

ETHICS OPINION

RO-90-04

[REDACTED]

QUESTION:

A brochure has been presented by a group of law students who wish to advertise a research business. Their query concerns whether "legal research" constitutes the practice of law.

ANSWER:

The Code of Alabama and case law in the State of Alabama define what acts constitute the practice of law. The Disciplinary Commission can neither expand nor interpret those statutes or case decisions and accordingly cannot address, in formal fashion, the question posed.

It is noted that the brochure advertising the services to be offered includes a disclaimer that states as follows:

"No research or services rendered by Legal Eagles Research constitutes a legal opinion. Our services are not provided by licensed attorneys and only constitutes a transmittal of information from Legal Eagles Research to licensed attorneys."

It is further noted that the services are offered to lawyers and law firms and not to the general public. As such, and within the limits described in the offering brochure, the Disciplinary Commission can discern no meaningful distinction between the services offered herein and those services provided by various non-lawyer employees of law firms. The individuals requesting this opinion are non-lawyers and are seeking employment as independent contractors. They do not seek employment from individuals in need of legal services but rather seek employment from licensed providers of legal services, i.e. lawyers and law firms.

Accordingly, and with the understanding that the Commission can only apply the law as promulgated by the Legislature or defined by the Courts of this State, it is the opinion of the Disciplinary Commission that the

brochure and the services described therein are permissible and do not constitute the unauthorized practice of law.

ADDITIONAL INFORMATION:

This opinion is not rendered pursuant to Rule 14 in that those requesting the opinion are not licensed members of the profession. Nonetheless, in an effort to provide clear guidance the Commission does offer its informal opinion as stated hereinabove. In addition, the Commission attaches hereto and makes a part hereof that portion of the Code of the State of Alabama that defines the practice of law.

AWJ/vf

1/18/90

## ARTICLE 1.

## GENERAL PROVISIONS.

**Cross references.** — As to summary proceedings against attorneys, see § 6-6-740. As to professional corporations, see § 10-4-380 et seq. As to unincorporated professional associations, see § 10-10-1 et seq. As to licenses for attorneys, see § 40-12-49.

## § 34-3-1. Unlawful practice of law.

If any person shall, without having become duly licensed to practice, or whose license to practice shall have expired either by disbarment, failure to pay his license fee within 30 days after the day it becomes due, or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of a misdemeanor and fined not to exceed \$500.00, or be imprisoned for a period not to exceed six months, or both. (Acts 1923, No. 133, p. 100; Code 1923, § 3318; Acts 1931, No. 241, p. 284; Code 1940, T. 46, § 31.)

**Cross references.** — For provision that graduates certified by the deans of the Birmingham School of Law, Miles College School of Law and Jones Law Institute shall be deemed to have sufficient legal training to take the bar exam offered by the state of Alabama or any of its agents as prescribed by law, see § 34-3-2.1.

**Admission of deposition not violative of Constitution.** — In disbarment proceedings against attorney, admission of depositions held not in violation of constitutional provision entitling accused to be confronted by witnesses. *In re Fite*, 228 Ala. 4, 152 So. 2d 1933.

**Courts may suspend or remove attorneys without trial by jury.** *Ex parte Thompson*, 228 Ala. 113, 152 So. 229 (1933).

**Defendant not entitled to practice law pending appeal to supreme court of United States.** — The fact that an appeal from disbarment is pending in the supreme court of the United States at the time of an alleged practice of law does not entitle the defendant to practice law pending such appeal. *Griffith v. State*, 47 Ala. App. 378, 255 So. 2d 48, cert. denied, 255 So. 2d 52 (Ala. 1971), 405 U.S. 1042, 92 S. Ct. 1317, 31 L. Ed. 2d 583 (1972).

**Only a licensed lawyer may obtain uncontested divorce for another person without violating this section.** *McGiffert v. State ex rel. Stowe*, 366 So. 2d 680 (Ala. 1978).

**Thus nonlawyer's contract to publish advertisement for legal services unenforceable.** — Where a person, not possessing a law license, holds himself out to the public as qualified to obtain divorces for a fee, a contract to publish such an advertisement would be unenforceable since the carrying out of the subject matter of the ad, i.e., obtaining divorces by a nonlawyer, would violate this section. *McGiffert v. State ex rel. Stowe*, 366 So. 2d 680 (Ala. 1978).

**Cited in** *Grace v. State*, 445 So. 2d 976 (Ala. Crim. App. 1983).

**Collateral references.** — 7 C.J.S., Attorney & Client, § 16.

**Failure to obtain occupational or business license or permit as defense to tort action.** 13 ALR2d 157.

**Right of person wrongfully refused license upon proper application therefor to do act for which license is required.** 30 ALR2d 1006.

**Recovery back of money voluntarily paid to unlicensed person required by law to have occupational or business license or permit to make contract.** 74 ALR3d 637.

**Propriety and effect of law students acting as counsel in court suit.** 3 ALR4th 358.

**Layman's assistance to party in divorce proceeding as unauthorized practice of law.** 12 ALR4th 656.

**§ 34-3-6. Who may practice as attorneys.**

(a) Only such persons as are regularly licensed have authority to practice law.

(b) For the purposes of this chapter, the practice of law is defined as follows: Whoever.

✓ (1) In a representative capacity appears as an advocate or draws papers, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or

✓ (2) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to secular rights; or

✓ (3) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or

✓ (4) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense;

is practicing law.

(c) Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands, nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, but any such person, firm or corporation engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles to real or personal property are prohibited from preparing or drawing or procuring or assisting in the drawing or preparation of deeds, conveyances, mortgages and any paper, document or instrument affecting or relating to secular rights, which acts are hereby defined to be an act of practicing law, unless such person, firm or corporation shall have a proprietary interest in such property; however, any such person, firm or corporation so engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles shall be permitted to prepare or draw or procure or assist in the drawing or preparation of simple affidavits or statements of fact to be used by such person, firm or corporation in support of its title policies, to be retained in its files and not to be recorded. (Code 1852, § 729; Code 1867, § 816; Code 1876, § 780; Code 1886, § 853; Code 1896, § 579; Code 1907, § 2983; Code 1923, § 6248; Acts 1927, No. 573, p. 669; Acts 1931, No. 493, p. 606; Code 1940, T. 46, § 42; Acts 1949, No. 167, p. 194.)