

THE WEST VIRGINIA STATE BAR  
 Committee on Unauthorized Practice of Law  
 Informal Opinion 2001-01

The Committee on Unauthorized Practice of Law has received a request from a West Virginia attorney for an opinion of the Committee on the following three questions.

- (a) If an attorney licensed to practice law in the State of West Virginia provides mortgage-related advice to a client, specifically on loan products best suited for their individual circumstances, does such conduct constitute or fall within the ambit or purview of the practice of law?
- (b) If an attorney licensed to practice law in the State of West Virginia represents a client in completing any applications and miscellaneous documents necessary to apply for, understand and obtain mortgage financing, does such conduct constitute or fall within the ambit or purview of the practice of law? And
- (c) If an attorney licensed to practice law in the State of West Virginia represents a client in negotiating on behalf of clients to secure the best rate and terms for the client's proposed financing, does such conduct constitute or fall within the ambit and purview of the practice of law?

In deciding these previous questions, the Committee on Unauthorized Practice of Law has been asked to assume the following:

- (a) That all services described above will be provided by an attorney licensed to practice law in the State of West Virginia, or through an employee acting under the direct supervision and control of said lawyer;
- (b) That there be a reasonable fee paid to the attorney from the clients for such services, and the attorney will not receive, directly or indirectly, any fee or compensation from the lender;
- (c) That any mortgage-related services provided will occur as a part of the law office business and not as a separate business of its own;
- (d) That the West Virginia Rules of Professional Conduct will apply to such services performed by an attorney;
- (e) That the attorney engaged in mortgage-related services will deal only with licensed [or exempted] lenders registered with the West Virginia Department of Banking; and
- (f) That all laws, including consumer protection law, will apply to the mortgage transaction.

The West Virginia Supreme Court of Appeals promulgated a definition of the practice of law on March 28, 1947. That definition states as follows:

**DEFINITION OF THE PRACTICE OF LAW**

It is essential to the administration of justice and the proper protection of society that only qualified persons duly licensed be permitted to engage in the practice of law. It is harmful to the public interest to permit anyone to represent falsely that he is qualified to perform legal services.

Unlicensed persons are excluded from that practice of law to protect the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the courts could exercise little, if any, control.

The principles underlying a definition of the practice of law

have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore it is from the relation of attorney and client that any definition of the practice of law must be derived.

The relation of attorney and client is direct and personal and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney-at-law is nonetheless practicing law though such person may employ or select others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others in matters connected with the law shall be properly trained and educated, and be subject to a peculiar discipline. The [That] fact, and the protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.

In general, one is deemed to be practicing law whenever he or it furnishes to another advice or service under circumstances which imply the possession or use of legal knowledge and skill.

More specifically but without purporting to formulate a precise and completely comprehensive definition of the practice of law or the prescribe limits to the scope of that activity, one is deemed to be practicing law whenever (1) one undertakes, with or without compensation and whether or not in connection with another activity, to advise another in any matter involving the application of legal principles to facts, purposes or desires; (2) one undertakes, with or without compensation and whether or not in connection with another activity, to prepare for another legal instruments of any character; or (3) one undertakes, with or without compensation and whether or not in connection with another activity, to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures. Nothing in this paragraph shall be deemed to prohibit a lay person from appearing as agent before a justice of the peace or to prohibit a bona fide full-time lay employee from performing legal services for his regular employer before any judicial, executive or administrative tribunal, agency or officer) in matters relating solely to the internal affairs of such employer, as distinguished from such services rendered to or for others. (as amended by order adopted June 27, 1961.)

The Committee on Unauthorized Practice of Law is of the opinion that (based on the assumptions given) the answer to each of the three questions posed in this request is "Yes." While the proposed activities set forth in each question may not necessarily fall within the exclusive area of the practice of law limited to attorneys, the activities do fall within the ambit or purview of law in that they relate to traditional activities that have been performed by attorneys in West Virginia.

The view of the Committee in this opinion is limited to the specific questions presented and may not be considered as an opinion or even an indication that if non-lawyers performed these same activities they would be involved in the authorized practice of law.