

Virginia State Bar Council to Review Unauthorized Practice of Law Opinion 204

Pursuant to Part Six: Section IV, Paragraph 10(c)(iv) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on June 13-16, 2002, in Virginia Beach, Virginia, is expected to consider for approval, disapproval or modification, a proposed unauthorized practice of law opinion issued by the Standing Committee on the Unauthorized Practice of Law.

UPL Opinion 204

Opinion 204 was issued by the Standing Committee on the Unauthorized Practice of Law on January 24, 2002. This opinion generally addresses whether it is the unauthorized practice of law for a lay employee to file a civil warrant or motion for judgment in General District Court on behalf of his/her employer if that employer is not one of the types of entities enumerated in Virginia Code § 16.1-88.03.

In this opinion, the Committee concluded that the resolution of this inquiry, in part, involves an interpretation of Virginia Code § 16.1-88.03, and to the extent that it does, the Committee declined to comment, as such an interpretation is beyond the purview of the Committee. It is the Committee's opinion that, for purposes of applying and enforcing UPR 1-101, if the entity is not specifically enumerated in the statute or the Rule, it is not included. Therefore, any similar practice by an employee of

an employer/entity other than a corporation or partnership as that allowed for under the statute and the Rule would be the unauthorized practice of law. If the statute is to be expanded to include other business entities, it is the Committee's opinion that such responsibility lies exclusively with the Legislature and until or unless such legislative action takes place, UPR 1-101 will be applied and enforced under a straightforward reading of the statute and the Rule.

Inspection and Comment

The proposed unauthorized practice of law advisory opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendment can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found on the Virginia State Bar's Web site at <http://www.vsb.org>.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the advisory opinion by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, no later than June 10, 2002.

VIRGINIA UPL OPINION 204

WHETHER A LAY EMPLOYEE CAN FILE A CIVIL WARRANT OR MOTION FOR JUDGEMENT IN GENERAL DISTRICT COURT ON BEHALF OF HIS EMPLOYER IF THAT EMPLOYER IS NOT ONE OF THE ENTITIES ENUMERATED IN VIRGINIA CODE

This will respond to an inquiry requesting an Unauthorized Practice of Law Advisory Opinion regarding whether it is the unauthorized practice of law for a lay employee to file a civil warrant or motion for judgment in General District Court on behalf of his/her employer if that employer is not one of the types of entities enumerated in Virginia Code §16.1-88.03.

It is the opinion of the Committee that the resolution of this inquiry, in part, involves an interpretation of Virginia Code §16.1-88.03, and to the extent that it does, the Committee declines to comment, as such an interpretation is beyond the purview of the Committee. To the extent that the Virginia Unauthorized Practice Rules apply to this inquiry the controlling Rules are:

Unauthorized Practice Rule 1. Practice Before Tribunals.

UPR 1-101. Representation Before Tribunals.

(B) A nonlawyer regularly employed on a salary basis by a corporation appearing on behalf of his employer before a tribunal shall not engage in activities involving the examination of witnesses, the preparation and filing of briefs or pleadings or the presenting of legal conclusions.

(C) A nonlawyer regularly employed by a corporation or partnership may appear and file certain pleadings on behalf of his or her employer as authorized by Virginia Code §16.1-88.03.

This Rule addresses only employees of corporations and partnerships and the functions which those individuals are permitted to perform. UPR 1-101 (C) references Virginia Code §16.1-88.03 without in any way suggesting an expansion of the statute or the Rule to include entities other than those enumerated in the statute and the Rule. Section 16.1-88.01 of the Virginia Code states:

§ 16.1-88.03. Pleadings and other papers by certain parties not represented by attorneys —

A. **Any corporation or partnership** when the amount claimed in any civil action pursuant to subsection (1) or (3) of § 16.1-77 does not exceed the jurisdictional amounts authorized in such subsections, exclusive of interest, may prepare, execute, file, and have served on other parties in any proceeding in a general district court a warrant in debt, motion for judgment, warrant in detinue, distress warrant, summons for unlawful detainer, counterclaim, cross claim, suggestion for summons in garnishment, garnishment summons, writ of possession, writ of fieri facias, interpleader and civil appeal notice **without the intervention of an attorney**. A partnership shall sign such pleadings by a general partner, and a corporation shall sign such pleadings by its president, vice-president, treasurer, or other officer or full-time bona fide employee authorized to do so by its board of directors. However, this section

shall not apply to an action under § 16.1-77 (1) or (3) which was assigned to a corporation, partnership, or individual solely for the purpose of enforcing an obligation owed or right inuring to another. (Emphasis added.)

- B. Nothing in this section shall allow a nonlawyer to file a bill of particulars or grounds of defense or to argue motions, issue a subpoena, rule to show cause, or *capias*; file or interrogate at debtor interrogatories; or to file, issue or argue any other paper, pleading or proceeding not set forth in subsection A.
- C. The provisions of § 8.01-271.1 shall apply to any pleading, motion or other paper filed or made pursuant to this section. (1990, c. 645; 1992, c. 814; 1993, cc. 473, 478.)

Thus, the Committee is of the opinion that the inquiry herein was directed specifically at entities/employers other than corporations and partnerships and whether lay employees of these entities could act in the same capacity as allowed for employees of corporations and partnerships under Virginia Code §16.1-88.03 and UPR 1-101. It is the Committee's opinion that, for pur-

poses of applying and enforcing UPR 1-101, if the entity is not specifically enumerated in the statute or the Rule it is not included. Therefore, any similar practice by an employee of a an employer/entity other than a corporation or partnership as that allowed for under the statute and the Rule would be the unauthorized practice of law. If the statute is to be expanded to include other business entities, it is the Committee's opinion that such responsibility lies exclusively with the Legislature and until or unless such legislative action takes place, UPR 1-101 will be applied and enforced under a straightforward reading of the statute and the Rule.

This opinion is based only on the facts presented and is subject to review by Bar Council at its next regularly scheduled meeting, after the requisite period for public comment, in accordance with Part Six: Section IV: ¶10(c)(iv) of the Rules of the Virginia Supreme Court. Should Council approve the Opinion, it will then be reviewed by the Supreme Court pursuant to Part Six: Section IV: ¶10(f)(iii).

Committee Opinion
January 24, 2002