In re Kruger, 8 ROP Intrm. 257 (2001)
IN THE MATTER OF STEPHEN KRUGER,
Respondent.

DISCIPLINARY PROCEEDING NO. 00-04

Supreme Court, Disciplinary Tribunal
Republic of Palau

Decided: January 8, 2001

Disciplinary Counsel: Michael J. Rosenthal

Counsel for Respondent: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; DANIEL CADRA, Senior Land Court Judge.

PER CURIAM:

In this disciplinary proceeding, respondent Stephen Kruger is charged with the violation of Rule 15 of this Court's rules of professional conduct, the unauthorized practice of law. After conducting a hearing and considering the evidence presented, we find that drafting legislation under these circumstances does constitute the practice of law, and therefore we find by clear and convincing evidence that Kruger violated the Rules of Professional Conduct pertaining to the unauthorized practice of law.

FACTS

Former Governor Paul Reklai obtained legal aid from the Law Office of Gerald Grey Marugg, when the State of Aimellik was in need of legal services. Stephen Kruger, who is a bar member of the State of New York but is not licensed to practice law in Palau, worked part-time in Marugg's office. After Marugg left the island in 1999, Kruger continued to work out of the office.
⊥258 In August 1999, former Governor Reklai went to the Law Office of Gerald Marugg seeking help in drafting a bill. The former Governor was aware that Kruger was not licensed to practice law in Palau, but sought his help. Former Governor Reklai testified that Kruger helped draft Supplemental budget bill ("ASPL 6-17"). However, Reklai also testified that Kruger did not give him any legal advice regarding the bill or his activities as Governor, but rather Reklai dictated what he wanted the bill to say and Kruger typed the bill and put it in proper English.

Kruger was paid $262.50 for his services in helping to draft ASPL 6-14. Reklai testified that Kruger was being paid at a rate of 70 dollars an hour.

Former Aimeliik State Governor Paul Reklai wrote a letter to Seit Andres, President of the Senate on October 19, 1999, recommending Kruger for the position of Senate Legal Counsel.

The letter states in part: "I have known Kruger for several years, personally and professionally. His work for Aimeliik State has included . . . drafting legislation . . . [including] budget bills and . . . general state legislation . . . ."

DISCUSSION

Kruger argues that even if drafting legislation is practicing law, he did not commit the unauthorized practice of law because he is protected by Rule 3 of the *Rules of Admission for Attorneys to Practice in the Courts or the Republic of Palau* . Rule 3 provides that a government attorney may practice law in Palau without taking the Palau bar examination for four years as long as he is a salaried employee of a state government of the Republic of Palau and "maintains membership in good standing in the bar of any state" of the United States.

However Rule 3 only exempts an attorney from taking the Palauan bar examination, it does not exempt an attorney from the requirement of becoming a licensed Palauan attorney.

Also relying on the common usage of words, Kruger was not considered a "salaried employee" of the state of Aimellik. The common usage of the term "salaried employee" is a person who works for fixed compensation paid regularly . . . for services." Webster's Third New International Dictionary 2003 (1981). Kruger submitted a statement on August 19, 1999 requesting payment for his services, and he was paid on a one time basis for these services. "[W]ords are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them." *Yano v. Kadoi*, 3 ROP Intrm. 174, 182-83 (1992) (quoting *Caminetti v. United States* , 242 U.S. 470, 485-86 (1917)). A Salaried employee does not commonly mean a person hired for a one time assignment and paid directly for that assignment, and we will not start interpreting it as such now.

Ascertaining whether a particular activity falls within the general definition of the practice of law is a formidable endeavor. The term "practice of law" as generally understood, is the "doing and performing of services in a court of justice in any matter pending therein, throughout its various stages, in conformity to adopted rules of procedure. But in a larger sense includes legal advice and counsel and preparation of legal instruments and contracts by which legal rights are secured, though such matters may not be pending in court." *People v. Merchants Protective Corp*., 209 P. 358 (Cal. 1922) (*quoting Eley v. Miller* , 34 N.E. 836, 837 (Ind. App. 1893) Therefore, "[i]n a pragmatic sense, the practice of law encompasses all of the activities engaged in by attorneys in a ⊥259 representative capacity, including legislative advocacy." *Baron v. City of Los Angeles*, 2 Cal. 3d 535 (1970) (*quoting* 41 Ops. Atty. Gen. 86, 93 (1963)).

The drawing of wills, deeds of trusts, mortgages and leases have all been considered the practice of law when coupled with the giving of advice. *Conway-Bogue Reality Inv. Co. v. Denver Bar Ass'n* , 312 P.2d 998 (Colo. 1957); *People ex rel. Committee on Grievances v. Denver Clearing House Bank* , 59 P.2d 468 (Colo. 1936); *Land Title Abstract & T. Co. v. Dworken*, 193 N.E. 650 (Ohio 1934). There is a wealth of authority, it was said in *Childs v. Smeltzer*, for the proposition that the habitual drafting of legal instruments for hire constitutes the practice of law, even though the individual so engaged makes no attempt to appear in court, or to

give the impression that he is entitled to do so. 171 A. 883 (Pa. 1934).

The preparation of charters, bylaws, and other documents necessary to the establishment of the corporation were considered the practice of law in Florida. In its reasoning the Supreme Court of Florida said:

> The reasonable protection of rights and property of those involved requires that the persons preparing such documents and advising others as to what they should and should not contain possess legal skill and knowledge far in excess of that possessed by the best informed non-lawyer citizen.

The Florida Bar v. Town, 174 So.2d 395, 396 (Fl. 1965).

Although no court has expressly decided whether or not legislative drafting is the practice of law, the California Supreme Court implied that legislative advocacy is not the practice of law. *Baron v. City of Los Angeles* , 2 Cal. 3d 535 (1970). In *Baron*, an attorney argued that a local ordinance, which requires legislative lobbyists to register within the city, was void as applied to attorneys because, so applied, it regulates the practice of law, a field preempted by state legislation. *Id* at 539. The court affirmed the trial court opinion that:

> the ordinance is a valid exercise of the police power of the City of Los Angeles and that it may be applied to plaintiff and others similarly situated, except when they are "acting on behalf of others in the performance of a duty or service, which duty or service lawfully can be performed for such an attorney licensed to practice law in the State of California."

Id. at 544.

The appellate court made this decision by looking at what constituted the practice of law in California and determining that "an attorney authorized by a client to appear at hearings considering local legislation in order to argue for or against the adoption of that legislation would be within the legitimate thrust of the ordinance," and therefore suggesting that lobbying is not the practice of law. *Id*. If lobbying is not considered the practice of law, then drafting legislation certainly would not be.

More recently, the Pennsylvania Supreme Court discussed the limitations and specificity of the *Baron* opinion. *Gmerek v. State Ethics Commission* , 751 A.2d 1241, 1262 (Pa. 2000). They explain "the decision is limited in its scope as it exclusively relates ⊥260 to the interpretation of these discrete statutory provisions." *Id.* The Pennsylvania Supreme Court decided that legislative advocacy is the practice of law. They explained that there are acts that may be performed by lawyers and non- lawyers, for example the right to petition the government. When these acts are performed by lawyers these neutral acts become the practice of law and are therefore within the province of the Supreme Court to regulate because these acts constitute the practice of law. *Id*. at 1259.

Looking at the specifics facts of the instant case, Kruger's act of drafting the Supplementary Budget bill was clearly the "Practice of Law." The Supplementary Budget Bill is drafted using legal language. Former Governor Reklai went to the Law Offices of Gerald Marugg, looking for a lawyer to help him with drafting legislation. Reklai was looking for someone in a law office to help him with drafting and he found Kruger. Although Reklai claims he used Kruger as little more than a secretary, it seems hard to believe he would than be willing to pay Kruger seventy dollars an hour for secretarial work. "[I]t seems clear that a person who takes facts and concepts and 'translates' them into causes of action in a legal format is practicing law." *In re Perrin*, 8 ROP Intrm. 165, 166 (2000). Likewise, it seems clear that taking facts and ideas and "translating" them using legal concepts into proposed legislation is the practice of law. When Kruger holds himself out to the public as competent to exercise legal judgment (as he has by working out of Marugg's office), he implicitly represents that he has the technical competence to analyze legal problems and the requisite character qualifications to act in a representative capacity. When such representations are made by persons not adequately regulated, the dangers to the public are manifest. *Gmerek*, 751 A.2d at 1257 n.21.

This case should not be read to say that drafting legislation will always be considered the practice of law, as with all unauthorized practice of law cases each case will be fact specific. Based on the facts, Respondent was clearly engaged in the practice of law without being licensed in Palau.

Respondent made a mistake and we will not sanction him more than to say so.