

**PRACTICE OF LAW BOARD**  
**STATE OF WASHINGTON**  
2101 Fourth Avenue, Ste. 400, Seattle, WA 98121-2330  
(206) 727-8252  
Fax (206) 727-8319

**#04-19 ADVISORY OPINION**  
**APRIL 2005**

---

The following inquiry was submitted to the Practice of Law Board:

**FACTS:** A nonlawyer is employed by a Delaware corporation whose main office is in California. The nonlawyer works within the legal department of the corporation at a branch office located in Bellevue, Washington. The nonlawyer selects appropriate commercial contracts for use in selling the corporation's services to other companies from among existing contract templates (or the nonlawyer may draft new contracts for this purpose), and reviews and negotiates all aspects of those contracts on behalf of the corporation with the corporation's customers via telephone and email. The nonlawyer works in the legal department with two Washington lawyers. The two Washington lawyers and the nonlawyer all perform the same essential functions. Neither of the Washington lawyers supervise the non lawyer's work.

After negotiation, the nonlawyer submits the negotiated contract to a California-licensed lawyer in the California head office recommending approval of the changes and modifications made during the contract negotiations. The California-licensed lawyer then reviews and approves the negotiated contracts, or indicates to the non-lawyer which negotiated changes are not approved and need to be modified.

**QUESTIONS:**

1. In general, is the nonlawyer engaged in the unauthorized practice of law in Washington state?
2. Do the nonlawyer's duties qualify him as nonlawyer assistant for the purposes of the definition of practicing law in Washington state?
3. Is the California corporation, as a "person" or entity, engaged in the unauthorized practice of law in Washington state because persons physically located in Washington state who are not licensed by the Washington bar are negotiating contracts on the California corporation's behalf?

**BRIEF ANSWER:**

1. As described, the nonlawyer is engaged in the unauthorized practice of law by selecting and drafting legal documents for others, and negotiating legal rights and responsibilities for the nonlawyer's employer.
2. Rule 5.3 of the Rules of Professional Conduct (RPC) discusses but does not define nonlawyer assistants, except that it is a person "employed or retained or associated with a lawyer." Under the facts presented, the non lawyer does not qualify as a non lawyer assistant. Neither of the lawyers supervises the nonlawyer.
3. The California corporation, through its nonlawyer employee, would be engaged in the unauthorized practice of law.

**DISCUSSION:**

General Rule (GR) 24 defines the practice of law in Washington. It provides in part:

The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

\* \* \*

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

\* \* \*

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

As this inquiry is presented, a nonlawyer working in Washington selects and drafts legal documents which affect the legal rights of others, including the nonlawyer's employer and third parties. The nonlawyer then negotiates the legal rights and responsibilities of the employer with third parties. This is the practice of law as defined in GR 24. *Perkins v. CTX Mortgage Co.*, 137 Wn. 2d 93, 969 P.2d 93 (1999) ("The practice of law includes the selection and completion of legal documents by which legal rights and responsibilities are established. . . . The question then becomes whether such activities are authorized").

In *Perkins*, nonlawyer employees of a mortgage company completed legal documents that had been prepared by lawyers admitted to practice in Texas and unlicensed to practice in Washington. The majority opinion found that

In preparing these documents, CTX attorneys performed all tasks requiring the exercise of legal judgment. For example, CTX attorneys selected the loan products, created the documents necessary for each loan product, and supervised the programming of CTX's central computer, which generates form templates in the branch offices. At the branch offices, lay employees entered customer information such as Social Security numbers, employer information, and bank account numbers in response to computer prompts depending on the type of loan the Perkinses had selected. Lay employees also entered the loan amount, interest rate, down payment, and other factual data. Attorneys prepared the other documents requiring the exercise of legal judgment. For example, the Perkinses' attorneys prepared the purchase and sale agreement, the earnest money agreement, the HUD-1, the excise tax affidavit, the warranty deed, and the escrow instructions.

The Supreme Court held that

whether or not a fee is charged, lenders are authorized to prepare the types of legal documents that are ordinarily incident to their financing activities when lay employees participating in such document preparation do not exercise any legal discretion. Moreover, even though the Perkinses have not alleged any harm, in order to fully safeguard the public interest we further hold that lenders must comply with the standard of care of a practicing attorney when preparing such documents. See *Cultum*, 103 Wn.2d at 631; *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 586-87, 675 P.2d 193 (1983).

However, the facts presented in this inquiry go beyond the conduct described in *Perkins*. Similar to *Perkins*, the nonlawyer employee “selects appropriate commercial contracts for use in selling the corporation’s services to other companies from among existing contract templates.” But, in addition, “the nonlawyer employee drafts new contracts” and “negotiates all aspects of those contracts on behalf of the corporation.” This is all done without supervision of any lawyer.

A lawyer may employ nonlawyers to perform legal services for the lawyer employer, but the lawyer is responsible for the conduct of the nonlawyer. This is specifically referred to in GR 24:

“Non-lawyer Assistants: Nothing in this rule shall affect the ability of non-lawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.”

RPC 5.3 requires that the supervising lawyer is responsible for the conduct of the nonlawyer, and GR 24 requires that the lawyer must exercise supervision and control over the work of the nonlawyer.

Because, in this inquiry, the nonlawyer drafts legal documents and negotiates legal rights and responsibilities without supervision of any lawyer until the final contract is arrived at, the conduct of the nonlawyer would constitute the unauthorized practice of law. Even though the final contract is reviewed by a lawyer, the process leading to that contract requires the exercising of legal judgment, which may only be performed by a lawyer.

Therefore, the California corporation, through its nonlawyer employee, would be engaged in the unauthorized practice of law.