

*Approved by the Supreme Court
Of Virginia, December 2, 1983
Effective March 1, 1984*

UPL Opinion No. 57.

**Employment by Financial Corporation of Lawyers
to Provide Legal Services.**

Subject: Employment by a financial corporation of lawyers to provide legal services to its customers.

Inquiry: May a lay corporation in the business of giving financial advice employ attorneys to provide legal services to its customers?

The corporation is in the investment, loan placement, mortgage placement and financial counseling fields and is considering providing legal services for customers in the District of Columbia, Maryland and Virginia. The corporation has several attorneys who work for it as employees on a part-time basis. Under these circumstances, may the corporation provide such services, may the attorneys properly provide such services and may the Virginia attorneys accept referrals from the corporation in which they split fees, when the fee splitting is characterized as employee compensation?

Opinion: The activities described constitute the practice of law by the corporation and, therefore, are prohibited.

The Supreme Court of Virginia, in 1937, reiterated some “well-settled principles” in *Richmond Ass’n of Credit Men v. Bar Assoc.* 167 Va. 327 (1937) at pages 334 and 335, our court, adopting law from other states and in its own words stated:

“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.

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“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.’ (Citations omitted)

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Independent of statute, it is contrary to public policy for a corporation to practice law, directly or indirectly.” (Citations omitted)

Section 54-42 of the Code of Virginia, 1950, as amended, defines who may practice law in the State of Virginia. It provides with some limited exceptions that the following may practice:

“All persons who have heretofore obtained, or may hereafter obtain, a license to so practice under the laws of this State and whose license has not been revoked, and who have paid the license tax proscribed by law.”

Section 13.1, Chapter 7, of the Code of Virginia, 1950, as amended, provides for the creation of professional corporations. As indicated in § 13.1-542:

“It is the legislative intent to provide for the incorporation of an individual or a group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization from the Commonwealth of Virginia.”

Chapter 7 requires that the “professional corporation” shall exist solely for the “specific purpose of rendering professional services” and contains other restrictions applying to the creation of professional corporations.

Section 54-42.2 of the Code of Virginia, 1950, as amended, further provides:

“(a) No professional corporation organized or qualifying under the provisions of Chapter 7 (§ 14.1-542 et seq.) of Title 13.1 of this Code shall render the professional services of attorney at law in this State unless such professional corporation is registered under this section.”

The inquiry presented clearly indicates we are dealing with a lay corporation which employs the services of several Virginia attorneys. It is clear from the facts presented that the lay corporation has not met any of the requirements laid out above and is, therefore, not permitted, but statute, to provide legal services to its customers.

Since the corporation cannot practice law, it would obviously be improper for the corporation to bill customers for the services of its employee attorneys when those attorneys undertake to provide legal services directly to the customer and not solely to the corporation.

No matter how the corporation pays its attorney employees or in what manner the customers are billed for the attorney’s services to customers, no Virginia attorney could properly participate in any such fee sharing or billing DR 3-101 provides:

“(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.”

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DR 3-102 provides that a lawyer of law firm shall not share legal fees with a nonlawyer except in some specified circumstances. Those circumstances are not applicable to the financial corporation involved in this inquiry. DR 3-103 further provides that “A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consists of the practice of law.”

Clearly, no lawyer employee of the lay corporation presented in this inquiry can properly share fees, bill the client, or in any manner aid the unauthorized practice of law by this corporation.

Summary: The Code of Virginia lays out the circumstances under which a corporation can practice law. Such a corporation must be composed of professionals and to practice law it must be composed of attorneys. No lay corporation may provide legal services to its customers. It would be improper for any attorney employee of a lay corporation to assist the lay corporation in the unauthorized practice of law.

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