FORMAL OPINION NO 2005-87
Unauthorized Practice of Law:
Financial and Estate Planning Service

Facts:

Estate Planning Service is owned by a CPA, a stockbroker who is a certified financial planner, a life insurance agent, and a casualty insurance agent. They propose to offer services to their clients that constitute the unlawful practice of law as provided in Oregon State Bar v. John H. Miller & Co., 235 Or 341, 385 P2d 181 (1963).¹

Questions:

1. May Lawyer recommend clients to Estate Planning Service?

2. May Lawyer accept client referrals from Estate Planning Service to help those clients transact business with Estate Planning Service?

3. May Lawyer do legal work directly for Estate Planning Service to help Estate Planning Service transact business with its clients?

Conclusions:

1. No.

2. No.

3. No.

¹ In John H. Miller & Co., 235 Or at 343–44, the defendant company engaged in financial and estate planning for individuals, as well as the sale of life insurance. The company would consider a variety of factors reflecting on tax liability in preparing the analysis. Much of the advice contained in the analysis performed for their clients involved the application of legal principles, primarily concerning the law of taxation. The court held this to be the practice of law.
Discussion:

Oregon RPC 5.5(a) provides:

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.


Because by hypothesis the activities of Estate Planning Service constitute the unlawful practice of law, Lawyer cannot aid Estate Planning Service by referring clients to them, accepting referrals from them to assist clients in transacting business with them, or do legal work directly for them as outlined above.

Approved by Board of Governors, August 2005.


2016 Revision