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Assembly California Legislature

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April 13, 2006

Judy Johnson, Executive Director
The State Bar of California
180 Howard Street
San Francisco, California 94105-1639

Dear Executive Director Johnson:

While never having attended law school, I am engaged in the practice of writing laws, interpreting statutes, and analyzing the impact of regulation. I guess you could say that by the Bar's recent actions I might be accused of violating §6125 of the Business and Professions Code: "No person shall practice law in California unless the person is an active member of the State Bar." I mean this in a barely facetious manner as I have thoroughly reviewed the Bar's actions in *Charles Benninghoff v. Superior Court (Real Party In Interest: California Bar)* Supreme Court Number: S141459 and believe that the logical conclusions of your actions in this case would have me, as a non-member of the State Bar, held to the penalties contained in §6126.

The case clearly has greater implications beyond retired, resigned and disbarred attorneys. As a result, I have written to the Supreme Court to ask that it review the case to overturn the very broad definition of the practice of law applied by the Court of Appeal – after all, my own temporary profession as a lawmaker might be endangered by a Bar-led shutdown of my office as happened to Mr. Benninghoff per the Bar's interpretation of §6126.3. Given the anti-competitive instincts of the Bar, perhaps one can excuse my fear.

As a member of the Assembly's Budget Subcommittee 4, I am aware of the some of the State Bar's less noble moments in recent history, its newfound power via §6126.3 as presently interpreted is therefore disturbing.

The decision of the court of appeal in conjunction with §6126.3 gives to the State Bar the power to shut down competing businesses, such as paralegal services, lay administrative representatives, headhunters, sports agents and the like – because all represent others and use the knowledge of law. In light of *Benninghoff* and the past history of the aggressive conduct of the Bar, I am forced to wonder: *will this new-found power be abused?*

It seems to me that the broad definition of the practice of law fuels a potential monopolistic problem that most assuredly was not intended by the Legislature. The State Bar is not above the anti-trust laws (See, e. g. *Goldfarb v. Virginia State Bar* 421 U.S. 773, 787 (1975). (*Am I practicing law again?*) Wasn't it less than 30 years ago that the U.S. Department of Justice forced the State Bar to give up its anti-competitive treaty network? It seems *Benninghoff* appears to repeat this pattern.

Assemblyman Chuck DeVore to Executive Director Judy Johnson, Page: 2 of 2

The California Supreme Court in the 1970 case of *Baron v. City of Los Angeles* ruled that the definition of the "practice of law" was only those things which only lawyers can do. In 1995 we took out of the Administrative Procedure Act the representation of persons before administrative agencies from the "practice of law" definition. Therefore, that activity is no longer the practice of law since anyone can do it, even I, unless there is a law, regulation or statute specifically forbidding it as explained in Legislative Counsel Opinion 18108. Of course, as a student of the Cold War-era I am very familiar with the old Soviet legal concept of "Anything not permitted is forbidden" vs. the American construct of "Anything not forbidden is permitted." Might the Bar's interpretation of our statutes be more like the traditional Soviet model and not the American?

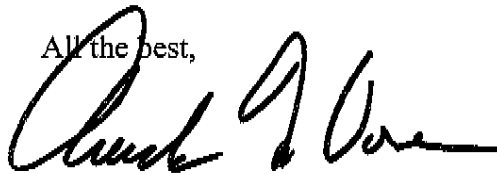
Finally, it is clear that Opinion 18108 considered B & P §6125 in making its decision. If the offending conduct in *Benninghoff* did not violate §6125 – which it clearly did not – then it could not pass §6125's threshold to get to the point of being violative of §6126! (*Perhaps I did miss my calling – please don't seize my legislative office!*)

You'll have to excuse me if I perceive that the Bar makes the rules, then seeks to manipulate them to increase market share, thus sorely testing the patience of people like me who have some say about your purse strings as well as statutory rules that might impact your business for ill or good.

Please consider reviewing your practices with an eye towards making corrections so the Bar does not continue to indulge in obviously anti-competitive behavior.

I look forward to hearing back from you as to why I have interpreted the statutes I help write incorrectly.

All the best,



Chuck DeVore
Assemblyman, Seventieth District