

FORMAL OPINION NO 2005-137

Unauthorized Practice of Law: Joint Venture to Produce Interactive Legal Information System

Facts:

Lawyer wishes to engage in a joint venture for profit with a non-lawyer to offer a web-based online legal information system to the public for a fee. Customers of the service will be told that they will not be communicating with or receiving information from an individual. Instead, the customers will be informed that they will be asked a series of questions previously stored at the website and will be provided with previously stored legal information or forms based on their responses to the questions.

Question:

Would Lawyer be engaging in promoting the unauthorized practice of law?

Conclusion:

No.

Discussion:

Oregon RPC 5.5(a) provides:

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

“The practice of law involves, among other things, the application of a general body of legal knowledge to the problems of a specific entity or person.” OSB Formal Ethics Op No 2005-101 (rev 2015). The marketing of videotapes and audiotapes that provide general legal advice does not constitute the unlawful practice of law. OSB Formal Ethics Op No 2005-107. In *Oregon State Bar v. Gilchrist*, 272 Or 552, 563–64, 538 P2d 913 (1975), the Oregon Supreme Court held that selling and marketing do-it-yourself divorce kits, complete with forms and instructions on

how to complete them, is not the practice of law, as long as those selling and distributing the kits do not personally advise the customers. The court reasoned that the practice of law requires that a person be involved in rendering the individualized advice:

[A]ll personal contact between defendants and their customers in the nature of consultation, explanation, recommendation or advice or other assistance in selecting particular forms, in filling out any part of the forms, or suggesting or advising how the forms should be used in solving the particular customer's marital problems does constitute the practice of law. . . .

Gilchrist, 272 Or at 563–64.¹ *See also* OSB Formal Ethics Op No 2005-115 (rev 2014) (lawyer cannot aid agents of nonlawyer corporation in giving estate-related legal advice).

The sale by nonlawyers of self-help legal software, whether through a program to be run on the purchaser's own computer or through a program to be run online, simply is not the practice of law, unauthorized or otherwise. When coupled with a clear indication to customers that there is no human interaction to be had, the absence of human interaction between a person seeking legal information, or advice on the one hand and a person providing that advice, is dispositive. *Cf.* ORS 9.460.

Approved by Board of Governors, August 2005.

¹ The approach of the Oregon Supreme Court has been followed in other states. *See, e.g., New Jersey State Bar Ass'n v. Divorce Ctr. of Atl. Cnty.*, 194 NJ Super 532, 477 A2d 415, 418 (Ch Div 1984) (citing *Gilchrist* in holding that purveyor of legal kit who goes beyond sale of information and actually engages in “making judgments” as to how a particular person should fill out legal forms is practicing law); *In re Thompson*, 574 SW2d 365, 368 (Mo 1978) (relying on *Gilchrist* to hold that sale of divorce kits is not practice of law).

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 13.2-2(a) (lawyers operating other businesses) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 4 (2000) (supplemented periodically); and ABA Model RPC 5.5.