

# IN THE SUPREME COURT OF TEXAS

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No. 98-0724  
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IN RE NOLO PRESS/FOLK LAW, INC., RELATORS

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ON PETITION FOR WRIT OF MANDAMUS  
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**Argued on October 21, 1998**

JUSTICE ENOCH, concurring.

I only take issue with the Court's approach to this matter. The phrase "making a mountain out of a mole hill" comes to mind.

This Court is empowered to determine the qualifications of persons authorized to practice law in this state's courts.<sup>1</sup> With that power comes the necessary ancillary power to stop the unauthorized practice of law. The Unauthorized Practice of Law Committee is simply an entity that has the standing necessary to litigate whether one is practicing law without authority.<sup>2</sup> The UPL Committee has no independent regulatory power. Its power is that of any other plaintiff — it can investigate whether to sue, and can bring a lawsuit. As well, Nolo Press, if sued, would have the power of any other defendant — it could choose to defend and have discovery. If the UPL Committee decides to sue and if Nolo Press decides to defend, a court will decide the case. This is

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<sup>1</sup> See TEX. GOV'T CODE § 81.061; *see also State Bar of Texas v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994).

<sup>2</sup> See TEX. GOV'T CODE §§ 81.103-.104; Order Approving Rules For The Unauthorized Practice of Law Committee § 2 (Tex. Nov. 17, 1980) (*supra*, Appendix I).

the entire matter. Yet the Court jumps the gun by entertaining Nolo Press's request for a writ of mandamus and elevating this case with the mantra of open records.

Why the Court jumps the gun troubles me. I cannot imagine under any similar circumstance that the Court would enable a potential defendant to pretermite a plaintiff's suit and the orderly application of the discovery rules through a mandamus action. This is particularly so because the legislature has empowered potential defendants to invoke the jurisdiction of the courts and the power of discovery through the device of declaratory judgment<sup>3</sup> — a device, by the way, that Nolo Press evidently knows how to use.<sup>4</sup>

It also troubles me that we use this one case to alter an administrative rule that has been in effect for thirteen years. And we do so without any comment on the proposed changes from the UPL Committee members or any other interested persons. Nolo Press certainly is not the only one with an interest in the operation of the UPL Committee. Furthermore, I do not think it's fair to say that our comment period for Administrative Rule 12, which generally deals with judicial records, was fair notice that our previous specific order concerning the Unauthorized Practice of Law Committee was to be changed.<sup>5</sup> In fact, I'm confident the Court didn't even know that that order was under consideration. So how could our committee know at the time that this order was being reconsidered?

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<sup>3</sup> See TEX. CIV. PRAC. & REM. CODE §§ 37.002-.004.

<sup>4</sup> See *Nolo Press/Folk Law, Inc. v. The Unauthorized Practice of Law Committee*, No. 99-03252 (201<sup>st</sup> Dist. Ct., Travis County, Tex., Mar. 17, 1999).

<sup>5</sup> See *In re Petition of Nolo Press, Inc. to Amend Rules Governing the Unauthorized Practice of Law Committee*, Misc. Docket No. 99-9082 (Tex. Apr. 15, 1999) (per curiam).

I agree that the request for mandamus should be dismissed because this Court doesn't have jurisdiction. While I also agree with much of what the Court says, the opinion serves only to build a mole hill into a mountain. The writ should be dismissed without further comment.

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Craig T. Enoch  
Justice

Opinion delivered: April 15, 1999