

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-63
Issued: March 2006

QUESTION 1: Does a non-attorney business entity or corporation, whose business is the creation, preparation or typing of legal forms and documents, engage in the unauthorized practice of law when, in addition to creating, preparing or typing the forms, the non-attorney or entity assists in the identification of the purchaser's legal goal and advises the purchaser on the proper choice and utilization of the forms to achieve their legal goal?

ANSWER: Yes. See Opinion

QUESTION 2: Does the answer to Question 1 change if the non-attorney business entity or corporation uses the services of an attorney, even if referred to as a "supervising," "on call" or "employee" attorney?

Answer: No.

AUTHORITY

SCR 3.020 defines the practice of law. The Supreme Court of Kentucky has the exclusive authority to promulgate rules governing the practice of law. Turner v. Kentucky Bar Association, 980 S.W.2d 560 (Ky. 1998).

The compelling reason for such regulation is to protect the public against rendition of legal services by unqualified persons. Comment to Kentucky Rule of Professional Conduct SCR 3.130-5.5.

The practice of law is defined by SCR 3.020 as any service "involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services."

The "unauthorized" practice of law is the performance of those defined services by non-lawyers for others. Countrywide Home Loans, Inc. et. al v. Kentucky Bar Association, 113 S.W. 2d 105 (Ky. 2003).

Corporations are not permitted to practice law in the Commonwealth. Kentucky Bar Association v. Tussey, 476 S.W.2d 177 (Ky. 1972); KBA U-32; Kentucky Bar Association v. Legal Alternatives, Inc., 792 S.W.2d 368 (Ky. 1990).

OPINION

For many years the public has been able to obtain from office supply stores and a variety of other sources, pre-printed form documents identified as wills, contracts, powers of attorney, partnership agreements, articles of incorporation and other similar documents all of which will be referred to as “legal form documents” for purposes of this discussion.

More recently certain entities and businesses have emerged which not only sell preprinted business type legal forms, but in addition thereto offer the public the opportunity to purchase blank documents on which the purchaser may provide information, fill in the blanks and have the documents typed by the business. The customers would be representing themselves in various types of legal matters such as dissolution of marriage and consumer bankruptcy cases.

Some types of legal forms seem quite simple to complete while others are more complicated. The sale of these preprinted legal forms, in and of itself, does not constitute the unauthorized practice of law.

However, the Kentucky Bar Association has become aware that some such entities and businesses advertise directly while others strongly imply that by using their “services” no attorney is required to handle a variety of legal matters. Some specifically include in the purchase price of these forms the name and phone number of an identified attorney who is represented to be available to “provide information” for the purchasers of the legal forms. In some instances the purchasers are encouraged to contact the identified attorney for advice.

The purely ministerial acts of typing forms, filing in blanks on commercially available preprinted forms, or official forms of the courts, would not constitute the practice of law. However, if the services of these entities are not so limited, the services could violate the prohibition against the unauthorized practice of law.

The following are illustrative of the services that if rendered by such entities or businesses, would be the unauthorized practice of law:

1. Offering services to the public in such a manner that creates an impression in the public that it may rely upon such entities or businesses to properly prepare legal form documents for them or on their behalf, other than properly typing;
2. Representing to the public that such entities or businesses, or any persons that are either employed by or who act in concert with them, are capable of advising the public as to which forms are needed and how to use them;
3. Completing forms or assisting in the completion of forms that are not official forms approved by the Administrative Office of the Courts of the Supreme Court of Kentucky or the relevant state or federal Court or administrative agencies, if

conveying information that would lead a reasonable person to believe that the completed form is legally sufficient for the customer's purpose;

4. Providing services such as conducting interviews to ascertain and evaluate information necessary to properly complete forms, that go beyond the mere selling of forms, typing of forms, providing written general information or providing secretarial or notary services;

5. Preparing or assisting in the preparation of any pleadings, motions, legal memoranda, arguments, briefs, notices or any other legal documents or pleadings for another person unless mere typing services are offered;

6. Using the title "paralegal" unless the employee is working directly for and under the supervision of a member of the Kentucky Bar Association and performs specifically delegated substantive legal work for which a member of the Kentucky Bar Association is responsible;

7. Giving advice and making decisions on behalf of another person that requires legal skill and knowledge of the law greater than that possessed by the average citizen;

8. Giving advice to another person concerning the application, preparation, advisability, or quality of any legal instrument or document in connection with any legal proceeding or procedure;

9. Construing or interpreting the legal effect of Kentucky or Federal laws and statutes for another person, as those laws relate to any legal matter, including but not limited to probate, dissolution of marriage, and bankruptcy matters;

10. Giving advice and/or explaining legal remedies and options to another person that affects that person's procedural and substantive legal rights, duties and privileges;

11. Providing direct advice to another person in the nature of explanation, recommendation, advice and assistance in the selection and completion of preprinted legal forms;

12. Initiating and controlling a lawyer-client relationship, setting fees and paying an attorney to do work for a third party;

13. Engaging in any personal legal assistance in the preparation of legal forms including the service of "correcting" customer's errors or omissions or providing customers with any assistance in preparing the forms other than mere typing or ministerial acts of correcting typographical errors;

14. Advising another person as to the sale, preparation or typing of a will, living trust or related documents by recommending or identifying the type of will, living trust or related documents most appropriate for another person's situation;

15. Assembling and/or drafting a will, living trust, deed, durable power of attorney or related documents for another person;

16. Executing and/or advising on the steps necessary for the legal execution of a will, living trust, deed, durable power of attorney or related documents for another person other than providing notary services;

17. Funding and/or advising on the funding of a living trust for another person.

The preceding are examples of services which, if provided by non-attorneys, would constitute the unauthorized practice of law. The list is not intended to be exhaustive of all possibilities but merely exemplary of the types of improper activities that might be engaged in by non-attorneys or legal form document preparation entities.

If a customer already has identified their legal goals and intends the use of the forms to achieve such ends, then selling them the forms they request is not the practice of law.

However, "[p]ractic[ing] law is not confined to performing services in actions or proceedings in courts of justice, but includes giving advice and **preparing wills, contracts, deeds, mortgages, and other instruments of a legal nature.**" Howton v. Morrow, 106 S.W.2d 81, 82 (Ky. 1937). (emphasis added) If the entity advises the customers that the document is advisable or legally sufficient for their particular legal situation, that is the unauthorized practice of law.

The availability of an "on call" attorney as part of the services being sold not only does not avoid the unauthorized practice of law, it adds another layer of problems.

If the entity or business has an employee who is a licensed attorney whose services have been sold as part of the package, and who, advises, or assists the purchaser in how to achieve their particular legal goal, one of two significant problems is involved. First, the services are being sold by the lay entity (however organized). Corporations cannot practice law. This relationship would cause the employee attorney to be aiding and assisting the entity in the unauthorized practice of law. See Kentucky Bar Association v. First Federal Savings & Loan Association, 342 S.W.2d 397 (Ky. 1960); SCR 3.130-5.5(e).

Second, similar business practices by an unincorporated entity, while they may not constitute the unauthorized practice of law by a corporation, raise other troubling ethical considerations for the attorney or firm involved which are outside the scope of this opinion but deserve mention. These include improper fee splitting, advertising and/or improper referral of legal business to the attorney. See KBA E-264; SCR 3.130-5.4.

Likewise, there may be consumer protection issues which are outside of the scope of this opinion.