

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-14
Issued: March 1976

Question: May a corporation, employing personnel not licensed to practice law, provide legal research and related services to licensed attorneys on a fee basis without constituting the unauthorized practice of law?

Answer: Qualified yes.

References: RAP 3.020, 3.470

OPINION

RAP 3.020 defines the practice of law as follows:

The practice of law is any service rendered 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. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor .

RAP 3.470 provides as follows:

Any attorney who knowingly aids, assists or abets in any way, form or manner any person or entity in the unauthorized practice of law shall be guilty of unprofessional conduct.

Therefore, based on the above provisions, if any of the services provided (or advertised to be provided, Opinion KBA U-10) by the corporation would constitute the practice of law, it would be unauthorized and any attorney aiding in such unauthorized practice would be subject to discipline.

Analysis of Services by the Corporation

The following analysis assumes that all services will be rendered only to attorneys and not to the general public. If at any time any of these services are offered or performed, for anyone other than a licensed attorney, it would constitute the unauthorized practice of law and would be prohibited.

Legal research, title examinations and criminal and civil investigations are all matters which would be performed by the corporate employees for individual attorneys. The important factors, however, are as follows:

1. The acts must be of a preparatory or ministerial nature;

2. The information or work product must be given only to a licensed attorney who would carry a given matter to a conclusion through his own examination, approval or additional effort; and
3. All work must be performed under the supervision of a licensed attorney.

The most important factor of all, however, is that the work must not be done independently of the attorney. Conferences with clients, etc., would be prohibited.

The rules applicable generally to law clerks or other clerical employees would be generally applicable in this regard. For an example of unauthorized activities, see Crawford v. State Bar of California, 335 P.2d 490 (Cal. 1960). See generally 13 ALR 3d 1137 for a discussion of the activities of law clerks as unauthorized practice of law.

Finally, with regard to the following specific areas, the following is important:

1. Civil or Criminal investigations--the employees may perform these functions but must not hold out or represent themselves as attorneys. Kentucky Bar Assn v. Lakes, 443 S.W.2d 248 (Ky. 1969).
2. Title Examinations--in Kentucky State Bar Assn v. First Federal Savings and Loan Assn of Covington, 342 S.W.2d 397, 398 (Ky. 1961), the Court of Appeals stated as follows:

It is not questioned that a "title examination" (which includes an analysis of recorded interests in land coupled with an opinion as to its legal status) is a service which lawfully can be performed for others only by a licensed attorney.

It follows naturally, that a title examination or opinion would have to be under the strict rules relating to law clerks and such opinion could only be given to a licensed attorney for his use and review and not directly to a client.

3. Legal Research--would fall under the same general guidelines as outlined above.

Conclusion

As long as the services advertised by the corporation are rendered only to attorneys and are performed only under their direction and control, they will not constitute the unauthorized practice of law.

Finally, any attorney employing these services would have to bear in mind the provisions of RAP 3.470 and supervise the work that is done by the employees.

Note to Reader

This unauthorized practice opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides in part: "Both informal and formal opinions shall be advisory only."