that on at least two occasions, he sued his "'clients'" for failing to pay him for his preparation of pleadings.

The hearing master rejected Respondent's contention that his conduct was not specifically proscribed by the criminal

statutes pertaining to the unauthorized practice of law, noting authority from this state and elsewhere that courts have inherent power to investigate and restrain the unauthorized practice of law notwithstanding the existence of statutes which make such conduct a criminal offense. The hearing master concluded that Respondent had engaged in the unauthorized practice of law in violation of the rules promulgated by this court and recommended entry of a civil injunction pursuant to the rules of this court.

By order of this court and pursuant to Neb. Ct. R. § 3-1017, a copy of the hearing master's report was mailed to the parties and deadlines for the filing of exceptions to the report and briefs were established. These materials were mailed to Respondent at two separate addresses on file with the clerk's office. Both mailings were returned by the U.S. Postal Service marked as undeliverable and unable to forward. Respondent did not file exceptions to the report as permitted by § 3-1017(B).

On January 12, 2011, this court established a briefing schedule which was mailed to the parties. The mailings to Respondent at both of his known addresses were returned by the U.S. Postal Service marked as undeliverable and unable to forward. The Commission filed a motion requesting issuance of the injunction summarily on the basis of the existing record. Respondent did not respond to the motion, so on February 24, this court entered an order to show cause, requiring Respondent to show cause within 20 days of the order why the injunction should not issue. Respondent has not done so, and the matter is therefore ready for disposition.

DISPOSITION

[1] This court has the inherent power to define and regulate the practice of law and is vested with exclusive power to determine the qualifications of persons who may be permitted to practice law.¹ As officers of the court, attorneys are

¹ *State, ex rel. Hunter, v. Kirk*, 133 Neb. 625, 276 N.W. 380 (1937); *In re Integration of Nebraska State Bar Ass'n*, 133 Neb. 283, 275 N.W. 265 (1937); *State, ex rel. Wright, v. Barlow*, 131 Neb. 294, 268 N.W. 95 (1936).

an important part of the judicial system of this state. It is their duty honestly and ably to aid the courts in securing an efficient administration of justice. The practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to define and regulate its practice naturally and logically belongs to the judicial department of our state government.²

Pursuant to this inherent power, this court has adopted rules providing for an integrated bar³ and rules establishing the standards and procedures by which attorneys may be admitted to practice before the courts of this state.⁴ This court has also adopted rules establishing standards for professional conduct of attorneys⁵ and rules governing the disciplinary procedures which may be invoked if an attorney violates those standards.⁶ This court has also adopted rules requiring mandatory continuing legal education for attorneys who are active members of the Nebraska State Bar Association.⁷

[2,3] Our inherent power to define and regulate the practice of law includes the power to prevent persons who are not attorneys admitted to practice in this state from engaging in the practice of law.⁸ This inherent power is undiminished by the fact that the Legislature has made the “[u]nauthorized practice of law” as defined by Neb. Rev. Stat. § 7-101 (Reissue 2007) a Class III misdemeanor. As we explained in *State, ex rel. Wright, v. Barlow*⁹:

² *In re Integration of Nebraska State Bar Ass’n*, *supra* note 1, 133 Neb. at 289, 275 N.W. at 268.

³ Neb. Ct. R. §§ 3-801 to 3-814 (rev. 2008).

⁴ Neb. Ct. R. §§ 3-101 to 3-119.

⁵ Neb. Ct. R. of Prof. Cond. §§ 3-501.0 to 3-508.5 (rev. 2011).

⁶ Neb. Ct. R. §§ 3-301 to 3-328 (rev. 2011).

⁷ Neb. Ct. R. §§ 3-401.1. to 3-402.3 (rev. 2011).

⁸ See, *Cornett v. State*, 155 Neb. 766, 53 N.W.2d 747 (1952); *State, ex rel. Hunter, v. Kirk*, *supra* note 1; *State, ex rel. Wright, v. Barlow*, *supra* note 1.

⁹ *State, ex rel. Wright, v. Barlow*, *supra* note 1, 131 Neb. at 302, 268 N.W. at 98-99.

That an act denounced by statute as a crime may constitute a contempt of the court is beyond question, notwithstanding the offender may be prosecuted under a criminal statute. . . . This court possesses inherent power to protect itself and its officers from any unlawful interference with its functions as a court. This it may do, not only for the purpose of protecting the court and its officers, but in the interest of the public at large to prevent it from being exploited and injured by one unlawfully assuming to act as an officer of the court. There are many instances where persons' rights have been jeopardized and sacrificed because of following the counsel and advice of unlicensed persons, giving or attempting to give legal advice.

With certain very limited exceptions, our rules prohibit lawyers who are not admitted in Nebraska from practicing law here.¹⁰ A legal proceeding in which a party is represented by a person not admitted to practice law is considered a nullity and is subject to dismissal.¹¹ This is not for the benefit of lawyers admitted to practice in this state, but ““for the protection of citizens and litigants in the administration of justice, against the mistakes of the ignorant on the one hand, and the machinations of unscrupulous persons on the other””¹²

[4] Pursuant to its inherent authority to define and regulate the practice of law in Nebraska, this court has adopted rules specifically addressed to the unauthorized practice of law.¹³ In the statement of intent which precedes the rules, we stated:

Nonlawyers may be untrained and inexperienced in the law. They are not officers of the courts, are not

¹⁰ See § 3-505.5(b).

¹¹ See, *Anderzhon/Architects v. 57 Oxbow II Partnership*, 250 Neb. 768, 553 N.W.2d 157 (1996); *Back Acres Pure Trust v. Fahnlander*, 233 Neb. 28, 443 N.W.2d 604 (1989); *Niklaus v. Abel Construction Co.*, 164 Neb. 842, 83 N.W.2d 904 (1957).

¹² *Niklaus v. Abel Construction Co.*, *supra* note 11, 164 Neb. at 852, 83 N.W.2d at 911, quoting *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 P. 718 (1923).

¹³ Neb. Ct. R. §§ 3-1001 to 3-1021 (rev. 2008).

accountable for their actions, and are not prevented from using the legal system for their own purposes to harm the system and those who unknowingly rely on them.

. . . The purpose of the rules is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.¹⁴

At the core of our rules pertaining to the unauthorized practice of law is a general prohibition: “No nonlawyer shall engage in the practice of law in Nebraska or in any manner represent that such nonlawyer is authorized or qualified to practice law in Nebraska except as may be authorized by published opinion or court rule.”¹⁵ “Nonlawyer” is defined by the rules as “any person not duly licensed or otherwise authorized to practice law in the State of Nebraska,” including “any entity or organization not authorized to practice law by specific rule of the Supreme Court whether or not it employs persons who are licensed to practice law.”¹⁶ The term “practice of law” is defined as

the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:

(A) Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.

(B) Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person.¹⁷

¹⁴ *Id.*

¹⁵ § 3-1003.

¹⁶ § 3-1002(A).

¹⁷ § 3-1001.

Certain types of conduct on the part of nonlawyers are not prohibited by the rules, including “[n]onlawyers selling legal forms in any format, so long as they do not advise or counsel another regarding the selection, use, or legal effect of the forms.”¹⁸

The unauthorized practice rules include civil enforcement procedures. The rules created the Commission, which consists of six attorneys and three laypersons appointed by the court, whose purpose is to receive and investigate complaints of unauthorized practice of law.¹⁹ The Commission is authorized by the rules to resolve a complaint under investigation through a written consent agreement or consent decree.²⁰ The rules further authorize the Commission to institute civil injunction proceedings before this court,²¹ as it has done in this case. When a respondent named in a petition files an answer which presents questions of fact, the rules provide that this court shall refer the matter to a hearing master for resolution.²²

As noted, the hearing master appointed in this case filed a report which included findings of fact and a recommendation that an injunction be issued. Section 3-1018(A) provides:

After de novo review of the proceedings before the Hearing Master, and upon consideration of any exceptions and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law and make such further orders as it may deem appropriate, including restitution and the assessment of costs.

¹⁸ § 3-1004(G).

¹⁹ §§ 3-1011 and 3-1012.

²⁰ § 3-1014(F).

²¹ §§ 3-1014(H) and 3-1015.

²² § 3-1015(F).

Based upon our de novo review of the record made before the hearing master, to which no exceptions were taken, and our consideration of all pleadings and reports filed herein, this court adopts the hearing master's report in its entirety. Based on the report, we conclude that Respondent is a nonlawyer who has repeatedly engaged in the practice of law as defined by § 3-1001(A) and (B). We agree with the hearing master's recommendation that injunctive relief is appropriate and necessary given Respondent's "intractable attitude" in response to the Commission's efforts to obtain his voluntary compliance with our rules prohibiting the unauthorized practice of law. The undisputed facts presented in this record clearly demonstrate a very real risk of harm to the public if Respondent's conduct is not enjoined.

Accordingly, by separate order entered on April 22, 2011, Respondent will be enjoined from engaging in the unauthorized practice of law in any manner, including but not limited to: rendering legal advice or counsel to others for compensation; selecting, drafting, or completing for another entity or person legal documents or pleadings to be filed in the courts of this state; and filing any pleadings on behalf of another entity or person in any court of this state. Noncompliance with this order of injunction shall constitute contempt punishable under this court's inherent power and § 3-1019.

INJUNCTION ISSUED.

WRIGHT, J., not participating.