

KENTUCKY BAR ASSOCIATION
Unauthorized Practice of Law Opinion KBA U-50
Issued: June 1997

Question: May a financial and tax consulting firm, with lawyer and non-lawyer employees, solicit estate planning business and for a fee prepare estate planning documents for individual customers?

Answer: No.

References: KRS 524.130; SCR 3.020, 3.130(5.5)(b) and 3.470; Kentucky State Bar Association v. Tussey, 476 S.W.2d 177 (Ky. 1972); Kentucky State Bar Association v. Holland, 411 S.W.2d 674 (Ky. 1967); Frazee v. Citizens Fidelity Bank & Trust Co.; 393 S.W.2d 778 (Ky. 1965); In re Mid-America Living Trust Associates, Inc., 927 S.W.2d 855 (Mo. S.Ct. 1996).

OPINION

The preparation and execution of wills and powers of attorney, and the drafting and funding of living trusts involve legal knowledge and advice, and therefore constitute the practice of law. SCR 3.202; Kentucky State Bar Association v. Holland, 411 S.W.2d 674 (Ky. 1967). Such services affect the legal rights of, and involve the risk of financial harm to, the individual who received such services and to that individual's heirs and beneficiaries. The public interest demands that estate planning services be rendered only by lawyers, who are held to high standards of competence, ethics, and confidentiality, and who tailor documentation to their client's needs. The performance of and solicitation for such services by non-lawyers constitutes the unauthorized practice of law in violation of KRS 524.130.

Estate planning marketing schemes are typically misrepresented as the cure for all family and tax bills, are aimed at the elderly, and result in canned documents prepared by lawyer or non-lawyer employees of the financial services marketer who have little knowledge or and no loyalty to the customer. In re Mid-America Living Trust Associates, Inc., 927 S.W.2d 855 (S. Ct. Mo. 1996).

The employment of staff attorneys by marketers to prepare wills, trusts, and powers of attorney does not avoid the unauthorized practice of law. Neither corporations nor their salaried employee attorneys may offer legal services to the public. Kentucky Bar Association v. Tussey, 476 S.W.2d 177 (Ky. 1972); Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 778 (Ky. 1965).

Practicing attorneys who review documents prepared by non-lawyer employees of such marketers, or who share fees with such marketers, aid the unauthorized practice of law in violation of SCR 3.130(5.5)(b) and 3.470. See In re Mid-America Living Trust Associates, Inc., 927 S.W.2d 855, 867-869 (Mo. S.Ct. 1996).

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.”