UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

RICHARD B. SOBOL, et al	*	
versus	*	CIVIL ACTION
LEANDER H. PEREZ, SR., et al	*	NO. 67-243
UNITED STATES OF AMERICA, Intervener-Plaintiff	*	SECTION "E" (THREE-JUDGE COURT)
STATE OF LOUISIANA, JOHN P. DONLING, et al, and LOUISIANA STATE BAR ASSOCIATION,	*	
Interveners-Defendants.	*	

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TRIAL BRIEF IN BEHALF OF INTERVENER-DEFENDANT LOUISIANA STATE BAR ASSOCIATION.

May It Please the Court:

This is a trial memorandum filed by the defendant-intervener, Louisiana State Bar Association. Time does not permit, nor do the rules require, a complete analysis of the case such as that attempted in the magnum opus filed on behalf of the original plaintiffs (which also presents many contentions which are spurious and not truly issues of the case, which we do not have time for, nor does the local rule require specific refutation thereof at this point). For purposes of this memorandum we will simply state what we feel to be the issues presented to the Court, and, in syllabus form, the authorities which we feel are pertinent to a resolution of these issues.

There are subissues, which will be set out in detail hereinafter, but, as far as the Louisiana State Bar Association is concerned in this litigation, there are two main issues: (1) Is LSA-R.S. 37:213 constitutional? (2) Is LSA-R.S. 37:214 involved in this litigation, and, if so, is it constitutional? In this climate and as a predicate to refinement of the subissues, we

present at this point the following postulations which we consider indisputable.

Pursuant to Article 2, Section 2 and Article 7, Section 10 of the Louisiana Constitution of 1921, qualifications for and admissions to the practice of law in Louisiana, and the disciplining and disbarment of lawyers, are judicial functions vested solely in the Supreme Court in the judicial branch of government. By its creation and the authority vested in it the Louisiana State Bar Association is the administrative agency of the Supreme Court, in the judicial branch of the government, as to those judicial powers and functions. This judicial right of the judicial branch of the government of the State of Louisiana to regulate the practice of law is one of the powers not transferred to the federal government and remains reserved to the state pursuant to Amendment X to the United States Constitution. Hence, the practice of law is a special franchise from the judicial branch of the state government and is not a general right.

The legislature, however, has "police power" authority to prescribe qualifications for the granting of such a right additional to those specified by the Supreme Court, but may not constitutionally diminish or lessen or legislate exceptions to the qualifications laid down by the Supreme Court.

In support of these principles we rely upon State v. Rosborough, 152 La. 945, 94 So. 858; Ex parte Steckler, 179 La. 410, 154 So. 41; (appeal dismissed for lack of a substantial federal question, 292 U.S. 610); In re Mundy, 202 La. 41, 11 So. 2d 398; Meunier v. Bernich, 170 So. 567; Holtz v. Louisiana State Bar Association, 239 La. 1081, 121 So. 2d 87; cf. Ex parte Perkins, 224 La. 1034, 71 So. 2d 558; cf. Ginsburg v. Kovrack, 392 Pa. 143, 139 A. 2d 889 (appeal dismissed 358 U.S. 52), and additional de-

cisions cited below. (Xerox copies of these decisions are annexed as Appendix 1.)

Sections 213 and 214, supra, are legislative enactments of the category last above mentioned. While these statutes, and their efficacy, vel non, are the main concern of defendant-intervenor, we believe that this Court should determine that no substantial federal issue is involved with either statute, and that the constitutionality, vel non, of these statutes should not be reached by this Court.

Is Section 214 involved at all? To determine this, the Court must look at this statute, and then at the information which was filed in Plaquemines Parish against Plaintiff Sobol. Does this information charge the plaintiff with a violation of Section 214? Attached hereto as appendix A is a photocopy of the information. Attached as appendix B is a photocopy of the statute LSA-R.S. 37:214). Review of the two makes it obvious that the information does not, in any way, shape or form, charge plaintiff with a violation of this statute.

In charging invalidity of the bill we cast no personal aspersions at the District Attorney. Taking the bill as it reads, it pleads neither statute specifically. The facts it pleads foreclose pertinence of Section 214. The actual facts, if true as we understand them from the depositions, foreclose pertinence of Section 213. These facts also exclude any possibility of criminal intent, an indispensable and essential element of an offense under either section. Hence, constitutionality of either statute should not properly be reached in this case.

With regard to Section 214, in order for this Court to have jurisdiction to declare the statute unconstitutional under 28 U.S.C. §§ 2281, et seq., this Court must find there to be a

substantial federal question involved with the statute. This determination also goes to the root of this Court's jurisdiction to grant injunctive relief to this plaintiff on the basis of the statute's unconstitutionality.

We submit that this question has been settled by the Supreme Court of the United States in Martin v. Walton, 368 U.S. 25, 82 S. Ct. 1 (1961). A copy of this opinion is annexed hereto as appendix C. We invite this Court's attention to the rules of the Kansas Supreme Court which were called into question in that case, as they are printed into a footnote of the opinion in connection with the dissent by Justices Black and Douglas. There is a striking similarity between Rule 54 and Section 214. The spirited dissent shows exactly what the majority of the court was deciding when it dismissed the appeal for lack of a substantial federal question based on the observation that the rules under attack were constitutional on their face, and well within the "allowable range of state action under the Fourteenth Amendment". (Squarely in these respects compare here the dismissal "for lack of a substantial federal question" of Ex parte Steckler, supra.)

Absent the substantial federal question already gainsaid by the Supreme Court in Martin, supra, there is no jurisdiction for a three judge Court under 28 U.S.C. §§ 2281 et seq. as well.

We submit that the opinion, as brought into focus by the dissent, in Martin v. Walton, answers two questions posed to this Court: Is there a substantial federal question posed by plaintiff's attack on LSA-R.S. 37:214? Answer: NO. Pretermitting this, is this statute unconstitutional? Answer: NO.

Passing now to LSA-R.S. 37:213, there are several subissues. For the Court's convenience, we attach hereto a photo-

copy of Section 213 as appendix D. Reference back to the information filed in Plaquemines Parish will show an attempt to bring the plaintiff into the ambit of this section.

The first question that this Court must decide in this regard is whether plaintiff Sobol falls within this statute. If he doesn't, then his complaint boils down to a dispute over the application of the statute to him under the facts alleged, or a dispute over the construction of the statute, a situation which the Fifth Circuit has held does not warrant the convening of a three-judge Court because of the absence of a substantial federal question. See McGuire v. Sadler, 337 F. 2d 902, 906 (5th Cir. 1964). A copy of page 906 of this opinion is attached hereto as appendix E.

Taken alone, Section 213 would proscribe the practice of law by plaintiff Sobol in Louisiana. He is, in fact, a natural person and he has not been licensed to practice law in this State in accordance with the terms of Section 213. However, he is the subject of a specific exemption to that statute provided in Section 214, supra. If he proves that he complied with Section 214, with regard to being qualified in association with a licensed attorney, he should be permitted to practice in the given case under the terms of Section 214. If this is proved, then there is no substantial federal question to warrant the exercise of Section 2281 jurisdiction of a three-judge Court.

Insofar as Section 213 is concerned, it is not unconstitutional on its face. Plaintiffs have conceded in brief the right of a state to regulate the practice of law (See pages 40 and 66 of plaintiffs' brief.). The Supreme Court of the United States has held, in a case calling into question a statute similar to Section 213, that no substantial federal question exists, and that jurisdiction to declare that statute unconstitutional did not exist.

Attached hereto as appendix F is a photocopy of the opinion of the Supreme Court in Hackin v. Arizona, _____ U.S. _____, _____ S. Ct. _____ (No. 523, Nov. 13, 1967). In that case, Hackin, who was not a licensed attorney, sought to represent an indigent defendant in a criminal case, was arrested, tried and convicted of practicing law without a license in violation of certain state statutes. The pertinent language of this statute is copied into the opinion, again for purposes of a dissent by Justice Douglas, and is available for this Court's perusal.[1] Again, like the Martin case, the dissent by Douglas furnishes this Court with an accurate guide as to exactly what the majority of the Court was deciding when they held that no substantial federal question was presented by Hackin's appeal.

According to the dissent, appellant, Hackin, contended that the statute was unconstitutional because it was overly broad and vague, and that it was unconstitutional because it offended the rights of the indigent to be advised of their rights in criminal cases. This attack was cut short by the majority per curiam: ". . . The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question."

If an attack on the Arizona statute on the grounds that it was overly broad and vague, and that it impeded indigent

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[1] The entire statute (Arizona Rev. Stats. § 32-261), reads as follows:

"A. No person shall practice law in this state unless he is an active member of the state bar in good standing as defined in this chapter.

B. A person who, not being an active member of the state bar, or who after he has been disbarred, or while suspended from membership in the state bar, practices law, is guilty of a misdemeanor."

It is also noteworthy that any attorney who lends his name to be used as an attorney by "any person who is not a member of the bar of this state in good standing" is grounds for disbarment. Ibid. § 32-267.

persons' rights to obtain representation, must fall because of lack of a substantial federal question, then the attack on LSA-R.S. 37:213 must also fall, especially when the attack is on substantially the same grounds.

In addition, since Section 213 is not unconstitutional on its face, if plaintiff Sobol is not guilty of violating it because of his compliance with a specific exception, there is no federal question because this Court need not reach the question of the constitutionality of the statute, but the court, acting as a one judge court can enjoin the application of the statute to Sobol under the facts alleged, or can enjoin the construction of this statute in this context if the facts warrant this action. See McGuire v. Sadler, supra.

In his brief, counsel for plaintiff lays great stress on the recent Second Circuit decision in Spanos v. Skouras Theatres Corporation, 364 F. 2d 161 (2d Cir. 1966) as standing for the proposition that unauthorized practice legislation cannot apply to plaintiff Sobol in this case. For purposes of this brief, we attach, as appendix G, a photocopy of page 171 of 364 F. 2d, and we invite the Court's attention to the portion of the opinion underlined in red, for emphasis.

The Supreme Court has stated, on several occasions that the states have "broad powers to regulate the practice of law within their borders. . . ." See United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n, _____ U.S. _____, 88 S. Ct. 353 (1967); Brotherhood of Railroad Trainmen v. Virginia, 377 U.S. 1, 84 S. Ct. 1113 (1964). Copies of these opinions are annexed hereto as appendices H and I respectively. In each of these cases, as well as others, (N.A.A.C.P. v. Button, 371 U.S. 415, 83 S. Ct. 328 (1963)) state regulations of the practice of law were

voided because certain activities which the Supreme Court found to be protected by the First and Fourteenth Amendments were clearly illegal under the state regulation under attack. Plaintiff Sobol's activities, as he describes them and if those facts are true, are just as clearly legal under the applicable Louisiana statutes. Therefore, if these opinions apply to this case, they apply for the affirmative proposition that Louisiana has a right to pass the statutes presently under attack. All plaintiff Sobol has to do is obey them. If he does, he will not be stopped, and nobody's First Amendment rights will be infringed. In the UMW, Trainmen and Button cases, supra, the regulations were not susceptible of obedience within the framework of the First Amendment. In this case, the Louisiana statutes are. In conclusion, it is apparent that no substantial federal question exists with regard to LSA-R.S. 37:214. There is no jurisdiction for this Court to declare these statutes unconstitutional, as a three judge court. We urge the Court to dismiss the matter, insofar as the constitutionality, vel non, of these statutes is concerned, for lack of jurisdiction. In the alternative, we earnestly submit that the Supreme Court has passed on statutes substantially similar to the Louisiana statutes, and has not found them wanting, from a constitutional point of view.

Respectfully submitted,

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