



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in January 2010. Please see the 2010 Illinois Rule of Professional Conduct 5.5. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion No. 95-7
October, 1995

- Topic: Unauthorized Practice of Law
- Digest: Individuals may complete and file corporate documents; however, if the individual receives any assistance or advice from nonlawyers in completing the forms, such as forms for filing articles of incorporation, even those provided by the Secretary of State, the person providing the assistance is unlawfully engaged in the unauthorized practice of law. This determination includes assistance provided by accountants.
- Ref.: Illinois Rules of Professional Conduct, Rule 5.5
Illinois State Bar Association Advisory Opinion on Professional Conduct, No. 90-13
- Chicago Bar Association v. Quinlan & Tyson, Inc., 34 Ill.2d 116, 214 N.E.2d 771 (1966)
In re Discipio, 163 Ill.2d 515, 645 N.E.2d 906 (1994)
In re Yamaguchi, 118 Ill.2d 417, 515 N.E.2d 1235 (1987)
People ex rel. Illinois State Bar Association v. Schafer, 404 Ill. 45, 87 N.E.2d 773 (1949)

The Florida Bar v. Mills, 398 So.2d 1368 (Fla. 1981)
The Florida Bar v. Fuentes, 190 So.2d 748 (Fla. 1966)
The Florida Bar v. Town, 174 So.2d 395 (Fla. 1965)
Cincinnati Bar Association v. Davis, 590 N.E.2d 916 (Ohio Bd. Unauth. Prac. 1992)
Ohio State Bar Association v. Brunson, June 29, 1978
Ohio State Bar Association v. Keyes, April 26, 1979
ABA Commission on Ethics and Professional Responsibility, Formal Op. 31 (March 2, 1931)
Charles W. Wolfram, Modern Legal Ethics, §15.1, 839-40 (1986)

FACTS

In County A, accountants routinely prepare articles of incorporation and other corporate documents prior to submission to the appropriate office of the Secretary of State. These accountants are not licensed to practice law.

QUESTION

Does the preparation of articles of incorporation and other corporate documents by lay persons or accountants on behalf of clients constitute the unauthorized practice of law?

OPINION

The Illinois Rules of Professional Conduct, Rule 5.5 provides:

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
- (b) assist a person who is not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law.

However, this Rule is not explicit as to what acts constitute the unauthorized practice of law.

When examining acts or conduct to determine whether they constitute the practice of law, courts look to the character of the acts themselves. Chicago Bar Association v. Quinlan & Tyson, Inc., 34 Ill.2d 116, 214 N.E.2d 771 (1966). If the particular act requires legal skills or knowledge or more than ordinary business intelligence, it constitutes the practice of law. Id.; In re Discipio, 163 Ill.2d 515, 645 N.E.2d 906 (1994); In re Yamaguchi, 118 Ill.2d 417, 515 N.E.2d 1235 (1987); People ex rel. Illinois State Bar Association v. Schafer, 404 Ill. 45, 87 N.E.2d 773 (1949).

As a general rule, drafting articles of incorporation is the practice of law. See, The Florida Bar v. Mills, 398 So.2d 1368 (Fla. 1981); The Florida Bar v. Fuentes, 190 So.2d 748 (Fla. 1966); The Florida Bar v. Town, 174 So.2d 395 (Fla. 1965).

It has also been held that the preparation of articles of incorporation, as well as the execution of the articles, constitutes the practice of law. See, Cincinnati Bar Association v. Davis, 590 N.E.2d 916 (Ohio Bd. Unauth. Prac. 1992); Ohio State Bar Association v. Brunson, June 29, 1978; Ohio State Bar Association v. Keyes, April 26, 1979. Also see the ABA Commission on Ethics and Professional Responsibility, Formal Op. 31 (March 2, 1931). Thus, at first glance, the drafting or preparation of articles of incorporation is the practice of law.

Generally, a trend has allowed lay persons to complete pre-printed forms without giving or receiving legal advice. Continued within the book on Modern Legal Ethics, by Charles W. Wolfram, §15.1, (West Publishing, 1986), is a discussion of "Do it Yourself Kits and Forms." As the text states:

Unauthorized practice committees have fought the development [of pre-printed forms] with typical spirit but seem to be losing the battle.

...Nonlawyer entrepreneurs have particularly useful argument in those areas--the First Amendment. As a general proposition, the state may not suppress publications on the ground that they may include legal advice or, if put to use, may create legal consequences. Thus courts have traditionally permitted printers to print forms (often prepared by lawyer entrepreneurs) and sell them to both lawyers and the public. The line that many courts have drawn uses the absence of personal advice to demark permissible practices: selling forms or kits is not unauthorized practice so long as they are not accompanied by advice, either in writing or in person, that is personalized in the sense of being directed to the specific problem of a designated or readily identifiable person. The Florida courts have permitted nonlawyers to operate "secretarial services" to fill out forms for no-fault divorces but only if the nonlawyer prepares the forms from written instruction received in advance from the customer and does not give any legal advice or select forms for the customer's use.

Many states have authorized the selling and completion of forms by "services."

Upon contacting the Secretary of State's Business Department, anyone may request forms to fill out and file in order to engage in business as a corporation. When asking whether an attorney is needed to complete such forms, the person at the Business Department will respond assertively "no." In approximately one week, a small packet will arrive containing "A Guide for Organizing Domestic Corporations" along with three (3) forms for filing articles of incorporation and a list of telephone numbers of different offices within the Secretary of State's Office. The Guide does contain suggestions that the reader may wish to seek assistance from a lawyer to explain and outline legal obligations, but does not encourage having a lawyer examine the completed forms prior to the actual filing of the forms. Most important, the Guide does not contain any warning or prohibition about receiving advice or assistance from a nonlawyer. In fact, there is a Secretary of State Helpline to respond to questions from people completing the forms. It is unclear whether the assistance is being provided by a licensed lawyer. Thus, it appears that the registering agency of the State of Illinois may have taken the position that anyone may complete the forms without consequence as to the unauthorized practice of law, regardless of whether there was assistance from a nonlawyer.

Illinois courts appear to agree with the notion that any person, including lay people or other nonlawyer professionals, who wants to pay the price to purchase a set of forms or form books, may use such forms for his or her own purposes. Schafer, 404 Ill. at 52. The forms may be used in the person's own business or as the person desires. But individuals who proceed in this manner, do so at their own peril. In short, Illinois courts allow people who wish to file articles of incorporation or other corporate documents for themselves and without assistance of counsel. However, when a person receives assistance from another in completing pre-printed forms and the individual providing the assistance is not licensed to practice law, the total character of the transaction must be re-examined. The Illinois Supreme Court does allow nonlawyers to simply place or fill-in factual information on a "standard form" for other persons.

In Quinlan & Tyson, the court held earnest money agreement forms used in home purchases in the real estate industry are acceptable forms which a nonlawyer may complete. 34 Ill.2d 116. The court noted that the information on this type of an agreement is simply factual with no required legal knowledge necessary to complete such forms or agreements. Id.

The Quinlan & Tyson case has been distinguished, as recently as December, 1994, in In re Discipio, 163 Ill.2d 515. The question in Discipio, was whether documents in workers' compensation claims were documents which required a degree of legal skill and knowledge for comprehension and completion. Id. at 525. In finding that the documents were indeed legal documents, the court found that the documents required legal rights be explained and that the documents had significant legal impact. Id.

Being compensated for performing work, such as completing pre-printed forms, is not the sole determinant of whether conduct is the practice of law. It is the combination of the nature of corporate documents filed with the Secretary of State, with the fact of compensating a nonlawyer for assisting in completing articles of incorporation and other corporate documents that constitutes the unauthorized practice of law. Articles of incorporation forms are not forms which allow just any nonlawyer to fulfill the requirements of the forms for another supplied by the State.

For instance, to respond to the "purpose" of the corporation requires the person completing the form to meet numerous restrictions, while still stating the character of the corporation's lawful business objectives. Authorized shares is another pitfall for nonlawyers attempting to incorporate. When designating the class and par value of the shares of stock, the person attempting to incorporate needs to know the ramifications of each option and selection. Only lawyers are authorized to advise on such matters.

If, by the nature of the transaction, a lawyer's training is required for it's proper performance, "it does not matter that there may have been a widespread disregard of the requirement or that consideration of business expediency would be better served by a different rule." Quinlan, 214 N.E.2d at 774.

In ISBA Advisory Opinion No. 90-13, it was determined that preparation of land trust agreements and deed into trust by a bank is the unauthorized practice of law.

In conclusion, the Illinois State Bar Association is of the opinion that, while an individual may

complete the forms for him/herself without receiving assistance, anyone giving advice to another in the completion of the corporate documents, such as the articles of incorporation, is unlawfully engaged in the practice of law, regardless of whether compensation is received.

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