

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 174

INTRODUCER: Judiciary Committee and Senator Geller

SUBJECT: Practice of Law

DATE: March 19, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Current law prohibits a sheriff, a deputy sheriff, the clerk of any court, and the deputy clerk of any court from the practice of law in Florida. This bill deletes that prohibition and deletes an exception to that prohibition. The bill also deletes the prohibition from the practice of law of a person not of good moral character or who has been convicted of an infamous crime. The deletion of these prohibitions does not equate to an authorization to practice law in all cases where a prohibition would have applied. Rather, the deletion of these prohibitions recognizes that whether a person may practice law or not is under the Supreme Court’s exclusive jurisdiction, under the Florida Constitution, to regulate the practice of law.

This bill substantially amends section 454.18, Florida Statutes.

II. Present Situation:

Section 454.18, F.S., prohibits sheriffs, deputy sheriffs, the clerk of any court, and the deputy clerk of any court from practicing law. However, this prohibition does not apply in a case where that person is representing the office or agency in the course of duties as an attorney. The law also prohibits persons not of good moral character or who have been convicted of an infamous crime from practicing law. The law authorizes any person, whether an attorney or not, to represent him or herself “in any court of this state, or before any public board, committee, or officer.” The Sixth Amendment also provides authority for self-representation in a criminal proceeding.¹ However, it is not clear that independent authority, beyond s. 454.18, F.S., exists for self-representation in a civil cause of action.

¹ Potts v. State, 718 So. 2d 757, 758 (Fla. 1998).

The law was enacted in 1925 as part of an act that in pertinent part provided for:

- the appointment of a State Board of Law Examiners (board);
- the regulation of the admission to the practice of law;
- the board to prescribe rules of professional conduct and ethics for the governance of attorneys;
- the board to administer the discipline of attorneys; and
- the prohibition of the practice of law in certain circumstances.²

At the time that the Legislature enacted s. 454.18, F.S., the Florida Constitution did not provide for the Florida Supreme Court to regulate the admission of persons to the practice of law and the discipline of persons admitted. Furthermore, the Florida State Bar Association was still a voluntary organization.

The Legislature appears to have enacted s. 454.18, F.S., as part of an effort to regulate the practice of law in Florida. The prohibition on the practice of law by sheriffs and clerks may have been an early attempt at the regulation of conflict of interest situations. As of 1972, the Florida Supreme Court has exclusive jurisdiction to regulate the practice of law.³ The Florida Bar as an official arm of the court has implemented the Rules Regulating The Florida Bar, including the Rules of Professional Conduct. Arguably, the provisions of s. 454.18, F.S., related to the prohibition on the practice of law by sheriffs and clerks are superfluous because the Florida Rule of Professional Conduct governing conflicts of interest provides the appropriate level of regulation in situations involving the practice of law by sheriffs or clerks of court.⁴

III. Effect of Proposed Changes:

Current law prohibits a sheriff, a deputy sheriff, the clerk of any court, and the deputy clerk of any court from the practice of law in Florida. This bill deletes that prohibition and deletes an exception to that prohibition. The bill also deletes the prohibition from the practice of law of a person not of good moral character or who has been convicted of an infamous crime. The deletion of these prohibitions does not equate to an authorization to practice law in all cases where a prohibition would have applied. Rather, the deletion of these prohibitions recognizes that whether a person may practice law or not is under the Supreme Court's exclusive jurisdiction, under the Florida Constitution, to regulate the practice of law.

The bill provides that it takes effect on July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

² Ch. 10175, Laws of Fla. (1925).

³ FLA. CONST. art V, § 15.

⁴ See R. Regulating Fla. Bar 4-1.7.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
