

UPL Opinion 211
DRAFT 10/2/06

You have asked the Committee to opine as to whether it is the unauthorized practice of law for an attorney, licensed and admitted to the Virginia State Bar either by examination or on motion, to provide volunteer pro-bono legal services to a community-based non-profit legal services entity, when the attorney is employed full time as in-house corporate counsel. The attorney would not maintain a separate law practice outside of his in-house corporate counsel position. The corporate employer would provide attorney with reasonable logistic and administrative support, including secretarial services, telephone and photocopy services and one day a month off with pay during which the attorney can work with and for the non-profit entity. While allowing the attorney access to these logistic and administrative supports, the corporate employer would have no involvement, control or influence over the attorney's rendering of legal services through the non-profit entity.

In considering this question, the Committee reviewed two existing Unauthorized Practice of Law Opinions, 57 and 167. The Committee also considered a Virginia Supreme Court opinion, *Richmond Ass'n of Credit Men v. Bar Assoc.*, 167 Va. 327, ---S.E.2d --- (1937). Unauthorized Practice of Law Opinion 57 addressed the issue of whether a corporation could employ attorneys to provide legal services to its customers. UPL Opinion 167 addressed whether a corporation's in-house counsel could provide personal legal services to the corporation's President/owner/CEO and/or clients under the auspices of the position of in-house counsel. Both opinions reached the conclusion that such conduct would be the unauthorized practice of law based on the holding in *Richmond Assoc. of Credit Men* as well as statutory authority. In *Richmond Assoc. of Credit Men v. Bar Assoc.*, the Court held:

The practice of law is not a business open to all, but a personal right, limited to a few persons of good moral character with special qualifications ascertained and certified after a long course of study, both general and professional, and a thorough examination by a state board appointed for the purpose. The right to practice law is in the nature of a franchise from the State conferred only for merit. It cannot be assigned or inherited, but must be earned by hard study and good conduct. It is attested by a certificate of the Supreme Court, and is protected by registration. No one can practice law unless he has taken an oath of office and has become an officer of the court, subject to its discipline, liable to punishment for contempt in violating his duties as such, and to suspension or removal. It is not a lawful business except for members of the Bar who have complied with all the conditions required by the statute and the Rules of the Courts. As these conditions cannot be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in.

* * *

The relation of attorney and client is that of a master and a servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, where he would be subject to the directions for the corporation and not to the directions of the client.’

Independent of statute, it is contrary to public policy for a corporation to practice law, directly or indirectly.

This remains the Committee’s position generally regarding a non-legal entity offering to provide legal services.

In UPL Opinion 167 the Committee concluded that “the attorney may only render legal service to the CEO if the attorney is a bar member *who maintains a practice separate from this employment with the corporation.*” (emphasis added). The issue raised in this request is whether a Virginia licensed corporate counsel providing pro bono legal services through an independent entity satisfies the “practice separate from” his employment requirement.

The requirement in UPL opinion 167 of a separate law practice was similarly expressed in *Richmond Assoc. of Credit Men*, to ensure that the lay corporate entity was not holding out to provide, or was not providing, legal services and that the attorney would maintain his/her independence in representing a client, free from any influence or control by the corporate entity. In the inquiry presented, the Virginia-licensed corporate counsel would provide *pro bono* legal representation through a community-based legal services entity. As described, the entity and the work would be completely separate from the corporate employer, the corporate employer would not be offering the legal services nor would the corporate employer have any control over the entity or the legal representation. The corporate employer would, however, allow the attorney access to administrative support and time off to work with this service. This scenario is distinguishable from those presented in UPL Opinions 57 and 167 in both of which opinions the situation involved a corporate counsel providing representation to clients other than the corporate entity directly from his position as corporate counsel and under the auspices of the corporate entity. As described, this scenario provides that the attorney would be offering his/her legal services through “a practice separate from [his/her] employment with the corporation.” This satisfies the “separate practice” requirement of UPL opinion 167 and the attorney participating in this program would not be engaged in the unauthorized practice of law.