

Model Rules for Advisory Opinions On Unauthorized Practice of Law

The model Rules for Advisory Opinions on the Unauthorized Practice of Law were proposed by the ABA Standing Committee on Unauthorized Practice of the Law and were adopted by the House of Delegates in February, 1984.

Preamble

This court recognizes the need to prevent harm to the public from the unauthorized practice of law and to make public a clear and timely understanding of what is the unauthorized practice of law. At the same time it wishes to encourage public access, where consistent with this purpose, to a wide range of services by professionals in related fields. These important public interests justify exercising the court's power to regulate the practice of law through following rules. These rules constitute the only procedure under which advisory opinions on the unauthorized practice of law shall be provided in this jurisdiction.

Definitions

Court: The highest appellate court of this state.

Committee: The Committee on the Unauthorized Practice of Law, to be constituted according to the directives contained in this rule.

Petitioner: An individual or organization seeking guidance as to the applicability in a hypothetical situation of the state's prohibitions against the unauthorized practice of law.

(B) When the committee is first selected, approximately one-third of members shall be appointed for a term of three years, one-third for a term of two years, and one-third for a

State: The state, a commonwealth, or jurisdiction in which these rules are to have force.

UPL: The unauthorized practice of law, as prohibited by statute, court rule, or case law of the state.

Rule 1. The Committee: Appointment, Composition, Removal Funding.

(A) The court shall appoint a committee on the unauthorized practice of law to act in accordance with these rules. The committee shall consist of nine members, six of whom shall be lawyers, and three of whom shall be public members who neither are admitted to the bar nor practice law in any state. The court shall also appoint three alternative members, one of whom shall not be a lawyer, to serve in the event members of the committee are disqualified in particular proceedings. In the event of such temporary replacement, a lawyer shall replace a lawyer and a nonlawyer shall replace a nonlawyer member. Thereafter the court, by order, shall request the submission of nominations to fill vacancies in each category of membership as they occur. Any bar association or any resident of the state may submit in writing the names of nominees.

term of one year. All subsequent appointments to the committee shall be for a term of three years. No member shall be appointed to more than two consecutive full terms. The members

of the committee shall not be subject to removal by the court during their terms of office, except for cause. Cause shall include unexcused failures to attend scheduled meetings, the number of which shall be set forth by the committee in an attendance policy. (C) The court shall provide funding for and exercise periodic review over the committee's budget.

Rule 2. Officers

The committee shall elect a chairperson and a vice-chairperson from among its members, subject to regulations and terms to be established by the committee not inconsistent with these rules.

Rule 3. Committee Functions

The committee shall respond to requests from all persons and entities seeking advisory opinions concerning activities which may constitute the unauthorized practice of law.

Rule 4. Meetings, Notice of Meetings and Official Actions.

The committee shall meet not less than once a year. The committee may provide, by resolution, the time and place for the holding of such other regular meetings without other notice than such resolution. In addition, special meetings of the committee may be called by or at the request of the chairperson, the vice-chairperson, or any two members. The person or persons authorized to call special meetings may fix any place for holding. The committee shall be empowered to accept the voluntary services of a person licensed to practice in this jurisdiction when, in the committee's discretion, it deems it advisable to receive written or oral argument in opposition to the position advanced by the petitioner.

any special meetings of the committee.

Notice of any special meeting shall be given at least seven days previous thereto by written notice delivered personally or mailed to each member's business address, or by telegram, telex, graphic scanning or other communication system. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage therein prepaid. If notice be given by telegram, telex, graphic scanning or other communication system, such notice shall be deemed to be delivered when the notice is delivered to the telegraph, telex, graphic scanning or other communication system company. Any member may waive notice of any meeting.

A quorum shall be constituted of a majority of the committee and must include at least one public member. The committee shall act only with the concurrence of a majority of the members present. All meetings shall be confidential unless the committee determines that all or a portion of the meeting shall be open to the public.

Rule 5. Limitation on Opinions.

No opinion shall be rendered with respect to any case or controversy pending in any court in this jurisdiction.

Rule 6. Services of Counsel

Rule 7. Conflict of Interest

Committee members shall not participate in any matter in which they have either a material pecuniary interest that would affect by a

proposed advisory opinion or committee recommendation, or any other conflict of interest that might prevent them from participating. However, no action of the committee will be invalid where full disclosure has been made and the committee has not decided that the member's participation was improper.

Rule 8. Immunity

The members of the committee as well as staff persons assisting those members shall have absolute immunity from civil liability for all acts in the course of their official duties.

Rule 9. Proposed Formal

Advisory Opinions: Procedures, Content, Publication, Effect.

(A) At least 30 days in advance of the committee meeting at which initial action is to be taken with respect to a potential advisory opinion, the committee shall provide public notice of the issue to be presented and the date of the meeting. The committee shall hold a public hearing on the announced date at which any person affected shall be entitled to be represented by counsel. Any other person shall be entitled at or before this hearing to file written testimony on the issue before the committee. Oral testimony by such other

(B) The petitioner may file objections within 30 days of the filing of the opinion and a brief in support thereof, copies of which shall be served on the committee. Any other interested person may seek leave of the reviewing court to file and serve a brief in accordance with the same procedure. The committee may file a responsive brief within 20 days of service of the initial brief. The petitioner, as well as other interested persons with leave of court, may file a reply brief within 10 days of service of the responsive brief. The reviewing court

persons may be allowed by the committee at its discretion. Other regulations for issuing advisory opinions consistent with this rule may be adopted by this committee.

(B) The committee shall issue a proposed formal advisory opinion, a letter which declines to issue an opinion or a letter which indicates that no showing of the unauthorized practice of law has been made.

(C) A proposed formal advisory opinion shall be in writing. The committee shall arrange for the publication of any proposed formal advisory opinion within a reasonable time. The opinion shall bear a date of issuance. It shall prominently bear a title indicating that it is a proposed formal advisory opinion and a disclaimer stating that it is only an interpretation of the law and does not constitute final court action.

Rule 10. Service and Judicial Review of Proposed Formal Advisory Opinion

(A) The Proposed formal advisory opinion shall be furnished by personal delivery or certified mail to the person requesting the opinion. The committee shall also file a copy of the opinion and all materials considered by the committee in adopting the opinion with the clerk of the reviewing court. (Such court is delegated the authority to review the opinion and to consider any objections to it.)

shall permit, at its discretion, reasonable extension of these time periods. Oral argument will be allowed at the reviewing court's discretion. The rules of appellate procedure of this state shall otherwise govern the above methods of filing, service, and argument.

(C) Upon the expiration of the time to file objections to the proposed formal advisory opinion, the reviewing court shall review the advisory opinion, regardless of whether any such objections are in fact made, together with any briefs or objections filed in support of or in

opposition to such opinion. Upon review, it shall approve, modify or disapprove the advisory opinion, and the ensuing opinion shall have the force and effect of an order of this court, and be published accordingly. (There shall be no further review of the opinion except as granted by this court in its discretion, upon petition to this court.)