PRACTICE OF LAW BOARD
STATE OF WASHINGTON

2101 Fourth Avenue, Ste. 400, Seattle, WA 98121-2330
(206) 727-8252
Fax (206) 727-8319

#04-36 ADVISORY OPINION
JANUARY 2006

The following inquiry was submitted to the Practice of Law Board:

QUESTIONS:

1. Does a non-lawyer serving as the Registered Agent of a corporation for a fee constitute the unauthorized practice of law?

2. Does a non-lawyer's preparation for a fee of articles of incorporation, certificates of formation, corporate bylaws, or operating agreements constitute the unauthorized practice of law?

3. Does a non-lawyer completing annual reports to the secretary of state and drafting minutes of an annual shareholders and directors meeting for a fee constitute the unauthorized practice of law?

BRIEF ANSWER:

1. A non-lawyer serving as the Registered Agent for a corporation for a fee does not constitute the unauthorized practice of law.

2. Preparation of articles of incorporation, certificates of formation, corporate bylaws, or operating agreements by a non-lawyer constitutes the unauthorized practice of law, whether or not a fee is charged.

3. Completing annual reports and drafting meeting minutes of annual shareholder and directors meetings for a fee does not constitute the unauthorized practice of law.

DISCUSSION:

General Rule (GR) 24 defines the practice of law in Washington. It provides in part:

> The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:
>
> > (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
> >
> > (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
> >
> > * * *
> >
> > (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

REGISTERED AGENT

RCW 23B.05.010 requires all corporations to appoint a registered agent. RCW 23B.05.040(1) and 25.15.020(b) define the duties of corporate registered agents as ". . .the entities agent for service of process, notice or demand required or permitted by law." Neither statute nor case law requires any specific skills or knowledge for those serving in this capacity. Accepting service of process or other legal notices and demands does not require the application of legal principals or judgment. Additionally, RCW 23B.05.010 specifically allows corporations to serve as registered agents. Non-lawyers serving as corporate registered agents, whether for a fee or not, does not constitute the unauthorized practice of law.

PREPARATION OF INCORPORATION DOCUMENTS

Preparing articles of incorporation, certificates of formation, corporate bylaws or operating agreements involves the application of legal principals and judgment with regard to the circumstances or objectives of another entity which require the knowledge and skill of a person trained in the law. (GR 24(a)) Preparation of any of these documents by book keepers, accountants, enrolled agents, certified public accountants, or other nonlawyers constitutes the unauthorized practice of law. Articles of incorporation and certificates of formation create a new legal entity and determine legal rights of the shareholders or members. The Articles or Certificate, along with the Bylaw or Operating Agreement establish the legal relationship between the State of Washington and the entity and between the entity and its members or shareholders. Establishing these legal rights and relationships requires the application of legal principles to specific circumstances and requires the knowledge and skill of one trained in the law. The statutes governing articles of incorporation and certificates of formation contain a short list of required provisions (RCW 23B.02.020) followed by a list of choices and

options (RCW 23B.02.020(4),(5) and (6). The options affect the powers, obligations and liability of the board or directors and the shareholders. The decision to include or exclude one of these provisions based on the needs of a specific corporation constitutes the practice of law. Advisory Opinion 95-7 from the Illinois State Bar Association states:

> It is the combination of the nature of corporate documents filed with the Secretary of State, with the fact of compensating a nonlawyer for assisting in completing articles of incorporation and other corporate documents that constitutes the unauthorized practice of law. Articles of incorporation forms are not forms which alloy just any nonlawyer to fulfill the requirements of the forms for another supplied by the State. For instance, to respond to the "purpose" of the corporation requires the person completing the form to meet numerous restrictions, while still stating the character of the corporation's lawful business objectives. Authorized shares is another pitfall for nonlaywers attempting to incorporate. When designating the class and par value of the shares of stock, the person attempting to incorporate needs to know the ramifications of each option and selection. Only lawyers and authorized to advise on such matters. . . . In conclusion the Illinois State Bar Association is of the opinion that, while an individual may complete the forms for him/herself without receiving assistance, anyone giving advice to another in the completion of the corporate documents, such as the articles of incorporation is unlawfully engaged in the practice of law, regardless of whether compensation is received.

Many courts and Bar Associations agree with Illinois' conclusion.[1]

---

[1] ABA Formal Opinion 31 (1931)[concludes that preparing articles of incorporation, corporate bylaws and necessary paperwork for the exchange of stack constitutes the practice of law]; *The People of the State of Colorado v. McClellan*, 164 Colo. 202, 434 P.2d 126 (1967)[holding McClellan in contempt of court for holding himself out as able to prepare articles of incorporation and preparing the articles; *The Florida bar v. Town*, 174 So.2d 395 (1965)[enjoining an accountant from preparing charters, bylaws, resolutions and other corporate formation documents; State Bar of Georgia Advisory Opinion 2005-1[found preparation of articles of incorporation, bylaws and other documents by a non lawyer to constitute the unauthorized practice of law; *In re Brainard*, 55 Idaho 153, 39 P.2d 769 (1934)[found a former probate judge's preparation of articles of incorporation without billing the client was the unauthorized practice of law]; Indian State Bar Association Advisory Opinion 2 (1995)[found that it would be the unauthorized practice of law for an accountant to complete generic articles of incorporation, bylaws, leases and promissory notes for his clients, when the blank forms were supplied to him by a lawyer; *Iowa State Bar Association v. Gartin* 272 N.W. 485 (1978)[preparation of articles of incorporation by nonlawyers constitutes the unauthorized practice of law, regardless of whether a fee is charged or the relationship between the preparer and the persons for whom the services were rendered]; Kentucky Bar Association Unauthorized Practice of Law Opinion 60 (date)[advising that drafting articles of incorporation is unquestionably the practice of law; *Cincinnati bar Association v. Davis*, 62 Ohio Misc.2d 64, 590 N.E. 2nd 916 (1992)[found that nonlawyer who prepared incorporation documents for a client engaged in the unauthorized practice of law; Oklahoma Bar Association Legal Ethics Committee Advisory Opinion 25 (1932)[nonlawyers, including accountants who prepare incorporation documents are engaged in the unauthorized practice of law; Pennsylvania bar

ANNUAL REPORTS AND MEETING MINUTES

RCW 23B.02.050(4) requires corporations to file annual reports. The statute specifies the information that must be included in the required report. Nothing in the statute appears to require the application of legal principals and judgment with regard to the circumstances or objectives of another entity requiring the knowledge of sill of a person trained in the law. The meeting minutes are simply a record of what occurred at the meeting. Preparation of minutes does not appear to constitute the practice of law as defined by GR 24.

Association Unauthorized Practice of Law Opinion 97-103[nonlawyers, including accountants cannot form associations]; Virginia UPL Opinion 67 (date)[a nonlaywer business consultant who rendered advice about incorporation or who assisted in the completion of the forms engaged in the unauthorized practice of law