

## **REGULATING THE PRACTICE OF LAW: ADMISSION, DISCIPLINE AND UNAUTHORIZED PRACTICE**

### **Background**

The practice of law in Missouri is defined and controlled by the Supreme Court of Missouri under its constitutional mandate to exercise the judicial powers of government. Art. 5, § 1, Constitution of Missouri. Attorneys are held to be officers of the court and play an important role in the exercise of the functions of the judicial branch. *In re Connor*, 207 S.W. 2d 492 (Mo. banc 1948).

The Supreme Court of Missouri has the exclusive power to license persons to practice law. *Hulse v. Criger*, 247 S.W. 2d 855, 857 (Mo. banc 1952). Admission to the bar is governed by Rule 8. Applicants must demonstrate they are of good moral character and are fit to practice law, and they must pass the written bar examination. Proceedings under Rule 8 are administered by the Board of Law Examiners, but the Supreme Court retains final authority over all matters relating to admission to the bar.

The Supreme Court of Missouri has exclusive power to discipline lawyers. Professional responsibilities are governed by the Rules of Professional Conduct, Rule 4. Enforcement of the Rules of Professional Conduct is governed by Rule 5. The Chief Disciplinary Counsel conducts investigations and serves as counsel for the bar in all disciplinary proceedings, but the Court has final authority over all matters of lawyer discipline.

The Supreme Court of Missouri also has exclusive authority to define what constitutes the practice of law and to prohibit the unauthorized practice of law by non-lawyers. *Clark v. Austin*, 101 S.W. 2d 977 (Mo. banc 1937). The Chief Disciplinary Counsel has the power and the duty to investigate the unauthorized practice of law and to institute appropriate proceedings. Rule 5.29. The Supreme Court of Missouri has declined to issue a blanket definition of what constitutes the practice of law, leaving the subject to case-by-case determinations. For example, in *Hulse v. Criger*, 247 S.W. 2d 855 (Mo. banc 1952), the Court set out a list of rules that defined the practice boundaries between lawyers and realtors.

Recently, there have been attempts – some successful – to regulate some aspects of the practice of law at the federal level. The ABA and the states are opposed.

The Sarbanes-Oxley Act, enacted in the wake of corporate scandals, imposes new disclosure requirements on lawyers in limited situations. In an effort to preempt further federal requirements, at its August 2003 Annual Meeting the ABA House of Delegates voted to amend Model Rule 1.6 to provide for disclosure by attorneys to prevent legal advice being misused for purposes of corporate looting or breach of fiduciary duties by management.

The Gramm-Leach-Bliley Act was interpreted by the FTC to impose new disclosure requirements on lawyers to advise their clients of privacy policies. This interpretation was struck down by a federal district court on August 11, 2003, in a suit brought by the ABA. Appeals are pending in this case.

Recent revisions to the Bankruptcy Code make lawyers personally accountable for the financial disclosure by their clients, and impose other requirements on lawyers.