



John T. Berry

# A Case of “Profound” Consequences

**pro.found** (pr\_-'found', pr\_) adj, -er, -est.  
 1. Situated at, extending to, or coming from a great depth; deep. See Synonyms at **deep**.  
 2. Coming as if from the depths of one's being; *profound contempt*.  
 3. Throughgoing; far-reaching; *profound social changes*.  
 4. Penetrating beyond what is superficial or obvious: a *profound insight*.  
 5. Unqualified; absolute: a profound silence. [Middle English *profounde*, from Old French *profound*, from Latin *profundus*: pr\_-, before; see PRO- + *fundus*, bottom.]

—American Heritage Dictionary of the English Language, Third Edition

On June 24, 2003, the Michigan Supreme Court issued an important opinion concerning the unauthorized practice of law.

In *Dressel v AmeriBank*, 2003 WL 21456614, the issue was whether a lender that charges a fee for the completion of standard mortgage document engages in the unauthorized practice of law under MCL 450.681.

The Supreme Court said no. Such conduct was not the practice of law.

Even more importantly, the Court disagreed with previous conclusions of the Court that a specific and enduring definition of the practice of law was impossible.

As stated by the Supreme Court, “[A] person engages in the practice of law when he counsels or assists another in matters that

require the use of legal discretion and profound legal knowledge.”

The purpose of unauthorized practice of law statutes was reiterated to be public protection.

This decision underscores the wisdom of the State Bar of Michigan's strategic plan, which provides emphasis upon our proactive involvement in the development and enforcement of practice of law standards for unauthorized practice of law, multidisciplinary practice, and multi-jurisdictional practice.

The assumptions found in that strategic plan leading to that emphasis are reflections of the reality of dramatic changes within the legal profession nationwide and within Michigan. To name but a few of those assumptions: increased competition with non-lawyers for delivery of many services that were traditionally provided by lawyers; competition for more alternative sources for le-

the public, the task force made three resolutions and provided guidance to states on how to go about the difficult process of determining where the lines in the sand should be drawn.

Those Resolutions follow:

*RESOLVED, that the American Bar Association recommends that every jurisdiction adopt a definition of the practice of law.*

*FURTHER RESOLVED, that each jurisdiction's definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity.*

*FURTHER RESOLVED, that each jurisdiction should determine who may provide services that are included within the jurisdiction's definition of the practice of law and under what circumstances, based upon the potential harm and benefit to the public. The*

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gal services and information; and more pressures from outside the individual states for changes in who may practice law and under what regulations.

The *Dressel* case cites the work of the American Bar Association's Task Force on Defining the Practice of Law. I have been privileged to be a member of that Task Force. Its report will be debated in August at the ABA's meeting in San Francisco. I invite your attention to the report at [www.abanet.org](http://www.abanet.org) and click on ABA Task Force on Model Definition of Practice of Law. After much debate and much heated input from lawyers, bar groups, other professions, and members of

*determination should include consideration of minimum qualifications, competence, and accountability.*

That report, as with *Dressel* is centered on public protection. It calls for less restrictive definitions and regulations on the practice of law but emphasizes the importance of minimum qualifications, competence, and accountability.

Like much of life, the devil is in the details. We must in Michigan and nationwide put the public first and as professionals help shape a future that is determined by service to the public. As lawyers we can't just circle

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the wagons. However, it is equally dangerous to open the practice of law to those not qualified and who would systematically harm the public.

This subject is close to my heart for a number of reasons. First, I've supervised in Florida the most comprehensive prosecution effort in the unauthorized practice of law that any state has engaged. Secondly, I've witnessed the harm to the public with unqualified non-lawyers violating legitimate unauthorized practice of law regulations with immunity. Third, I've seen overly protective attempts by lawyers to ignore the realities of changing business and professional realities

already upon us. We must together find the appropriate balance.

On a personal note, at the age of 53 I moved to the state of Arizona having been recruited to work for their bar. I had to take the full bar examination, multi-state, state essay, and MPRE. My own new staff was betting against me passing. To the surprise of all, I passed.

It was a humbling experience, reminding me of the privilege to be a lawyer and the awesome responsibilities associated with it.

Like the *Dressel* case and the ABA Task Force Report on Defining the Practice of

Law, this article does not attempt to solve all the difficult issues surrounding the subject. The common thread of both however is to sound the alarm that we must act, not just react to these issues. We must put first and foremost the public we all serve for the sake of our profession and livelihood. We must not ignore the changes, and demands for additional changes around us. Some are good. Some are not. Some we may not like, and some we must fight. The process to make those distinctions must be accelerated.

*Dressel* and the effort of the ABA Task Force are but reflections of "profound" changes around us. One of the reasons many of us became lawyers was getting the chance to deal with important issues to individuals and society. Here is our chance. Your state bar has made this a major priority. We need your help.

Please let me know your thoughts. Contact me at [jberry@mail.michbar.org](mailto:jberry@mail.michbar.org) ♦