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Report of Committee on Unauthorized Practice of Law

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such children as the courts have over the children of a valid marriage pending dissolution.

A new statute is proposed which would provide that property acquired by the parties during the marriage is common property and the court has equitable power to distribute such property between the parties in an annulment proceeding according to the same principles and guides as the court adheres to in distributing property to the parties in a valid marriage.

It is further proposed that Section 995, providing for the powers and duties of the prosecuting attorney in divorce cases, shall be amended to make the prosecuting attorney a party to the proceedings and giving him such power as he may consider expedient to exercise in light of each individual case, or in the larger counties, in respect to the entire default divorce calendar.

The foregoing is based upon the report of the 1947 Committee on Divorce Law as submitted by its chairman, Mrs. Anne Thompson, at the 1947 meeting. In addition to the work of drafting specifically worded sections for submission to the Legislature, in accordance with those findings, the Committee has before it a statute proposed by Judge J. E. Stone of the Cowlitz County Superior Court, providing for the entry of final decree nunc pro tunc under certain circumstances.

The Committee is also planning to devote serious study to the proposed Uniform Divorce Law as approved by the American Bar Association before presenting its recommendations in final form.

Report of Committee on Unauthorized Practice of Law,
by Jack Freeman

At the first meeting of the Committee appointed by the Board of Governors as the Unauthorized Practice Committee for the year 1948, the members took up the matter of prime importance, that being the prospective action against the realtors of the state for unauthorized practice of the law. It had before it the recommendation of the Board of Governors that a test case be brought in King County against the Washington Association of Realtors and certain individual realtors, but the Committee felt that perhaps prompter action could be obtained in some other county in the state, because of the crowded condition of the docket in King County. The Committee also felt that the services of the attorney previously employed by the Committee would no longer be necessary and that the money used in paying him a retainer should

be used in the prosecution of any action against the realtors. Accordingly the Chairman of the Committee met with the Board of Governors in Wenatchee and he was authorized to commence the action in Spokane County and to employ counsel to bring the action. The Chairman accordingly employed F L. Stotler, Attorney in Colfax, Washington, past president of the Washington State Bar Association, and a man who for many years has been actively interested in the subject of unauthorized practice, as counsel. Tentative draft of a complaint was drawn, but before the action could be commenced several attorneys contacted the Chairman of the Committee and protested against the bringing of the action in Spokane County and called attention to the fact that a number of years ago a so-called "gentlemen's agreement" had been entered into by the Spokane Bar Association and the Spokane Realty Board whereby realtors could draw legal instruments upon their own sales. While it was the opinion of the Chairman of the Committee and Mr. Stotler that any such agreement was not binding upon the Washington State Bar Association, was illegal, and that in any event the agreement had been breached by the realtors in general by drawing instruments on deals other than their own sales, it was nevertheless felt that the matter should be referred to the Board of Governors. The Board of Governors was of the opinion that the action should not be brought in Spokane County but in Yakima County. Extensive delays were incurred in determining whom the action should be brought against in Yakima County, but your Committee is happy to report that before this report reaches you that action will have been commenced against individual realtors in the County of Yakima and against the Association of Realtors to enjoin them from drawing any legal instruments in connection with sales of property or from otherwise practicing law unlawfully.

During the past year your Committee has received a number of reports from lawyers throughout the state, reporting instances of the unlawful practice of the law. These instances may be roughly classified in two groups. By far the larger group is that one which contains the reports concerning realtors unlawfully practicing the law. Action on the major portion of these must be deferred until a decision in the action against the realtors is obtained. The second group are the more flagrant violations, consisting of notaries public drawing wills and community property agreements and other serious but isolated cases. Letters have been written, and in most of these cases agreements to desist have been obtained from the guilty parties. Some cooperation has been obtained

from the prosecuting attorneys in these cases in obtaining these agreements.

The foregoing portion of this report represents a very brief statement of the work which has been done by your Committee during the past year. On the face of it, it appears that not a great deal of progress has been made. The reason for this lack of progress will be brought out in the following portions of this report. But before your Committee points out its opinion as to the reasons for the lack of progress and makes its recommendations in regard thereto, it desires to call to the attention of the Board of Governors and the members of the profession as a whole the seriousness of the situation. Many young attorneys have returned from military service and many more are being graduated from the two law schools in the state. Gonzaga University in Spokane has just announced the enlargement of its law school and it is probable that they will have a day school as well as a night school. More young men are seeking a legal education because it is financially easier for them to obtain it by reason of the assistance received under the G. I. Bill of Rights. It is the opinion of your Committee that our state may soon experience an overcrowding in the law profession. An overcrowding in the law profession is a bad thing both for the lawyers themselves and for the public in general. Obviously it will affect all members of the profession financially. This, of course, might be termed a selfish argument. However, this same overcrowding is likely to have a serious effect upon the public generally and also upon the reputation of the legal profession as a whole. When a young lawyer graduates from law school and endeavors to start practice, unless he has an opportunity to make a living at his profession, there is a great temptation to use and embezzle his client's funds to augment his income. This results in harm to the public and also the reputation of the profession as a whole. Your Committee feels that it is the duty of the Bar Association to see that such minor work as conveyancing is reserved for the legal profession because it is in this field that the young lawyer is most likely to commence the building of his practice, and your Committee therefore feels that every step should be taken to see that no encroachment is made upon this field of work, which is rightfully the work of the legal profession and for which the legal profession is particularly and especially trained.

As has been previously stated, very little progress has been made toward curbing the unlawful practice of the law, either in the past year in which your present Committee has been acting, or in previous years.

Some members of your Committee have felt that this has been due to the inactivity of previous Committees, and undoubtedly subsequent committees may feel that your present Committee has also been inactive and has done nothing toward the curbing of this practice. Your Committee, however, is now of the opinion that the reason that nothing has been done to curb this practice has been due to a singular lack of cooperation on behalf of the Bar as a whole, and it is now apparent to your Committee that very little can be done to stop the unauthorized practice of the law unless considerably more cooperation is received from the lawyers throughout the state and from prosecuting attorneys especially, both in the reporting of violations and in the efforts to stop the violations.

At the suggestion of your Committee practically every local bar association in the state appointed a local Unauthorized Practice Committee. It is the opinion of the state Committee, however, that these local committees have done nothing to correct the situation in their respective counties. The reports are received by the state Committee from lawyers who have in their practice discovered violations of unauthorized practice. No local committee has reported any violations as a committee, and it is the opinion of your Committee that there is a great amount of this unlawful practice which is never reported and about which nothing is done. The local policing work and particularly the reporting of the violations, in the opinion of your Committee, must be done by the local committees. The state Committee is willing to assist in whatever manner it can, but is unable to police the whole state. These local committees must become active in their ferretting out and reporting of violations if the practice is to be stopped.

When your Committee was seeking some county in the state in which to bring an action against the realtors, it found most lawyers very anxious to have the case commenced but also very anxious that the case not be commenced in their county nor against their clients, for fear of adverse criticism and the loss of business. The adverse criticism in the opinion of your Committee can be overcome by proper public relations work, which will be hereinafter recommended. If the bar is uniformly behind the stopping of unlawful practice, no loss of business will occur. It is, therefore, the opinion of your Committee that any lawyer who represents a real estate concern should definitely advise their clients that they are violating the law in drawing legal instruments and should insist that they desist in this practice. This form of cooperation is wholly lacking among the lawyers in this state, and in the

opinion of your Committee unlawful practice cannot be stopped until this cooperation is received. In one instance of unlawful practice the attorney reporting the violation refused to cooperate with the prosecuting attorney who was willing to take action and denied that he knew anything about the case. This is one example of the lack of cooperation which your Committee meets from the lawyers.

The Bar Association must also seek and obtain the cooperation of the prosecuting attorneys in the various counties if it is going to be able to stop this practice. In the opinion of your Committee, the practice is a violation of the law and is injurious to the public interest and should be prosecuted by the prosecuting attorneys. The Bar Association cannot specially prosecute the many violations throughout the state upon the limited amount of funds which it has available. Although excellent cooperation has been received in one or two instances from prosecuting attorneys, other prosecutors appear to be reluctant to assist.

It is the recommendation of the Committee that the following specific steps be taken during the ensuing year to halt the unlawful practice of the law:

1. That the action against the realtors be carried to a conclusion.
2. That members of the state Committee appear before the local bar associations in an effort to point out the dangers and to obtain the cooperation of the bar as a whole in its work in curbing the unlawful practice of the law. That these members supervise the establishment of active local committees and urge these local committees to ferret out and report all violations of unlawful practice and to do the necessary preliminary work needed to stop the practice. That the member of the Committee at the time he is meeting with the local bar associations also meet with the prosecuting attorney in an effort to obtain his assistance in his county and to obtain an agreement from him that he will, where the evidence is clear, prosecute the violations.
3. That the Washington State Bar Association request of the State Association of Prosecuting Attorneys an opportunity to meet with them at their next convention on this matter and at that time the Chairman of your Committee meet with the prosecuting attorneys, explain the seriousness of the situation, and endeavor to obtain their cooperation.
4. That funds be allocated to the Public Relations Committee and it make some effort, using material which we understand has been prepared by the Junior Bar Conference of the American Bar Association, to advise the public by newspaper advertising, of the services which an

attorney renders and of those instances in which one definitely needs a lawyer's advice.

In closing, your Committee would like to express its opinion that if the Bar Association is able to curb the unlawful practice of the law, it will have done a great service to the public. The work in curbing this practice is not a selfish venture, but is an effort to save the public large amounts which are lost through faulty preparation of wills, deeds, contracts, and other legal instruments which are being drawn daily by persons who are not trained in the drawing of them. We should avail ourselves of this opportunity to render a valuable service to the public.

Report of Committee on Legal Ethics, by Frank E. Holman

During the year a great many oral decisions have been given, chiefly covering inquiries regarding insertion of cards by lawyers announcing the opening of offices and the beginning of practice. The younger members of the bar have shown a commendable attitude and desire to conform to the canons of professional ethics.

Upon the request of interested lawyers or upon complaint by other lawyers, the Committee has rendered a number of written opinions, most of which have involved the questions of "indirect advertising." During the course of the year it has been necessary to refer only two matters to local Administrative Law Committees for action.

Your Committee has had before it during the year only one complaint regarding legal fees. It has one matter pending and undecided involving a charge of "heir-hunting."

Report of Federal Legislation Committee, by Roy A. Redfield

There has been no occasion to call the Committee into actual session. Such business as was transacted was accomplished by correspondence.

The only matter referred to this Committee had to do with a proposal to make uniform the rules relating to admission of practitioners to the bar of the federal courts. A voluminous file was transmitted to the Chairman, containing recommendations as to this matter which were mainly negative. The view expressed therein was that there was so much difference in circumstances among federal courts in various parts of the country that it would be wisest not to attempt any uniform rules which should apply to all, but to leave the matter as it now is, under the control of the judges presiding in the respective districts.