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## ADVISORY OPINION 93-003

The Committee on Unlawful Practice of the West Virginia State Bar has received an inquiry from a law firm requesting an opinion as to whether or not their lay client would be participating in the unauthorized practice of law if she engaged in the following services.

1. Document preparation and supervision/ handling of real estate closings. The anticipated document preparation would include preparation of deeds, deeds of trust and loan documentation. For example, she would complete the loan documentation generally required in a VA or FHA loan. In doing so, she would work directly with the borrower and the involved lender.
2. Title search and title insurance services. At least initially, she would provide this service through an independent attorney's office. However, her company would eventually provide these services.
3. Completion of standard forms to assist pro se debtors in Chapter 7 bankruptcy cases.
4. Assistance in preparing documentation and providing administrative services relative to decedents' estates. For example, she would anticipate assisting with the preparation of appraisal and inventory forms.
5. The preparation of, and the assistance in executing, simple wills.
6. Some of the foregoing matters from time to time would necessitate her preparing other routine legally oriented documents such as powers of attorney and affidavits.
7. Preparation of documents for use by parties proceeding pro se in divorce matters.

Pursuant to the provisions of Section 4a, Article 1, chapter 51 of the West Virginia Code of 1931, as amended, the West Virginia Supreme Court, on March 28, 1987, by rule discussed and defined the practice of law in the State of West Virginia in the following terms, in part:

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 interests to permit anyone to represent falsely that he is qualified to perform legal services ...

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 to 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 interests 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.

The above definition of the practice of law was expanded upon by the West Virginia Supreme Court in the case of *West Virginia State Bar v. Early*, 109 S.E.2d420 (WVA. 1959). In that case, in attempting to define what constituted the practice of law, the West Virginia Supreme Court held that:

The courts in numerous decisions in different jurisdictions have undertaken to define and designate what constitutes the practice of law; but it is generally recognized that it is extremely difficult, perhaps impossible, to formulate a precise and completely comprehensive definition of the practice of law or to prescribe limits to the scope of that activity ...It is clear, however, that a licensed attorney at law in the practice of his profession generally engages in three principal types of professional activity. These types are legal advice and instructions to clients to inform them of their rights and obligations; preparation for clients of documents requiring knowledge of legal principles which is not possessed by an ordinary layman; and appearance for clients before public tribunals, which possess the power and

authority to determine rights of life, liberty, and property according to law, in order to assist in the proper interpretation and enforcement of law ...The practice of law is not limited to the conduct of cases in courts. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds and in general all advice to clients and all action taken for them in matters connected with the law.

With these general parameters as a reference point, the Committee will attempt to answer the inquiries made as follows.

Inquiry 1: The Committee on Unlawful Practice is of the opinion that the preparation of deeds, deeds of trust, and loan documentation would constitute the preparation of "legal instruments" as that term was used by the West Virginia Supreme Court in its definition of the practice of law. The Committee acknowledges the holding of the West Virginia Supreme Court in *West Virginia State Bar v. Early*, supra, where our court held that a lay person may assist another in filling in preprinted blank forms where those blank forms do not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent lay person. Consequently, if the individual providing these services is merely filling in blank spaces in loan documentation or in deeds of trust, then we do not believe such activities would constitute the unlawful practice of law. However, the Committee can envision no circumstance where the preparation of a deed would not constitute the preparation of a "legal instrument" and the Committee is of the opinion that all deeds must be prepared by licensed

attorneys. Additionally, even if such individual is helping a lay person fill in preprinted blank forms, the lay person may not provide advice or recommendations involving the application of legal principles to facts, purposes, or desires, and in particular the lay representative may not advise the individual for whom those documents are prepared of the legal effect or consequences of signing said documents or of the legal effect or consequences of any of the language found within those documents.

Inquiry No.2. The Committee on Unlawful Practice does not believe that a lay person can conduct title searches and title insurance services for prospective clients unless doing so under the direct supervision and control of an attorney. The preparation of documents evidencing title searches and title insurance services constitutes the preparation of "legal instruments" that can only be accomplished by attorneys licensed to practice in the State of West Virginia. Title searches and title insurance services, in and of themselves, involve advice to individuals regarding the application of legal principles to facts, purposes, and desires.

Inquiry No.3. The Committee on Unlawful Practice does not believe the individual making this inquiry would be involved in the unauthorized practice of law if that individual assisted pro se debtors in Chapter 7 Bankruptcy cases in the completion of standard forms. However, in assisting an individual filling out these pre-printed standard forms, the individual providing those services may not provide advice on any matter involving the application of legal principles to facts, purposes, or desires, and in particular may not advise the individual of the legal effect as to whether or not information should or should not be included in the preparation of that standard application nor can that individual advise of the potential ramifications of including or not including certain information. Said individual may further not advise or provide recommendations to the individual as to what information should be placed in those standardized forms or the effect of filing of the bankruptcy or the completion of the forms themselves.

Inquiry No.4. The Committee on Unlawful Practice does not believe the individual making this inquiry would be involved in the unlawful practice of law if they were merely assisting individuals in filling out preprinted appraisal and inventory forms as supplied by the county commissions throughout the State of West Virginia. However, again, said individual would not be allowed to advise the individual preparing the forms about the application of legal principles to facts, purposes, or desires.

Inquiry No.5. The Committee on Unlawful Practice does not believe the lay representative can assist another in the drafting of a will or supervising its execution. The West Virginia Supreme Court in *Brammer v. Taylor*, 338 S.E.2d 207 (W.Va. 1985), held that:

Drafting a will for another person, advising another person how to draft a will or supervising its execution are activities which constitute the practice of law. ..Certainly such activities come within our definition of our practice of - law, as they constitute the giving of advice to another person on a matter involving the application of legal principles to facts, purposes or desires, and they involve the preparation of legal instruments for another person.

~~Inquiry No.6. The Committee on Unlawful Practice believes that the preparation of powers of attorney by a lay person would constitute the unauthorized practice of law. The only exception the Committee finds would be the preparation and execution of medical powers of attorney as found in W.Va. Code § 16-30A-1 et seq., which would merely be the preparation~~

of a preprinted form approved by the West Virginia Legislature. In general, the Committee would not believe that the preparation of affidavits would constitute the unauthorized practice of law because the preparation of such affidavits would merely involve the reducing of the words of another person to writing and, therefore, does not constitute the preparation of a legal instrument. *Brammer v. Taylor*, supra.

Inquiry No.7: The Committee on Unlawful Practice does not believe that a lay person assisting another in filling out pro se divorce complaints constitutes the unauthorized practice of law so long as the preprinted forms are those supplied by the various circuit courts to the individuals. The lay person assisting another individual in the preparation of such forms would not be authorized to advise that individual regarding the application of legal principles to facts, purposes or desires, and in particular could not describe or advise the individual of the effects of said documents or the legal ramifications regarding their filing.

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