

AUG 14 1984

IN THE CIRCUIT COURT OF THE STATE OF OREGON TRIAL COURT ADMINISTRATOR  
FOR THE COUNTY OF CLACKAMAS By Davidson

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OREGON STATE BAR, )  
a Public Corporation, ) NO. 82-12-172  
Plaintiff, ) JUDGMENT  
vs. )  
DAVID M. ORTIZ, )  
Defendant. )

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The above entitled action came on regularly for trial, without jury, before the HONORABLE JUDGE CHARLES A. SAMS, on the 10th and 11th days of May, 1984. After testimony and other evidence were introduced, and the court having heard arguments by counsel for all parties, and being fully advised, and concluding an injunction should issue, NOW THEREFORE,

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IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

That a permanent injunction issue against the defendant DAVID M. ORTIZ, as of the date of this judgment, preventing the defendant from practicing law within the state of Oregon and, more specifically, from doing any of the following acts:

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1. Advising any person of what form is or forms are necessary to qualify for benefits under the immigration and naturalization laws of the United States.
2. Advising any person to be married in order to secure a benefit under the laws of immigration or naturalization of the United States.

1 3. Advising any person of what benefits are available  
2 to them as prospective immigrants under the immigration and  
3 naturalization laws of the United States.

4 4. Advising any person of any actions they should take  
5 in order to make himself/herself eligible for any benefit  
6 under the immigration and naturalization laws of the United  
7 States.

8 5. Advising any person in any other manner that con-  
9 stitutes the unauthorized practice of law in the state of  
10 Oregon.

11 6. Notwithstanding the foregoing, this Judgment shall  
12 not be construed to prohibit:

13 a) Defendant from translating, reading and ex-  
14 plaining the immigration forms from the Department of State  
15 or Immigration and Naturalization Service of the United  
16 States Government.

17 b) Assist in the completion of blank spaces in  
18 the above-named forms.

19 c) Acting as a Notary Public.

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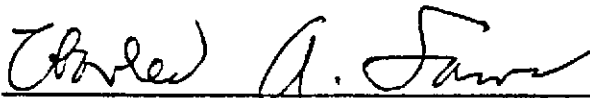
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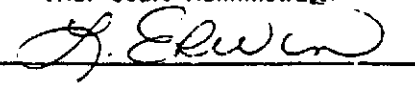
2 d) Informing people that forms are available  
3 from the Department of State and Immigration and Naturali-  
4 zation Service or providing literature from the Department  
5 of State or Immigration and Naturalization Service intended  
6 by those services to be made available to the public.

7 DATED THIS 13<sup>th</sup> day of August, 1984.

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11 CHARLES A. SAMS  
12 CIRCUIT COURT JUDGE



20 Certified True Copy Of The Original  
21 Dated This 6 Day of Sept, 1984  
22 Fifth Judicial District, State of Oregon  
23 Trial Court Administrator  
24 By: 

25 The Court Reporter in the above-entitled action was:

26 BOBBI BAUMANN  
Clackamas County Courthouse  
807 Main Street  
Oregon City, Oregon 97045

79-29

**FILED**  
COURT OF APPEALS

FEB - 5 1986

FEB 4 1986 STATE COURT ADMINISTRATOR  
By \_\_\_\_\_ Deputy

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON STATE BAR,  
a public corporation,

Respondent,

v.

DAVID M. ORTIZ,

Appellant.

(82-12-172; CA A33222)

Appeal from Circuit Court, Clackamas County.

Charles A. Sams, Judge.

Argued and submitted July 15, 1985.

David S. Shannon, Portland, argued the cause for appellant.  
With him on the briefs were Mark A. La Mantia, and  
Shannon and Johnson, P.C., Portland.

Stewart A. Martin, Portland, argued the cause for  
respondent. With him on the brief was Danner, Scott &  
Martin, Portland.

Before Buttler, Presiding Judge, and Warren and Rossman,  
Judges.

ROSSMAN, J.

Affirmed.

1                    DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

2 Case Name:     Oregon State Bar v. Ortiz

3 Appellate case number:     A33222

4 Trial Court or agency case number:     82-12-172     (C)

5 Prevailing party or parties:     respondent

6         [   ] No costs awarded

7         [XX] Costs awarded to the prevailing party or parties,  
8                 payable by     appellant

9 \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*

10                    FINAL ORDER\*

11             IT IS ORDERED that on appeal or judicial review the prevailing  
12 party or parties recover from

13 costs and disbursements taxed at \$                    , and attorney fees in  
14 the amount of \$                    . (ORAP 11.03, 11.05, and 11.10.)

15             IS FURTHER ORDERED that judgment be entered in favor of the  
16 Judicial Department and against

17 in the amount of \$                    for filing fees not waived and unpaid at  
18 the time of entry of the final written disposition of this case.  
19 ORS 21.605.

20 Date Supreme Court denied review:

21 DATED:

COURT OF APPEALS  
(seal)

22 \*This section will be completed when the appellate judgment is  
23 prepared. The Records Division of the Office of the State Court  
24 Administrator will prepare the appellate judgment, enter it in the  
appellate register, and mail copies to the parties within the time  
and in the manner specified in ORAP 11.03(3). See also ORS  
19.190(1).

1           ROSSMAN, J.

2           Plaintiff brought this proceeding to enjoin defendant,  
3 a nonlawyer, from engaging in what the Bar contends is the  
4 unauthorized practice of law. For several years defendant has  
5 advised and assisted people--up to 35 per year-- in the  
6 preparation of applications for citizenship and immigration  
7 visas. He is fluent in Spanish and English and also acts as a  
8 translator for his primarily Spanish-speaking clients. He  
9 charges fees for his services. Plaintiff prayed for injunctive  
10 relief. Defendant was held to have been practicing law, and an  
11 appropriate injunction was issued. We affirm.

12           In his two assignments of error, defendant argues that  
13 the injunction was improperly granted, because (1) the federal  
14 government has preempted the state's ability to regulate the  
15 practice of law in the immigration area; and (2) the state has  
16 failed to establish that he engaged in unauthorized practice.

17           The federal government has preempted much of the  
18 subject matter of immigration, naturalization and citizenship.  
19 However, the federal power is exclusive only in regard to  
20 making "a determination of who should or should not be admitted  
21 in the country and the conditions under which a legal entrant  
22 may remain." De Canas v. Bica, 424 US 351, 355, 96 S Ct 933,  
23 47 L Ed 2d 43 (1976). As defendant points out, there are  
24 fairly extensive federal regulations which govern who may

1 "represent"<sup>1</sup> others before agencies in immigration  
2 proceedings. 8 CFR § 292.1. Although the regulations define  
3 certain classes of lay people who may "represent" others,  
4 defendant does not qualify under any of the definitions. We do  
5 not understand him to contend that he does.

6 The question is whether defendant is immune from state  
7 regulation, even though he does not fit within the federal  
8 exceptions to the attorney requirement. An almost identical  
9 question has arisen in patent law cases. In People by  
10 Lefkowitz v. Lawrence Peska Associates, Inc., 90 Misc 2d 59,  
11 393 NYS2d 650 (1977), the court held that, although New York  
12 state does not have jurisdiction to regulate patent attorneys  
13 or patent agents who are registered with the Patent Office, the  
14 state can control the unlawful practice of law by nonregistered  
15 practitioners. The court noted that certain lay people are  
16 permitted to prepare patent applications, even though that  
17 might constitute the unauthorized practice of law, solely  
18 because they have federal authority to do so; however, when  
19 they lack that authority, the state can regulate their  
20 unauthorized practice. 90 Misc 2d at 62. In In Re Amalgamated  
21 Development Co., Inc., 375 A2d 494 (DC Ct App), cert den 434 US  
22 924 (1977), the court, after discussing the federal regulations  
23 allowing the lay practice of patent law, stated: "[I]f the  
4 federal government has not granted a license in this area, a

1 state is free to enforce its own licensing regulations." 375  
2 A2d at 497. (Emphasis in original.) By analogy, because  
3 defendant is not authorized by federal law to practice in  
4 immigration proceedings, he is subject to state regulation.

5 We now turn to defendant's second claim that plaintiff  
6 failed to prove that defendant had engaged in the unauthorized  
7 practice of law. The Bar relied primarily on the testimony of  
8 Manuel Gonzalez, a Mexican national in this country illegally  
9 who was involved in deportation proceedings at the time of  
10 trial. Gonzalez hired defendant in 1975 to help him obtain  
11 permanent resident status. At that time, Gonzalez, an  
12 agricultural worker, spoke little English and had less than a  
13 third-grade education. Defendant advised Gonzalez which  
14 initial application to file, to file a request for re-entry and  
15 to travel to Mexico for an embassy interview. Defendant also  
16 told Gonzalez that his application would be treated more  
17 favorably if he were to marry. Gonzalez paid defendant \$1,000,  
18 more or less, for services rendered to him and his wife.  
19 Defendant does not dispute that he engaged in these and other  
20 activities alleged. However, the question is whether the  
21 activities constitute the unauthorized practice of law. From a  
22 de novo review of this record, we find that they do.

23 ORS 9.160<sup>2</sup> prohibits a nonattorney from engaging  
24 in the practice of law. Unfortunately, the statute fails to



1 define the "practice of law." In the land title area, the  
2 Supreme Court recognized the difficulty of forming a universal  
3 definition for the practice of law and set out a rule for the  
4 case before it:

5 "For the purposes of this case, we hold that the  
6 practice of law includes the drafting or selection of  
7 documents and the giving of advice in regard thereto  
8 any time an informed or trained discretion must be  
9 exercised in the selection or drafting of a document  
10 to meet the needs of the person served. The knowledge  
11 of the customer's needs obviously cannot be had by one  
12 who has no knowledge of the relevant law. One must  
13 know what questions to ask. Accordingly, any exercise  
14 of an intelligent choice, or an informed discretion in  
15 advising another of his legal rights and duties, will  
16 bring the activity within the practice of the  
17 profession. We reject such artificial or haphazard  
18 tests as custom, payment, \* \* \* or the quality of  
19 being 'incidental.' \* \* \* State Bar v. Security  
20 Escrows, Inc., 233 Or 80, 89, 377 P2d 334 (1962).  
21 (Footnotes omitted.)

22 On the other hand, filling in blanks under the direction of a  
23 customer on forms selected by the customer has been held not to  
24 be the practice of law. Oregon State Bar v. Fowler, 278 Or  
169, 563 P2d 674 (1977).

Here, the forms defendant selected and filled out for  
his clients are accompanied by detailed instructions which  
identify which forms to use and how to fill them out. Perhaps  
it does not require legal skill to fill out the forms, but an  
understanding of the consequences attendant on their completion  
and filing with the immigration service does require legal  
skill and judgment. The forms notify the immigration service

1 that the alien is in the country, provide it with his home  
2 address and make deportation more likely if he is in the  
3 country illegally.

4 Expert testimony was presented that virtually no  
5 immigration case is routine and that immigration law is complex  
6 and constantly changing. Deciding what form to file and when  
7 to file it can make the difference between the success or  
8 failure of the application. Knowing the benefits for an alien  
9 which may be eligible for, the steps to take to obtain them and  
10 assessing the risk involved in applying for those benefits  
11 requires informed and trained legal judgment. Making the wrong  
12 choice can result in deportation, loss of continuous residency  
13 status and permanent loss of entry rights and may jeopardize  
14 other benefits. We hold that defendant was properly enjoined  
15 from advising clients about what benefits are available, how to  
16 obtain those benefits and advising what forms to use.

17 It is significant that defendant also advised Gonzalez  
18 to marry so that he would improve his chances of having his  
19 application for a visa approved. Not only can it alter  
20 immigration rights, but one's marital status can also affect  
21 important property rights and create legal duties. Advising  
22 clients to marry to influence their immigration status requires  
23 an understanding and evaluation of the legal effects of  
24 marriage, as well as of immigration law.

1           We are satisfied that defendant's activities go far  
2 beyond merely "filling in blanks under the direction of a  
3 customer." We hold that the trial court's issuance of the  
4 injunction was proper.<sup>3</sup>

5           Affirmed.  
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FOOTNOTES

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Representation is defined broadly by the regulations to include, inter alia, the preparation of documents on behalf of another. 8 CFR § 1.1(i), (k) and (m) (1985).

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ORS 9.160 provides:

"Except for the right reserved to litigants by ORS 9.320 to prosecute or defend a cause in person, no person shall practice law or represent himself as qualified to practice law unless he is an active member of the Oregon State Bar."

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Other activities spelled out in the injunction are not at issue in this appeal. The injunction allows defendant latitude to continue assisting others in their efforts to obtain visas or citizenship. It specifically states:

"6. Notwithstanding the foregoing, this Judgment shall not be construed to prohibit:

"a) Defendant from translating, reading and explaining the immigration forms from the Department of State or Immigration and Naturalization Service of the United States Government.

"b) Assist in the completion of blank spaces in the above-named forms.

"c) Acting as a Notary Public.

1 "d) Informing people that forms are available  
2 from the Department of State and Immigration and  
3 Naturalization Service intended by those services to  
4 be made available to the public."  
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