

**UPL OPINION NO. 202.**

**UNINCORPORATED LABOR UNION EMPLOYING SALARIED ATTORNEYS TO PREPARE DRAFT QUALIFIED DOMESTIC RELATIONS ORDERS FOR MEMBERS' DIVORCE ATTORNEYS.**

Your inquiry concerns whether an unincorporated labor union, through a wholly-owned subsidiary, can employ salaried attorneys to prepare draft Qualified Domestic Relations Orders (“QDROs”) for use by a union member’s private attorney in the member’s divorce proceedings. The union wishes to provide this service to its members because of the complicated nature of QDROs. The attorneys employed by the union would have been involved in the negotiation and have detailed knowledge of the provisions of the retirement plans at issue in the QDROs and would be able to prepare a draft of the QDRO consistent with federal law and tailored to the specific requirements of the member’s retirement plan. The intention is that this will be an exchange of information between the union attorneys and the private divorce attorneys; the service will be to the private divorce attorneys and there will be no direct service to or contact with the union member. The service will be supplied only in the context of the union member being otherwise represented by private counsel. The member’s attorney would pay a fee for this service to the union subsidiary which would use the fee to subsidize the union attorneys’ salaries. You have asked the committee to opine as to whether the union would be engaging in the unauthorized practice of law in Virginia were it to provide this service to its members under the circumstances described.

In support of your inquiry you cite several cases decided by the United States Supreme Court in which an organization or union wished to provide legal services to its members. The Court found in those cases that the organization’s or union’s action was permitted as protecting rights of free speech and association under the First and Fourteenth Amendments. A state’s attempt to limit or prohibit the union’s activity was found unconstitutional, even in the context of professional regulation of the bar. See *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576 (1971); *United Mine Workers of America v. Illinois State Bar Assoc.*, 389 U.S. 217 (1967); *Brotherhood of Railroad Trainmen v. Virginia State Bar*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963). You also rely upon and cite Unauthorized Practice Rule 8-101 and UPC 8-3, which were adopted by the Bar in view of these cases, allowing “trade associations” to provide members legal services or refer them to same. You also cite UPR 8-103(A)(3) and (A)(5) which prohibit a trade association from interfering in any way with an attorney-client relationship between a member and his/her attorney. In support, specifically, of your position that the union subsidiary can collect the fees for the services provided by the union attorneys, you cite these same authorities along with Virginia Rules of Professional Conduct 5.4 and 5.5.

The Committee has reviewed the case presented in the context of the application of the authorities cited in your inquiry as well as the Unauthorized Practice Rules (“UPRs”) generally and

Unauthorized Practice of Law opinions (“UPL opinions”). The Committee finds that the plan outlined by the union would not be the unauthorized practice of law. To reach this conclusion, the Committee determined it was not necessary to apply the rulings of the U.S. Supreme Court in the cases cited. The Committee considered the following:

As to the union attorneys preparing a draft QDRO for the union member’s private divorce attorney, Unauthorized Practice of Law opinions 191, 192 and 147 are instructive. UPL opinions 191 and 147 outline the permissible activities and services that a paralegal can perform for an attorney. UPL Opinion 192 addresses what services an entity can provide, and for whom, when the entity is not a law firm but whose employees are all attorneys licensed elsewhere than in Virginia. In UPL 192, the Committee dealt with a corporation providing consulting services, including analytical legal services; recommendations for revision of domestic and international law to support client positions; drafting legal opinions and legal summaries of statutes and treaties; and serving as technical legal advisors in criminal and civil trials, exclusively to legal counsel of federal agencies. The Committee concluded that if such services were provided exclusively to licensed attorneys authorized to act on behalf of their clients, all within the parameters set out in UPL opinions 147 and 191 as well as DR3-104, (now RPC 5.3), the corporation would not be practicing law.

Applying the Committee’s findings in UPL 192 to the case under consideration, if the union attorney would be providing his/her service exclusively and directly to the private divorce attorney, and *not* directly to the union member and within the parameters set out in UPL 102 and the opinions cited therein, it is the Committee’s opinion that the service would not be the practice of law. The draft QDRO that the union attorney prepares will be subject to final review and revision by the private, Virginia-licensed divorce attorney prior to inclusion in a document presented to a court of competent jurisdiction for approval, making this attorney ultimately responsible for the document’s content. The “delegated work” of the union attorney would thus merge into the divorce attorney’s completed work product.

With regard to the payment for these services, the Committee finds that such fee can be analogized to the payment of a fee for an expert or consultant used by an attorney in the course of representation. This fee is considered a “cost” to the client rather than a fee for legal services and, as such, payment made directly to the union subsidiary would not be improper.

In conclusion, the services of the union attorneys in drafting the QDRO and providing it directly to the private attorney, who will review, revise and have ultimate responsibility for its content prior to filing with a court of competent jurisdiction is not the unauthorized practice of law nor is the payment and collection of the fee for this service directly to and by the union.

Committee Opinion  
June 18, 2002