

JUN 07 2005

IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Proposed Definition of
the Practice of Law

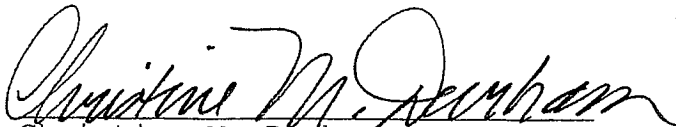
No. 20040669-SC

ORDER

Following expiration of the comment period, and the court's careful consideration of all comments received, IT IS HEREBY ORDERED that the attached rule, captioned Rule 1.0 Authorization to Practice Law, which shall be further identified as Chapter 13A to the Supreme Court Rules of Professional Practice, is adopted and promulgated effective as of the date of this order.

FOR THE COURT:

June 7, 2005
Date


Christine M. Durham,
Chief Justice

Supreme Court Rules of Professional Practice
Chapter 13A. Authorization to Practice law
RULE 1.0 Authorization to Practice Law

Pursuant to its authority under Article VIII, Section 4, Constitution of Utah, the Supreme Court promulgates this Rule.

(a) **Except as set forth in subsection (c) of this Rule, only persons who are active, licensed members of the Utah State Bar in good standing may engage in the practice of law in Utah.**

(b) For purposes of this Rule:

(b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.

(b)(2) The “law” is the collective body of declarations by governmental authorities that establish a person’s rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(a) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(b) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person’s rights, duties, constraints and freedoms.

(b)(3) "Person" includes the plural as well as the singular and legal entities as well as natural persons.

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(c)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(c)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.

(c)(3) Providing clerical assistance to another to complete a form provided by a court for protection from harassment or domestic violence or abuse when no fee is charged to do so.

(c)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(c)(5) Representing a natural person in small claims court without compensation and upon the express approval of the court or representing a legal entity as an employee representative in small claims court.

(c)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the

amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(c)(7) Representing a party in any mediation proceeding.

(c)(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(c)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(c)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(c)(11) Lobbying governmental bodies as an agent or representative of others.

(c)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(c)(12)(a) a real estate agent or broker licensed by the State of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(c)(12)(b) an abstractor or title insurance agent licensed by the State of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(c)(12)(c) financial institutions and securities brokers and dealers licensed by the State of Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(c)(12)(d) insurance companies and agents licensed by the State of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(c)(12)(e) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(c)(12)(f) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

Comment:

Subsection (a)

"Active" in this paragraph refers to the formal status of a lawyer, as determined by the Utah State Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve *another* person, it is not technically the "practice

of law." Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Section III.T of the Rules for Integration and Management of the Utah State Bar: "Nothing in this section shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee."

Similarly, an employee of a business entity is not engaged in "the representation of the interest of another person" when activities involving the law are a part of the employee's duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in subparagraph (b)(2), "the law" is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(a).

Subparagraph (b)(2)(b) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies. Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person's interests.

Subsection (c).

To the extent not already addressed by the requirement that the practice of law involves the

representation of others, subparagraph (c)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.

Subparagraph (c)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (c)(7) applies only to the procedures directly related to parties' involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (*e.g.*, under subparagraph (c)(5)).