

ORANGE COUNTY BAR ASSOCIATION
PROFESSIONALISM AND ETHICS COMMITTEE

FORMAL OPINION NO. 94-002

STATEMENT OF FACTS

A paralegal, working with an attorney, visits prospective clients' homes, answers their questions, and works with clients to provide revocable living trust packages, which are written by the attorney. The paralegal only answers specific questions which the attorney has trained her to answer. If any questions or issues arise in which the paralegal has not been trained, she declines to answer until she has conferred with the attorney.

QUESTION PRESENTED

IS THE PARALEGAL PRACTICING LAW IN VIOLATION OF THE STATE BAR ACT, WHICH PROHIBITS THE PRACTICE OF LAW BY PEOPLE NOT ACTIVE IN THE STATE BAR?

DISCUSSION

The question presented requires an analysis of (1) the character of the services the paralegal is providing and (2) the amount of attorney supervision the paralegal receives. From the limited facts presented, it appears that the paralegal is not practicing law in violation of the State Bar Act.

A. Services Constituting The Practice of Law

The State Bar Act states that "No person shall practice law in California unless the person is an active member of the State Bar." (Cal. Bus. and Prof. Code § 6125.) Unfortunately, the Legislature did not define what the practice of law is.

The California Supreme Court provides some guidelines and states "the practice of law . . . includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending [sic] in a court." (Crawford v. State Bar (1960) 54 Cal.2d 659, 667, citing People v. Merchants Protective Corp., 189 Cal. 531.) Thus, the definition of the practice of law is broad and embraces giving counsel, negotiating and preparing documents, and enforcing rights in court.

Admittedly, many of the services attorneys provide can be rendered by lay persons, such as title companies, brokers, and paralegals, but "[p]eople call on lawyers for services that might otherwise be obtained from laymen because they expect and are

entitled to legal counsel." (Id. at 668.) For example, estate planning requires drawing up legal documents, which in many cases a paralegal can do. However, estate planning also requires broad knowledge of state and federal tax codes to provide the client with the best plan for each client's unique situation.

Although it is difficult to firmly demarcate the work of attorneys and paralegals, the Supreme Court provides some guidelines on the function of law clerks by quoting this passage from Ferris v. Snively, 172 Wash. 167:

"[I]t is sufficient to say that it is work of a preparatory nature, such as research, investigation of details, the assemblage of data and other necessary information, and such other work as will assist the attorney in carrying the matter to a completed product The work must be such, however, as loses its separate identity and becomes either the product, or else merged in the product, of the attorney himself." (Crawford, supra, 54 Cal.2d at 668.)

Thus, the Supreme Court makes it clear that a legal assistant can only engage in work of a preparatory nature.

Under the facts presented, it appears that the paralegal is not practicing law when she visits clients' homes to answer questions and work with them to provide revocable living trust packages, which are written by the attorney. The paralegal is only engaging in work preparatory to the writing of the living trust package by the attorney. Thus, the paralegal is not in violation of the Supreme Court's definition of the practice of law.

B. Attorney Supervision

When paralegals do perform legal work, they are not necessarily engaged in the unauthorized practice of law. If an attorney provides sufficient supervision, the paralegal may perform legal services. "[D]elegation is proper if the lawyer maintains a direct relationship with the client, supervises the delegated work and has complete professional responsibility for the work product." (ABA Ethical Consideration 3-6, emphasis added.)

In the issue presented above, the paralegal seems to be acting under a proper delegation from the attorney. Her activity is allowing the attorney to reach potential clients that the attorney may not have access to otherwise because of time and cost constraints. Since the attorney will write the revocable living trust package, the attorney will be maintaining a "direct relationship" with the client.

C. Conclusion

Our conclusion is that the activities performed by this paralegal, including activities such as visiting clients and answering their estate planning questions, should not be considered the unauthorized practice of law, particularly since the attorney is supervising the paralegal and maintaining a direct relationship with the client.

CAUTIONARY NOTE

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