Attorney and Client: What Constitutes Practice of Law by an Accountant?

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would be susceptible to only one meaning: that it had alleged the necessary intent. Whether plaintiff actually had that intent or merely held possession for its own convenience is a question of fact for the jury. Although the decision can be justified on another ground, the court—by construing the pleading most unfavorably to the plaintiff and by omitting to give plaintiff the benefit of facts necessarily implied—adopted a highly technical attitude toward matters of pleading that resulted in a decision by the court of the jury question of intent.

ALLEN CROUCH

ATTORNEY AND CLIENT: WHAT CONSTITUTES PRACTICE OF LAW BY AN ACCOUNTANT?

In re Bercu, 69 N. Y. S.2d 730 (Sup. Ct. 1947)

Respondent, a certified public accountant, was consulted by a client regarding federal income tax matters and undertook for remuneration to study the reported decisions and departmental rulings on the subject and to render an opinion thereon. Respondent was not engaged in an audit of the books or in the preparation of a tax return. The New York County Lawyers Association, contending that respondent had rendered counsel involving legal research and that this constituted the unauthorized practice of law, petitioned the New York Supreme Court to have him adjudged in contempt of court. Respondent maintained that he had merely given his opinion as an accountant on the decisions and law applicable to federal tax accounting. Held, since the respondent limited his research and advice to principles of proper accounting, to a study of the tax law, and to the court decisions and departmental rulings on the

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8Rountree v. Jackson, 242 Ala. 190, 4 So.2d 743 (1941); Sullivan v. Huber, 209 Minn. 592, 297 N. W. 33 (1941); Romine v. West, 134 Neb. 274, 278 N. W. 490 (1938).

9That the bill of particulars described an enclosure composed of natural barriers which could be held, within the discretion of the court, inadequate to give notice to defendant, or any one else, that plaintiff was asserting an adverse claim, Drawdy Investment Co. v. Leonard, 29 So.2d 198, 203 (Fla. 1947); accord, Brumagim v. Bradshaw, 39 Cal. 24 (1870).

1Under the provisions of N. Y. JUDICARY LAW, §750(7) (1937).
specific subject with which he was concerned, and since he did not go outside the tax law, respondent did not engage in the practice of law. Petition denied.

The courts and legislatures, by means of court rules and statutes protect the public against unauthorized practice of law by laymen, and unprofessional conduct by members of the bar. The practice of law is not confined to the courts alone, but includes giving legal advice and rendering services which require legal skill or knowledge. In the penumbra of federal tax procedure it has become increasingly difficult to distinguish the line between the fields of law and tax accounting; and the principles of law are often supplanted by principles of sound accounting practice. The United States Treasury Department allows practice before it by certified public accountants as well as by enrolled attorneys, and the Tax Court of the United States admits citizens to practice upon examination, without restriction as to profession. In the state courts, on the other hand, although the question as to whether practice before an administrative tribunal in tax matters is the practice of law has been the subject of conflicting decisions, these courts frequently take the strict view that it is the practice of law. It is usually held that the boundaries of the legitimate activities of accountants, tax experts, and other laymen

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2Code of Ethics, Supreme Court of Florida, Rule C (2).
8FLA. STAT. 1941, §39.25.
3Boykin v. Hopkins, 174 Ga. 511, 162 S. E. 795 (1932); State v. Richardson, 125 La. 644, 51 So. 673 (1910); Rhode Island Bar Ass'n v. Automobile Service Ass'n, 55 R. I. 122, 179 Atl. 139 (1935).
5People ex rel Courtney v. Ass'n of Real Estate Taxpayers of Illinois, 354 III. 102, 187 N. E. 823 (1933); People ex rel Illinois State Bar Ass'n v. Peoples Stockyard State Bank, 344 Ill. 462, 176 N. E. 901 (1931).
7Circular No. 230, 1 CCH 1944 Fed. Tax Serv. 2695 §2(c).
must be left to the particular circumstances of each case. There is no Florida decision on the subject, but the Supreme Court has refused, in the absence of a specific case, to adopt proposed rules intended to suppress the unauthorized practice of law.

The court in the instant proceeding ignored a prior decision in a similar case by another branch of the New York Supreme Court which held that the rendering of opinions for compensation as to the proper interpretations of statutes, or the furnishing of information as to what judicial or quasi-judicial tribunals are deciding, is the practice of law. The Massachusetts rule is that any service which lies wholly within the practice of law cannot lawfully be performed by an accountant or any other person not a member of the bar. Within its definition of the practice of law the Massachusetts Court includes the examination of statutes, judicial decisions, and departmental rulings for the purpose of giving advice on a principle of tax law.

The principal case recognized that accountants, in their dealings with tax subjects, are called upon as a matter of routine to examine and interpret the applicable statutes, rulings, and regulations pertaining to tax accounting and the preparation of tax returns. There is no doubt that proper tax accounting concepts and procedures remain, as always, the legitimate domain of the certified public accountant; but in the present case certainly respondent's opinion, based upon legal research and unconnected with an audit or the preparation of a tax return, lies wholly within the practice of law as defined by the Massachusetts Court and the earlier New York case.

MICHEL G. EMMANUEL


Petition of the Florida State Bar Ass'n, 134 Fla. 851, 874, 186 So. 280, 290 (1938).


Ibid.