

Board on the Unauthorized Practice of Law of
The Supreme Court of Ohio

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Advisory Opinion **UPL 2008-03**

Issued: December 12, 2008

Legal Document Preparation by Online Services

SYLLABUS: An individual, not licensed to practice law in Ohio¹ and doing business as an online legal document service, may not draft or prepare legal documents and pleadings, nor select and complete legal forms for an Ohio resident.

OPINION: The question addressed in this opinion is whether an individual, not licensed to practice law in Ohio and doing business as an online legal document service may engage in the selection, preparation, and completion of various legal documents and pleadings for consumers via an internet or electronic service.

Legal Document Preparation by Nonattorneys in Ohio

The unauthorized practice of law consists of the rendering legal services for another by one not admitted to the practice of law in Ohio. Gov. Bar R. VII(2)(A). The practice of law in Ohio includes the preparation of pleadings and other papers incident to actions for filing in court and the preparation of legal instruments of all kinds. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23. Additionally, the preparation of legal pleadings and other papers for filing in court by a layperson on another's behalf without the direct supervision of an Ohio licensed attorney is the unauthorized practice of law in Ohio. *Cleveland Bar Ass'n v. Boyd*, 112 Ohio St.3d 331, 2006-Ohio-6590.

Legal document preparation by nonattorneys in Ohio is limited by application of existing case law to the traditional and permissible activities of a scrivener. The clerical act of filling out a form legal document is not the practice of law if it consists of typing or writing verbatim the information provided by a customer into the blanks of a form selected by the customer. This type of activity does not require the application of legal knowledge or legal skill possessed by attorneys. *Gustafson v. V.C. Taylor & Sons, Inc.* (1941), 138 Ohio St. 392. However, a nonattorney does engage in the unauthorized practice of law when he/she tailors a legal document by selecting the appropriate form document for completion. *Cleveland Bar Ass'n v. McKissic*, 106 Ohio St.3d 106, 2005-Ohio-3954.

The Supreme Court of Ohio has issued a series of opinions that directly addresses the issue of legal document preparation by unlicensed individuals. In *Ohio State Bar Ass'n v. Cohen*, the respondent owned a national document preparation franchise that

¹ For purposes of this advisory opinion, "an individual not licensed to practice law in Ohio" and "nonattorney" are synonymous.

offered to prepare various legal documents and pleadings for customers. 107 Ohio St.3d 98, 2005-Ohio-5980. The respondent's act of using computer software and official court forms to prepare legal documents and pleadings for others was found by the Supreme Court to constitute the unauthorized practice of law. Similarly, the combined acts of selecting and completing a standard form by a nonattorney without the supervision of an attorney has been viewed as an impermissible activity by the Court. *McKissic*. The Court has specifically found that assistance given by a nonattorney in the preparation and completion of legal forms for another is the unauthorized practice of law. *Disciplinary Counsel v. Taylor*, 84 Ohio St.3d 390, 1999-Ohio-487. The Court has consistently applied these and similar holdings in subsequent opinions dealing with legal document preparation.

The Supreme Court of Ohio is not alone in its restrictive approach to document preparation by unlicensed individuals. Other jurisdictions have also recognized that the preparation of even a simple legal form that requires no creative drafting may constitute the practice of law if one acts as more than a mere scrivener. For example, an individual using a commercial form software program to both select and complete a standard probate document form for a client was found to have engaged in the practice of law. *Franklin v. Chavis* (2007), 371 S.C. 527, 640 S.E.2d 873. In another case, the Florida Supreme Court determined that the acts of selecting a form, giving advice about what information should be included in the form, and soliciting information from a person in order to make a determination about how to best use the information in the form, were equivalent to practicing law. *Fla. Bar v. Am. Senior Citizens Alliance, Inc.* (1997), 689 So. 2d 255, 259.

Online Document Preparation Services

A variety of online legal document services have emerged during the last decade that advertise their services as alternatives to traditional legal services offered by licensed attorneys. Online services offer a variety of different legal forms and general assistance for a set fee. As one example, an online service confirms a customer's particular legal issue, selects the appropriate form legal document, and places the information given by the client in the correct fields. In another example, an online service possesses an electronic bank of forms or templates for the customer to select from to complete without assistance. As a final example, an online service offers to create customized documents or pleadings based on the customer's answers to questions posed by an online questionnaire through the insertion of relevant terms, clauses or averments. After the questions are answered, the most appropriate form document is selected, finalized for the customer and mailed or delivered electronically. This type of online service typically represents that the completed document is legally sufficient to accomplish a desired legal outcome for the customer. See, generally, Lanctot, *Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law* (2002), 30 Hofstra Law R. 811.

Many online services offer additional assistance to consumers when the service is being utilized. For example, additional online aids may include:

- a). Customer representatives are available by telephone or online chat features to answer questions about how to fill out a form.
- b). Customer assistance is provided to review a document for errors and omissions.
- c). Customer assistance is provided on how to file a document or interact with a court.
- d). Assistance via general advice, consultation, explanation or recommendation in selecting a form, in filing out part of the form, or how the forms should be used.

These additional aids if present, and when viewed in context of the more basic form preparation services provided, support a conclusion that the online service is engaged in the unauthorized practice of law.

The traditional prohibition against document or form preparation by nonattorneys is not altered by the fact the services are provided online instead of through more traditional means. The service inevitably engages in the practice of law by selecting the appropriate legal form or the most appropriate provisions/clauses for a legal form based on a consumer's answers to online questions. This conduct constitutes the practice of law because legal advice is inherently given when one selects and prepares the appropriate legal document for another, or selects relevant terms, clauses, averments or other provisions for a form legal document or pleading, based on responses to specific questions.

In conclusion, it is the Board's opinion that an online service that prepares a legal document or instrument for a customer by selecting an appropriate legal form, makes choices for inclusion of certain provisions in the form, and generally aids in the preparation of the document or instrument is not a scrivener service and is prohibited in Ohio. Legal document preparation without the direct supervision of an Ohio licensed attorney, whether by completing forms selected by an unlicensed individual, or through the creative drafting of documents, unavoidably leads to the unlicensed individual or entity engaging in the rendering of a legal service that involves the giving of legal advice. Gov. Bar R. VII(2)(A). Unless a preprinted legal form is chosen by the consumer, without assistance, guidance, selection, or direction from the online service, and the consumer provides all information for the form without prompting for key or relevant information, the combined activities of an online service will normally constitute the unauthorized practice of law in Ohio.

Advisory opinions of the Board on the Unauthorized Practice of Law are informal and nonbinding pursuant to Gov. Bar R. VII(2) in response to prospective or hypothetical questions submitted by unauthorized practice of law committees of local or state bar associations and the Office of Disciplinary Counsel.

