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Attorney and Client--Unauthorized Practice of Law--Banks and Trust Companies Providing Specific Legal Information [*Green v. Huntzgton Nat'l Bank*, 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965)]

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Recent Decisions

ATTORNEY AND CLIENT — UNAUTHORIZED PRACTICE OF LAW — BANKS AND TRUST COMPANIES PROVIDING SPECIFIC LEGAL INFORMATION

Green v. Huntington Nat'l Bank, 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965).

Today, as in the past, the legal profession is frequently troubled with the unauthorized practice of law by lay groups. Some prerequisites for the practice of law have always existed, although at common law the requirements were quite general.[1] Today, every state has adopted statutory standards for admission to the practice of law.[2] The Ohio Supreme Court has held that the interpretation of the activities which constitute the "practice of law" is a judicial obligation.[3]

The activities of the trust and estate planning departments of banks have been a continuing source of concern to the bar. The close dependence of the banks on the bar, coupled with the possible resentment by the bar of the banks' role in this field, has resulted in some friction between the two groups. The trust officer feels that he is better qualified to serve the public with his specialized background than is the lawyer who may have only a general knowledge of the subject.[4] The lawyer, however, emphasizes that the legal profession exists for the benefit of the public and must justify that existence by providing service. Thus, it is the obligation of the bar not only to provide such service, but also to insure that it is provided by qualified practitioners.[5] The bar jealously

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[1] See 1 POLLACK & MAITLAND, HISTORY OF ENGLISH LAW 211-16 (2d ed. 1952); PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 151 (1929).

[2] HICKS & KATZ, UNAUTHORIZED PRACTICE OF LAW 15-61 (1934); 45 CORNELL L.Q. 126, 128 n.17 (1959). See also OHIO REV. CODE § 4705.01. Violation is punishable as a misdemeanor by OHIO REV. CODE § 4705.09.

[3] Land Title Abstract & Trust Co. v. Dworken, 129 Ohio St. 23, 193 N.E. 650 (1934). See also State *ex rel.* Green v. Brown, 173 Ohio St. 114, 180 N.E.2d 157 (1962).

[4] See Harris, *The Estate Planning Team — Its Duties and Functions*, TRUST BULL., March, 1959, p. 56. Harris believes that it is not easy to find a lawyer who is well trained in this area, and too easy to find one who is not competent to practice in the field of estate planning. He concludes that lawyers will "never" attain a degree of professional skill acceptable to trustmen. *Id.* at 57. See the Brief for Ohio Banker's Ass'n, Trust Division as Amicus Curiae, p. 5, Green v. Huntington Nat'l Bank, 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965).

[5] Gambrell, *The Respective Spheres of Lawyers and Trust Institutions*, TRUST

guards its preferred position, asserting that the public, not the lawyer, is harmed by the unauthorized practice of law,[6] with the courts generally supporting the bar.[7]

The Ohio Supreme Court has further defined the scope of permissible activity by a trust institution with an estate planning program in the case of *Green v. Huntington Nat'l Bank*.[8] There, Merritt W. Green, Chairman of the Unauthorized Practice of Law Committee of Ohio, sought to enjoin the Huntington National Bank from advertising and providing an "Estate Analysis" program[9] on the ground that it involved the unauthorized practice of law. The court of appeals, in reversing the common pleas court's judgment for defendant, issued an injunction and held that a regular program of individual estate analysis in light of certain "legal considerations and particular circumstances" can involve the unauthorized practice of law.[10]

The bank contended that its program provided only general

BULL., JUNE 1959, pp. 8, 66; Resh, *Safeguarding the Administration of Justice From Illegal Practice*, 42 MARQ. L. REV. 484, 489 (1959).

[6]Otterbourg, *The Lawyers, the Public and Illegal Practice of Law*, U.P. NEWS, Dec. 1952, p. 3. See *Examples of Public Harm Resulting From the Illegal Practice of Law by Laymen*, U.P. NEWS, June 1954, p. 29; *How the Public is Harmed by the Illegal Practice of Law*, U.P. NEWS, Oct. 1954, p. 57.

[7] Bump v. District Court of Polk County, 232 Iowa 623, 5 N.W.2d 914 (1942). "Unauthorized practice of law is the attempt by laymen and corporations to make it a business for profit of giving the public, as a substitute, the services of unqualified and unprofessional persons . . . ." *Id.* at 639, 5 N.W.2d at 922.

[8] 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965).

[9] Defendant's "estate analysis" form consisted of five parts: (1) Foreword; (2) Summary of Estate Data; (3) Prospect's "Present Situation"; (4) Comments or Suggestions; and (5) Conclusion. The bank sought to distinguish its program of analysis resulting in suggestions from "estate planning" which it claimed is a complete analysis plus legal advice of a specific nature. Brief for Appellant, p. 4 Green v. Huntington Nat'l Bank, 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965). See Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1965); Oregon State Bar v. John H. Miller & Co., 235 Ore. 341, 385 P.2d 181 (1963); State Bar Ass'n v. Connecticut Bank & Trust Co., 146 Conn. 556, 153 A.2d 453 (1959); Chicago Bar Ass'n v. Financial Planning, Inc., Civil No. 53-S 10001, Super Ct. Cook County, June 10, 1958, reported in 26 U.S.L. WEEK 2662; 31 OHIO BAR 1075 (Dec. 15, 1958). All of these cases involved judicial interpretations of "estate planning" activities.

[10] Green v. Huntington Nat'l Bank, 3 Ohio App. 2d 62, 209 N.E.2d 228 (1964). Defendant was enjoined "from offering or providing to any person who seeks information or assistance . . . specific legal information in relation to specific facts of a particular estate . . . offering or providing specific comments or advice on the form of investments or on the management of assets in a particular estate for the purpose of obtaining . . . a more beneficial estate condition in relation to the tax and other consequences of death . . . [and] from offering, or soliciting inquiry about, its estate analysis program, whether by advertising or otherwise, so long as such program contains . . . a deliberate or systematic practice of law in the manner enjoined . . . ." Green v. Huntington Nat'l Bank, 4 Ohio St. 2d 78, 80, 212 N.E.2d 585, 586-87 (1965).

information, comments, or suggestions on problems in estate planning, and that the prospect was referred to his attorney for further advice.[11] Upon examination of the bank's program, however, the court determined that utilization of the marital deduction trust, the residual trust, and the insurance trust represented a specific estate analysis from a prospect's particular circumstances rather than illustrations of general information. In addition, suggestions of "possible desirable" modifications as to joint holdings, and examination of gift tax liability, amounted to an analysis of the estate which involved *legal* considerations.[12]

The Supreme Court of Ohio, in affirming the decision,[13] modified the injunction, holding that specific comments or advice to lawyers to improve the condition of an estate at death were permissible. However, the practice of providing such information to a prospective customer was held to be illegal.[14] Banks were, therefore, prohibited from dealing directly with their customers; rather, they must work through their customers' attorneys.

The boundaries of the practice of law are not capable of an accurate and unequivocal definition. There exists a twilight zone between the area of activity clearly permissible to a layman and that which has traditionally been denied to him.[15] The courts have generally avoided a specific definition of the term "practice of law," often applying several tests where the situation falls within the gray area. On the one hand, under the "incidental test,"[16] a layman may prepare legal instruments and give legal advice

[11] Brief for Appellant, p. 2, Green v. Huntington Nat'l Bank, 3 Ohio App. 2d 62, 65, 209 N.E.2d 228, 231 (1964).

[12] Green v. Huntington Nat'l Bank, 3 Ohio App. 2d 62, 67, 209 N.E.2d 228, 232 (1964). The bank's program appeared "deliberately designed to emulate the man on the edge of the cliff with one foot poised over the brink. The exhibits show that in its actual operation the wind blew too hard and the bank has fallen into the practice of law." *Id.* at 69, 209 N.E.2d at 233.

[13] Green v. Huntington Nat'l Bank, 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965).

[14] *Id.* at 85, 212 N.E.2d at 589-90. The court apparently accepted the proposition that the original injunction denied the defendant's right to explain its capacities and concepts effectively, which is its duty and right in the management of the trust assets under OHIO REV. CODE § 1107.07. That section states that a trust company may accept and execute any trusts, duties, and powers "in regard to the holding, *management*, and disposition" of property in the trust estate. *Ibid.* (Emphasis added.) See Brief for Ohio Banker's Ass'n, Trust Division as Amicus Curiae, pp. 9-14.

[15] State *ex rel.* Indiana State Bar Ass'n v. Indiana Real Estate Ass'n, 244 Ind. 214, 191 N.E.2d 711 (1963); State *ex rel.* Junior Ass'n of Milwaukee Bar v. Rice, 236 Wis. 38, 294 N.W. 550 (1940). See Lashly, *Trust and Bar Relations*, TRUST BULL., Dec., 1965, pp. 2, 6.

[16] See Johnstone, *The Unauthorized Practice Controversy, A Struggle Among Power Groups*, 4 KAN. L. REV. 1, 15 (1955).

if these activities are incidental to his business or within the scope of his fiduciary capacity.[17] On the other hand, under the "legal skill and knowledge test,"[18] a layman is prohibited from performing services which require an application of legal principles or a degree of competence and knowledge commonly understood to involve the practice of law.[19] Some courts have resorted to a "totality of the circumstances test," whereby each case involving an allegation of unauthorized practice of law is determined on the particular facts presented.[20] Factors that have influenced the decision of the courts are the following: (1) whether a fee was paid for the services rendered;[21] and (2) whether the advice was put in the form of a particular suggestion rather than a general legal recommendation.[22]

In applying one or a combination of these tests, most courts have decided the cases before them without specifying which acts a bank or trust company may perform.[23] However, an attempt in this direction was made in the recent case of *Frazee v. Citizens Fidelity Bank & Trust Co.*,[24] in which the court enumerated fifteen prohibited and twenty-eight authorized activities of a trust company.[25] The *Frazee*

[17] Merrick v. American Sec. & Trust Co., 107 F.2d 271 (D.C. Cir. 1939), *cert. denied*, 308 U.S. 625 (1940) (probating wills and giving estate management advice incidental to the fiduciary function); State Bar Ass'n v. Connecticut Bank & Trust Co., 146 Conn. 556, 153 A.2d 453 (1959) (giving advice as incidental to authorized fiduciary business); Judd v. City Trust & Sav. Bank, 133 Ohio St. 81, 12 N.E.2d 288 (1937) (drafting for administration of trusts and appearing in probate court within the fiduciary activity).

[18] See Johnstone, *supra* note 16.

[19] State Bar v. Arizona Land Title & Trust Co., 90 Ariz. 76, 366 P.2d 1 (1961) (acts customarily carried on from day to day by attorneys through the centuries); Bump v. District Court, 232 Iowa 623, 5 N.W.2d 914 (1942) (act requires knowledge of the law and is of a kind usually for attorneys); *In re* Unauthorized Practice of Law in Cuyahoga County, 175 Ohio St. 149, 192 N.E.2d 54 (1963); Land Title Abstract & Trust Co. v. Dworken, 129 Ohio St. 23, 193 N.E. 650 (1934) (advice and actions taken in matters connected with the law); Oregon State Bar v. John H. Miller & Co., 235 Ore. 341, 385 P.2d 181 (1963) (application of legal principles).

[20] McMillen v. McCahan, 167 N.E.2d 541 (Ohio C.P. 1960) (the character of the act is determinative); State *ex. rel.* Junior Ass'n of Milwaukee Bar v. Rice, 236 Wis. 38, 294 N.W. 550 (1940) (each case upon its own particular facts).

[21] *In re* Unauthorized Practice of Law in Cuyahoga County, 175 Ohio St. 149, 192 N.E.2d 54 (1963). *But see* State Bar v. Arizona Land Title & Trust Co., 90 Ariz. 76, 366 P.2d 1 (1961) (receipt of a fee is irrelevant).

[22] Oregon State Bar v. John H. Miller & Co., 235 Ore. 341, 385 P.2d 181 (1963) (application of legal principles is practice of law regardless of form used).

[23] Hobson v. Kentucky Trust Co., 303 Ky. 493, 197 S.W.2d 454 (1946). The court found the bank's request for an enumeration of practices in which it could engage to be an impossible task.

[24] 393 S.W.2d 778 (Ky. 1965).

[25] Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1965). Banks or trust companies, either through salaried attorneys or lay employees should

case illustrates the difficulty involved in distinguishing financial recommendations from legal advice.

The *Green* case did not turn upon the "incidental test" nor upon

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not: (1) draft wills or trust instruments; (2) offer wills for probate; (3) handle formal court proceedings; (4) draft papers or give advice concerning revocation of wills; (5) resolve questions of domicile and residence; (6) handle proceedings involving allowance of widows, children, or wards; (7) draft deeds or mortgages; (8) prepare or file assignments of rent; (9) draft any formal legal documents to be used in discharge of corporate fiduciary's duty; (10) give legal advice or legal counsel to any person, firm, or corporation; (11) in estate and inheritance taxes, and federal and state income tax matters, execute waivers of statutes of limitations, without advice of the attorney, or prepare and file protest or claim for refund or confer with tax authorities regarding protest or claim for refund, unless based on mathematical or clerical errors in tax returns filed by it as fiduciary, or handle petitions to Tax Court; (12) secure court orders for prompt sale or disposition of such assets of the estate as may be subject to depreciation, deterioration, or loss; (13) prepare contracts or court orders required to conserve estate or operate business of decedent during administration; (14) terminate any pending litigation in which decedent had an interest; and (15) institute or defend any litigation on behalf of executor, administrator, or trustee. *Id.* at 784-85.

In the administration of estates, guardianships, or other fiduciary activities, a bank or trust company *may*: (1) use form custodians and management agent agreements prepared by its counsel; (2) discuss business and financial aspects of fiduciary relationships with customers and prospective customers and with persons who are considering a renunciation of right to qualify as executor or administrator or who propose to resign as a guardian or trustee; (3) perform any clerical, accounting, financial, or business acts in preparation of inventory or account required of it as fiduciary and file inventory and account after furnishing copy to the attorney; (4) perform acts jointly for themselves and for a co-fiduciary relating to their joint duties, provided such duties are otherwise proper for trust companies acting alone; (5) act as agent for foreign corporate fiduciary and perform such services as would be permitted if trust company were acting as fiduciary; (6) act for protection of their interest as fiduciaries in insolvency proceedings short of formal hearings before a referee in bankruptcy or in court; (7) make appointments with the custodian of security for opening safe-deposit boxes; (8) open safe-deposit boxes; (9) publish notice to creditors; (10) search tax records to determine real and personal property which decedent had listed for tax purposes; (11) marshal assets of estates and provide for security and preservation of the interests of all beneficiaries; (12) provide for prompt protection or disposition of assets of estate that may be perishable, subject to rapid depreciation, or otherwise in peril; (13) pay uncontested claims; (14) give notice of termination of lease because of default by lessee; (15) demand and receive payment of life policies payable to the estate of a fiduciary's decedent or corporate fiduciary as trustee or as guardian; (16) demand and collect claims without litigation; (17) file copy of will in county other than the county of the decedent's domicile; (18) demand foreclosure of deeds of trust which are in default; (19) notify beneficiaries under testator's will relating to each beneficiary; (20) secure death tax waivers in order to transfer property; (21) give and take receipts of all types; (22) engage in advertising business and financial aspects of their services as executor, trustee, or guardian and estate planner with clear statement that all legal implications will be handled in cooperation with customer's own attorney; (23) perform ministerial and clerical acts in preparation and filing of any tax return required of them as fiduciaries, but in case of federal estate or Kentucky inheritance tax return, filing shall take place after furnishing copy to attorney for estate and affording him an opportunity to question and discuss it and, in case of fiduciary income and intangible tax returns, copies of such returns shall be furnished to attorney for estate, prior to filing upon request by such attorney; (24) collect rents, payments due, interest, dividends and other income

an application of the "legal skill and knowledge test." Rather, the court looked to the "totality of the circumstances" to support its finding that the bank's activities were in the nature of legal advice. The end result of gathering data on the status of a particular estate was to provide "specific legal information," and " 'specific comments or advice on the form of investments or on the management of assets . . . for the purpose of obtaining . . . a more beneficial estate condition in relation to the tax and other consequences of death . . . .' "[26] A bank's course of conduct in providing continuous legal advice with the "reasonable expectation of receiving full compensation"[27] was held to constitute the practice of law. Further, the court found irrelevant such factors as the recommendation that the customer consult his attorney[28] and that the advice given was termed as "suggestions."[29] Thus, it appears that providing specific recommendations in an estate plan without the consultation and approval of the customer's attorney will be considered as involving the practice of law.[30]

The practical effect of this result is not to restrict the extent of bank participation in the process of estate planning, but rather to limit the methods by which this participation may be accomplished. Trust officers have insisted upon the necessity of a broad base in order to administer effectively their right and duty as a fiduciary.[31] They look upon the bar's activity as an interference with their estate planning programs which were the banking system's own creation.[32]

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due the estate or trust; (25) keep all buildings and fixtures in repair during the course of administration of the estate or trust; (26) with court authority, continue to operate any business of decedent; (27) assemble such information and records as may be needed for the preparation and filing of any partial or intermediate settlement required by court; and (28) assist in location of heirs, their names, ages, residence and degree of relationship. *Id.* at 785-86.

[26] Green v. Huntington Nat'l Bank, 4 Ohio St. 2d 78, 85, 212 N.E.2d 585, 589-90 (1965).

[27] *Id.* at 81, 212 N.E.2d at 587.

[28] *Id.* at 82, 212 N.E.2d at 588.

[29] *Ibid.*

[30] See Oregon State Bar v. John H. Miller & Co., 235 Ore. 341, 385 P.2d 181 (1963). The court found that the estate planning advice involved the application of legal principles and prohibited explanations as to "specific" need. *Id.* at 347, 385 P.2d at 183.

[31] See, *e.g.*, Barclay, *Practical Guides to Bar Relations*, 104 TRUSTS & ESTATES 885 (1965); Gambrell, *The Respective Spheres of Lawyers and Trust Institutions*, TRUST BULL., June 1959, p. 8; Otterbourg, *A Continuing Professional Problem: Ethics and the Unauthorized Practice of the Law*, 44 A.B.A.J. 350 (1958); Rogers, *Estate Planning — A New Look*, TRUST BULL., March 1963, p. 29.

[32] Barclay, *supra* note 31, at 887; Brief for the Ohio Banker's Ass'n, Trust Division as Amicus Curiae, p. 5, Green v. Huntington Nat'l Bank, 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965). *But see* Rollison, *The History of Estate Planning*, 37 NOTRE DAME LAW. 160, 168 (1961).

The American Bar Association, aware of the threat of commercialization of the practice of law, created a Special Committee on the Unauthorized Practice of Law in 1930 to investigate and report on encroachment by lay groups upon the professional activities of lawyers.[33] In 1940, members of the Bar Association's Unauthorized Practice Committee joined with the Trust Division of the American Bankers Association to establish a National Conference Group.[34] "The group's objective was 'to eliminate, as far as possible, controversies giving rise to misunderstandings and litigations between trust institutions and bar groups.' "[35] The following year, a "Statement of Principles" was issued which stated that "trust institutions should neither perform services which constitute the practice of law nor otherwise engage in such practice; therefore they should not draw wills or other legal documents or perform services in the administration of estates or trusts where such acts by law or local procedure are considered the practice of law."[36] Though there has been conflict between these two groups with respect to the scope of permissible activities of a trust company, this "Statement" is today recognized by the American Bar Association and the American Bankers Association.[37] Thus, the spirit of cooperation embodied in the National Conference's "Statement of Principles" was made mandatory

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33 Jackson, *Foreword* to HICKS & KATZ, *op. cit. supra* note 2, at 3. This was made a standing committee in 1933. Faced with the American Bar Association's organized effort against unauthorized practice, the Trust Division of the American Banker's Association issued a "Statement of Principles" in which the distinct and separate function of the lawyer was recognized and the practice of law by trust institutions was prohibited. *A Statement of Principles of Trust Institutions*, art. IV, § 2. See Kuhn, *The National Conference of Lawyers and Bankers — An Effective Way for Working Together*, TRUST BULL., May 1965, p. 29; Lashly, *supra* note 15, at 2; McLucas, *Relations of Banks with the Bar*, 30 U.P. NEWS 189 (1964).

34 See Johnstone, *The Unauthorized Practice Controversy, A Struggle Among Power Groups*, 4 KAN. L. REV. 1, 22-26 (1955); Resh, *Safeguarding the Administration of Justice From Illegal Practice*, 42 MARQ. L. REV. 484, 492-93 (1959). Other National Conference Groups have been formed with the life insurance companies, the National Association of Life Underwriters, collection agencies, the National Association of Real Estate Boards, the American Institute of Accountants, casualty insurance companies, publishers of loose-leaf services, and insurance adjusters. Conference groups normally meet once or twice a year, with brief summaries of their accomplishments appearing in the annual reports of the Standing Committee on Unauthorized Practice of Law, printed in the annual *A.B.A. Reports*.

35 McLucas, *supra* note 33, at 191.

36 *Ibid.* No attempt was made to define the prohibited "acts" or "services"; rather, the entire matter was left to the courts and local procedure.

37 The Standing Committee on Unauthorized Practice of Law issued an *Informative Opinion 1959-A: Estate Planning*, 45 A.B.A.J. 1296 (1959); 32 OHIO BAR 1008 (1959), which stated that estate planning "necessarily" involved an application of legal principles, and that any plan which involved the dissemination of information other than an "analysis of the facts and assets" would constitute the

in *Green* by requiring the trust officer to bring in the customer's attorney at an early stage.[38]

While the *Green* case was decided in the bar's favor, the problem of the unauthorized practice of law in the area of estate planning will continue to face the legal profession. Attempting to solve this matter through litigation carries with it the uncertainty of future decisions and the resultant friction between trust officers and the bar.

Two proposals for non-judicial solution have been made in an attempt to establish adequate and comprehensive guidelines for determining what are acceptable or prohibited activities. The first is that certification boards be established to license those practitioners who are particularly qualified in specialized fields of law.[39] This suggestion was offered in response to criticism of the legal profession's failure to adapt to modern society's demand for specialized abilities to meet its specialized needs.[40] Although the American Bar Association appointed a special committee to investigate this proposal, there was general opposition to its adoption.[41]

A second suggested solution to the problem is an increased effort at the conference level, as in Massachusetts,[42] where the state bar association and representatives of corporate fiduciaries worked together to formulate acceptable guidelines regarding the practice of law and estate planning. The "Massachusetts Declaration of Policy" realistically recognizes that estate planning necessarily involves the specific application of legal principles, and that the attorney's role is vital to the total process. Cooperation and confidence are

practice of law. The reaction of the trust companies was immediate, and the National Conference Group issued a "Statement of General Policies" in 1960 which basically affirmed the "Statement" of 1941. See TRUST BULL., Sept. 1960, p. 23.

[38] This has been recognized as a primary consideration in fostering good bank-bar relations in that the lawyer does not want to be reduced to a mere scrivener, but rather desires to participate actively in the planning decisions. See McLucas, *Relations With the Bar*, TRUST BULL., Sept. 1964, p. 29, 35.

[39] See Kegan and Melchior, *Certification — A Proposal to the Bar*, 42 ILL. L. REV. 413 (1947). See also Porter, *Bar Professionalism: The Antidote to Lay Practice of Law*, 33 OHIO BAR 852 (1960).

[40] Bethel, *Trust Institutions' Relations With the Bar*, TRUST BULL., Nov. 1962, pp. 45, 48; Johnstone, *supra* note 34, at 36.

[41] *Recommendations of the Special Committee on Specialization and Specialized Legal Education*, 79 A.B.A. REP. 582 (1954). The Committee on Unauthorized Practice of Law specifically opposed the creation of specialized legal societies. See *Report of the Standing Committee on Unauthorized Practice of the Law*, 79 A.B.A. REP. 296 (1954). For a criticism of the idea of certification boards, see Otterbourg, *supra* note 31, at 353.

[42] *Massachusetts Bar and Corporate Fiduciaries Formulate Declaration of Policy*, 104 TRUSTS & ESTATES 856 (1965); CASE & COM., Jan.-Feb. 1966, p. 61.

stressed in effecting the best interests of the customer. Guidelines are established as to: (1) promotional activities; (2) general discussions; (3) specific application; (4) counsel; and (5) amendment or termination. The Declaration pointed out that "specific application of legal principles to a given set of facts is the function of the lawyer."[43] Unless the lawyer is actually present, therefore, the trust officer must limit himself to general recommendations and suggestions, and may not advise on specific form or content or apply the law to the customer's specific factual situation or to specific financial data. It becomes the trust institution's responsibility and duty to explain to the customer that all recommendations and suggestions are subject to final approval by his lawyer. Thus, it is readily apparent that Massachusetts has accomplished by the joint efforts of its banks and the bar association the same result that has been reached in Ohio by judicial decision. However, Massachusetts has done so through professional cooperation and without incurring conflict, adverse publicity, or six years of litigation. In addition, the Massachusetts Declaration is broader in its treatment of the question of permissible bank activities. The question remains as to whether the state bar associations will follow a similar course or will leave the solution of future disputes between trust officers and lawyers to the judiciary.

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[43] *Massachusetts Bar and Corporate Fiduciaries Formulate Declaration of Policy*, 104 TRUSTS & ESTATES 856, 857 (1965); Case & Com., Jan.-Feb. 1966, p. 61.