PRACTICE OF LAW BOARD
STATE OF WASHINGTON

#02-01 ADVISORY OPINION
November 2003

COPYRIGHT LEGAL SERVICES OFFERED BY PERSONS NOT ADMITTED TO PRACTICE LAW IN WASHINGTON

ISSUES:

1. Whether a person who offers copyright services in Washington, who is not licensed to practice law in any state, is violating Washington's unauthorized practice of law statute, RCW 2.48.180.

2. Whether a person who offers copyright services in Washington, who is licensed in federal court in another state, but not in Washington, is violating Washington's unauthorized practice of law statute, RCW 2.48.180.

BRIEF ANSWER: A nonlawyer or a lawyer who is licensed out of state who is permitted to appear before a federal office by virtue of a federal law or federal regulation is exempt from state unauthorized practice of law statutes by operation of the Supremacy Clause. *See Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963). Federal law, however, does not specifically authorize nonlawyers, even those who have been granted registration to practice before the United States Patent and Trademark Office, to render services in the area of copyright law.

ANALYSIS: States have the broad authority to regulate against the unauthorized practice of law. *Sperry v. Florida ex rel. Florida Bar*, supra. The Washington legislature enacted RCW 2.48.180 to protect individuals from the unauthorized practice of law. This statute specifically prohibits a nonlawyer from holding himself or herself out as entitled to practice law. RCW 2.48.180(2)(a).

Federal law can supersede state unauthorized practice of law statutes. *See* General Rule 24(b)(9). Where federal law expressly authorizes nonlawyers to perform specific legal services, such nonlawyers are not subject to state unauthorized practice of law statutes for the performance of those services which are reasonably necessary and incident to the preparation and prosecution of the authorized matters. *See, Sperry v. Florida ex rel. Florida Bar*, *supra* (discussing the scope of practice authorized by a nonlawyer who has been admitted to practice before the United States Patent and Trademark Office).

No federal statute or regulation specifically authorizes nonlawyers to provide assistance to others with respect to copyrights. Absent such statute or regulation, one state appellate court has expressly held that its state's unauthorized practice of law statutes could be enforced against a nonlawyer who was granted registration to practice before the United States Patent and Trademark Office and who held himself out as available and authorized to render services in the area of copyright law. *Mahoning County Bar Ass'n. v. Harpman*, 608 N.E. 2d 872, 62 Ohio Misc. 2d 573 (1993). The Practice of Law Board, therefore, concludes that a nonlawyer who holds himself or herself out as available and authorized to render services in the area of copyright law in Washington may be subject to prosecution for violating RCW 2.48.180.

A lawyer who is admitted before the Copyright Arbitration Royalty Panel or who is registered with the United States Copyright Office may perform those services which are reasonably necessary and incident to the preparation and prosecution of authorized matters even if the Washington State Supreme Court has not otherwise authorized the lawyer to practice in Washington state.

CONCLUSION: A nonlawyer who is providing copyright services IS engaged in the unauthorized practice of law, as federal law does not specifically authorize nonlawyers, even those who have been granted registration to practice before the United States Patent and Trademark Office, to render services in the area of copyright law. A lawyer who is not admitted to practice in Washington, but who is admitted to practice before the Copyright Arbitration Royalty Panel, IS NOT engaging in the unauthorized practice of law if he or she limits the services provided in Washington to those which are reasonably necessary and incident to the preparation and prosecution of authorized matters.