

**UNANIMOUSLY APPROVED BY COMMITTEE ON MARCH 10, 2010
PENNSYLVANIA BAR ASSOCIATION
UNAUTHORIZED PRACTICE OF LAW COMMITTEE**

FORMAL OPINION 2010-01

**LEGAL DOCUMENT PREPARATION BY ONLINE AND IN-PERSON
SERVICES**

In response to many inquiries, the Pennsylvania Bar Association (PBA) Unauthorized Practice of Law (UPL) Committee has reviewed the activities of online and in-person legal document preparation services in Pennsylvania provided by persons, whether individuals or entities, not licensed to practice law in Pennsylvania. This review is based on descriptions of the services posted on websites maintained by the services, analysis of newspaper advertisements for legal document preparation services with a physical location, and the experience of other states with such services

LEGAL DOCUMENT PREPARATION SERVICES

The PBA's UPL Committee acknowledges the valuable input and inspiration of the Connecticut Bar's Unauthorized Practice of Law Committee Informal Opinion 2008-01 which reviewed the nationally marketed online legal document preparation service *LegalZoom* and the in-person legal document preparer and franchisor *We the People*, Advisory Opinion UPL 2008-03 issued by the Board on the Unauthorized Practice of Law of the Supreme Court of Ohio which reviewed online legal document preparation services generally, and finally the Cease and Desist Letter of Caution, dated May 5, 2008, issued by the North Carolina State Bar to *LegalZoom*.

Legal Documentation Preparation Services "(LDPS)" offer legal forms and advice online or in person to laypersons in Pennsylvania who are contemplating litigation, filings with administrative bodies, and the creation of business entities in Pennsylvania as well as personal estate planning and the like. In the vernacular of their marketing approach, the documents offered are typically "inexpensive" or "cheap" Wills, Trusts, Incorporations or LLC's, and Divorce pleadings.

Connecticut Bar

The Connecticut UPL Committee's Informal Opinion 2008-01 cites an "enthusiastic" *LegalZoom* supporter who states that the site has a staff of 31 people "dedicated to customer service" and an additional 150 people who process paperwork for customers.¹ The Opinion further says that "*LegalZoom* has formed over 80,000 corporations, according to this source... *LegalZoom* claims to have served over 500,000 customers."² *LegalZoom's* website states that it was developed by "expert attorneys with experience at the most prestigious law firms in the country."

¹LegalZoom Reviews and Company Information, Jan. 2008.

² LegalZoom provided this information on a franchise link on its website.

The Connecticut Opinion notes that *LegalZoom's* website states that it has assembled a “team of legal experts, including retired judges and law school professors. All of our forms were developed by experienced attorneys, so you can be sure our documents are dependable.”³

Further, according to Connecticut UPL Committee Informal Opinion 2008-01, *LegalZoom* describes the assistance provided in the divorce process to include a review by “specialists” to ensure that clients’ responses to questionnaires are consistent and complete.⁴ *LegalZoom* then prepares the documents and instructs the customer how to file the documents, how to arrange for service of process, how to obtain a response from the spouse, and some information about asset disclosure.⁵

From an examination of the websites it would appear that a similar methodology is used in Pennsylvania (and other states) by online legal document preparation services as used in Connecticut.

The Connecticut Bar Committee notes that *We the People* offers “Legal Document Preparation Services”, often at a specific physical location. The company’s website states that it has assisted 600,000 customers over 20 years. “We help customers represent themselves (pro se litigation) in uncontested legal matters by preparing/typing the necessary legal documents to court standards.” The website offers this advice: “Do it Yourself...Not by Yourself”.

The Connecticut Committee further observed that:

“*We the People* states that it will prepare customer’s documents, file the documents in court, manage the process, provide access to an overseeing attorney, and provide published materials.”⁶ *We the People* states that it provides assistance, not representation.

As pointed out in Connecticut Informal Opinion 2008-01:

“...The services select the documents that customers will use. The services suggest that the documents are of good quality and meet the requirements of the law. *LegalZoom* claims that its documents were

³ www.LegalZoom.com/about-us/our-story.html.

⁴ The Process of Preparing a Divorce.

⁵ Id.

⁶ Not all *We the People* websites refer to access to a supervising attorney, but *We the People* has a central processing facility. Three *We the People* franchises mention that services include access to an attorney. It is reasonable to infer that *We the People* customers have access to an attorney as described in the three websites. The Denver franchise describes staff to include document assistants and paralegals. www.wethepeopledenver.com.

prepared by experts, including retired judges and law professors and that all documents were prepared for customers are reviewed by experts. *We the People* will provide access to a supervising attorney. From this advice it is reasonable to conclude that legal advice is available from the services. *We the People* states as much in offering access to a supervising attorney. *LegalZoom* describes the care it took to make sure its documents meet legal requirements. *LegalZoom* appears not to limit the documents it prepares from official forms the Courts offer to the general public. The conduct described above amounts the practice of law...”

Ohio Supreme Court

The Supreme Court of Ohio, as cited in the Supreme Court of Ohio Advisory Opinion UPL 2008-03, has directly addressed LDPS. In Ohio State Bar Ass’n. v. Cohen, 107 Ohio St.3d 98 (2005), the non-attorney respondent’s act of using computer software and official court forms to prepare legal documents and pleadings for customers was found to be the unauthorized practice of law.

The Ohio Supreme Court cited similar holdings in South Carolina: Franklin v. Chavis, 371 S.C.527, 640 S.E.2d 873 (2007), and in Florida: FLA Bar v. Am. Senior Citizens Alliance, Inc., 689 So.2d 255 (1997).

North Carolina State Bar

The North Carolina State Bar, in its May 5, 2008 Cease and Desist directive to *LegalZoom* noted:

“Committee also considered your argument that *LegalZoom* wasn’t giving any legal advice in connection with the preparation of these documents. The committee disagrees. Legal advice includes the selection of terms and clauses within a legal document as well as the selection of which template to use. Accordingly, legal advice is inherently given by one who prepares a legal document for another. Once the customer has selected the type of document available through *LegalZoom*, the content is determined by *LegalZoom*. Regardless, the North Carolina statutes do not permit legal document preparation services even if they are not accompanied by “legal advice”. This argument does not resolve the primary problem with *LegalZoom’s* service-its offer to prepare legal documents and its representation that its services will satisfy the customers’ legal needs.

“The Committee also considered your argument that *LegalZoom* is similar to a scrivener. The Committee disagrees. Scrivener services are normally defined as merely typing or writing the words dictated by another. *LegalZoom* is not simply transcribing information as dictated by the customer or providing the customer with a legal form. By gathering information from the customer in an abstract form using responses to a

questionnaire and using that information to generate the completed legal document based on the content and nature of the responses, *LegalZoom* has exercised legal judgment concerning the preparation of that document, even if the judgment is part of an automated software design system. Further, the software has been designed in accordance with the judgment of *Legalzoom*. There is no doubt that this constitutes the practice of law. See In re Reynoso, 477 F.3rd 1117 (9th Cir. 2007)”.

ANALYSIS

The PBA UPL Committee has been advised by concerned members of Pennsylvania’s consuming public and by members of Pennsylvania’s legal profession, that such legal document preparation services make offerings in Pennsylvania of similar ‘services’⁷ not only on the web, but often by advertising in local newspapers for a specific location to provide services in Pennsylvania.

The Pennsylvania Constitution provides that “the Supreme Court shall have the power to prescribe general rules governing practice, procedure and conduct of all courts and for admission to the bar and to practice law...” Pa.Const. Art. V.§ 10(c). The Court has the exclusive right to determine what constitutes the practice of law. Kohlman v. Western Pennsylvania Hospital , 438 Pa. Super. 352, 652 A.2d 849 (1994), appeal denied, 541 Pa. 640, 663 A.2d 692 (1995); Commonwealth v. Carroll, 358 Pa. Super. 357, 517 A.2d 980 appeal denied, 515 Pa 573, 527 A.2d 535 (1986). See also Commonwealth v. Stern , 549 Pa. 505, 701 A.2d 568 (1997).

Persons engaging in the **unauthorized** practice of law are subject to the penalties set forth in 42 Pa. C.S.A. § 2524:

“(a) **General rule.** Except as provided in subsection (b), any person, including, but not limited to , a paralegal or legal assistant, who within this Commonwealth shall practice law, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction, without being an attorney at law or a corporation complying with 15 Pa.C.S. Ch. 29 (relating to professional corporations), commits a misdemeanor of the third degree upon the first violation. A second or subsequent violation of this subsection constitutes a misdemeanor of the first degree.

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⁷ It is not uncommon to see legal document preparation services advertising “save money on legal fees” in conjunction with, e.g. “Divorce, \$289”) accompanied by language such as “...offering the following services; Trust, Guardianship, Name Changes...” , etc.

“(c) **Injunction.** In addition to criminal prosecution, unauthorized practice of law may be enjoined in any county court of common pleas having personal jurisdiction over the defendant. The party obtaining the injunction may be awarded costs and expenses incurred, including reasonable attorney fees, against the enjoined party. A violation of subsection (a) is also a violation of the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law.”⁸

In order to protect the public, stringent requirements have been imposed to gain admission to and remain a member of the bar. See Kohlman, 438 Pa.Super. at 356, 357, 625 A. 2d at 851. “A duly admitted attorney is an officer of the court and answerable to it for dereliction of duty” Childs et al. v. Smetlzer, 315 Pa. 9, 14, 171 A. 883, 886 (1934). As stated by the Supreme Court in Shortz v. Farrell:

“The object of the legislation forbidding practice to laymen is not to secure to lawyers a monopoly, however deserved, but, by preventing the intrusion of inexpert and unlicensed persons in the practice of law, to assure to the public adequate protection in the pursuit of justice, than which society knows no loftier aim.”

Shortz v. Farrell, 327 Pa. 81, 91, 193 A. 20, 24 (1937).

The Courts have not precisely delineated “the boundaries...which limit the practice of law” since such “[a]n attempt to formulate a precise definition would be more likely to invite criticism than achieve clarity.” Shortz, 327 Pa. at 84, 193 A. at 21. Although such an exact description does not exist, one can identify those areas which are reserved for licensed attorneys at law:

“Where...a judgment requires the abstract understanding of legal principles and a refined skill for their concrete application, the exercise of legal judgment is called for. Shortz v. Farrell, 327 Pa. 81, 85, 193 A. 20, 21 (1937). While at times the line between lay and legal judgments may be a fine one, it is nevertheless discernible. Each given case must turn on a careful analysis of the particular judgment involved and the expertise that must be brought to bear on its exercise. Dauphin County Bar Association v. Mazzacaro, 465 Pa. 545, 553; 351 A.2d. 229, 233 (1976).

The documents being prepared by LDPS in Pennsylvania are legal documents including pleadings, agreements, wills, trusts, etc., which under the Mazzacaro case

⁸ The PBA UPL Committee is anecdotally aware of several private civil actions on behalf of victims of UPL brought by licensed practitioners in Pennsylvania successfully seeking the treble damages and attorneys fees permitted by the Unfair Trade Practices and Consumer Protection Law 73 P.S. § 201-1 et seq. above cited. The prospect of disgorgement of three times the “legal fee” charged by unlicensed protectioners gives some recompense to the consumer victim and should act as a strong deterrent.

supra, require the abstract understanding of legal principles with a refined skill in their concrete application i.e., the exercise of legal judgment.

Clearly the legal rights of the “client” are being affected by the judgment being applied by the document preparer not only in selection of the appropriate legal “form” but also in applying the facts of a particular “client’s” [customer’s] unique circumstances since, in the words of Connecticut Informal Opinion 2008-01:

“There seems to be no other purpose or value to the documents other than to affect legal rights...”

42 Pa C.S.A. § 2524 makes it a crime in Pennsylvania for one to “hold himself out to the public as being entitled to practice law...” Persons offering the services offered by legal document preparation services hold themselves out as having the training and ability to offer legal services and as such, are in violation of this section.

While the PBA UPL committee clearly recognizes that anyone may sell “forms” or provide solely clerical assistance in completing them, it is clear from the advertising and the fees being charged by LDPS that are offering more than rote forms to be typed upon by a clerk. It is the PBA UPL Committee’s opinion that there is a reasonable factual basis that legal document preparation services, whether online or in person at a specific site, are engaging in the unauthorized practice of law in Pennsylvania. This conclusion is based upon such services, and public descriptions of their own activities.⁹ Clearly their conduct goes beyond merely clerical or rote completion of form documents provided by a customer. As noted by the Connecticut Bar in its Informal Opinion 2008-01:

“...These services design, craft and select documents based on legal research and legal experience, and hold the documents out to be suitable for a particular customer’s needs. Supervising attorneys or experts are also often available during the document preparation process. Their involvement would be an unnecessary expense to any stenographic activity. The involvement adds value only if they are giving legal advice. Lawyers, whether admitted in this state or elsewhere, are prohibited from engaging in the unauthorized practice of law in Connecticut by assisting another in doing so in this state.”

⁹ The website of LegalZoom e.g, states: “Save time and money on common legal matters! Created by top attorneys, LegalZoom helps you make reliable legal documents from your home or office...” The term “reliable” is obviously intended to convey the meaning that the document is enforceable under governing law. Furthermore, next to the photograph of co-founder Robert Shapiro, is the statement: “LegalZoom was developed by expert attorneys with experience at the most prestigious law firms in the country”. In Pennsylvania, it is inappropriate for an attorney to refer to oneself as a “specialist” i.e. as an “expert” in an area of law, unless the designation has been approved by the Pennsylvania Supreme Court. See Pennsylvania Rules of Professional Conduct 7.4.(a).

Conclusion

It is the opinion of the Pennsylvania Bar Association Unauthorized Practice of Law Committee that the offering or providing [in Pennsylvania] of legal document preparation services as described herein (beyond the supply of preprinted forms selected by the consumer not the legal document preparation service), either online or at a site in Pennsylvania is the unauthorized practice of law and thus prohibited, unless such services are provided by a person who is duly licensed to practice law in Pennsylvania retained directly for the subject of the legal services.¹⁰

¹⁰ We note with appreciation that the Office of the Attorney General of the Commonwealth of Pennsylvania through its Bureau of Consumer Protection has been proactive in protecting Pennsylvania's consumers. The Bureau's action against *We the People Forms and Service Centers USA Inc.*, resulted in an Assurance of Voluntary Compliance before the Commonwealth Court of Pennsylvania which included civil penalties and reimbursement of the Commonwealth's investigation costs.