

# PRACTICE OF LAW BOARD STATE OF WASHINGTON

## [An Important Note on These Practice of Law Board Advisory Opinions](#)

On Dec. 18, 2018, the Practice of Law Board was reconstituted under Washington Court General Rule 25 ([GR 25](#)). This reconstitution of the board changed the mission of the Practice of Law Board, (available [here](#)). Therefore, under the revised Rule GR 25, the Practice of Law Board no longer accepts any request for an advisory opinion, and no longer updates these advisory opinions to ensure they still represent good law and sound judgment regarding the unlawful practice of law. The unlawful practice of law is defined by the Revised Code of Washington (RCW) Title 2, Courts of Record, Chapter 2.48, The State Bar Act, Section 2.48.180 Definitions, Unlawful Practice a Crime ([RCW 2.48.180](#)), and Court General Rule 24 ([GR 24](#)) Definition of the Practice of Law.

## **ADVISORY OPINION NO. 4**

### **FORMING A NEW BUSINESS**

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#### **QUESTION PRESENTED**

May a nonlawyer assist another person in forming a new business by giving legal advice and preparing articles of incorporation, certificates of formation, bylaws, or operating agreements?

#### **SHORT ANSWER**

No.

#### **ANALYSIS**

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

**(a) General Definition:** 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 . . .
- (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
- (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

A new business entity is formed by filing articles of incorporation or a certificate of formation with the Washington Secretary of State.<sup>1</sup> These documents, along with bylaws and an operating agreement, determine the legal rights and responsibilities of the business's owners. The threshold decision about which form of business entity to use is complicated and involves financial, tax, liability, and other considerations.<sup>2</sup> Once the form of business is selected, other decisions need to be made about the management, operation, and governance of the business. These decisions can have significant consequences regarding the powers, obligations, and liabilities of the governing persons and the business owners with respect to their personal liabilities, tax liabilities, and their ability to sell or transfer their ownership interests, withdraw from the business, or terminate its affairs.

Preparing business formation documents and giving advice about the form of business entity involve the application of legal principles and judgment with regard to the circumstances or objectives of the business and its owners. This advice and the preparation of these documents require the knowledge and skill of a person trained in the law.<sup>3</sup>

Under a pro se (or "self-help") exception, the prospective owners, managers, or officers of a business may form their own business.<sup>4</sup>

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<sup>1</sup> For example, corporations ([RCW 23B.02.020](#)); limited liability companies ([RCW 25.15.070](#)); nonprofit corporations ([RCW 24.03.025](#)); and limited partnership ([RCW 25.10.201](#)). This is not a complete list and is not intended to provide a roadmap for the formation of a business. Many other statutes and regulations impact these decisions.

<sup>2</sup> Examples include sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability partnerships, limited liability companies, and corporations (whether Subchapter C or Subchapter S).

<sup>3</sup> [General Rule 24\(a\)\(1\) and \(2\)](#). See also *In re: Wright*, 102 Wn.2d 855, 860-61, 690 P.2d 1134 (1984) (giving advice about whether to incorporate and drafting incorporation documents constitutes the practice of law).

<sup>4</sup> The definition of the practice of law in Washington provides, "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." [General Rule 24\(a\)](#) (emphasis added). See also *Perkins v. CTX Mortgage Co.*, 137 Wn.2d 93, 96, 969 P.2d 93 (1998) ("we have recognized that a party to a legal document may select, prepare or draft that document without fear of liability for unauthorized practice"), quoting *Washington State Bar Association v. Great Western Union Federal Savings and Loan Association*, 91 Wn.2d 48, 56, 586 P.2d 870 (1978).

The Restatement (Third) of the Law Governing Lawyers, § 4, comment e, provides that "a nonlawyer officer of a corporation may permissibly draft legal documents, negotiate complex

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Advisory opinions are issued by the Practice of Law Board under the authority of the Washington Supreme Court pursuant to [General Rule 25\(c\)\(1\)](#).

This advisory opinion supersedes Advisory Opinion #04-36 issued in January 2006.

(November 8, 2013)

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transactions, and perform other tasks for the employing organization, even if the task is typically performed by lawyers for organizations.”

Other states have recognized a pro se exception for the preparation of business formation documents. Examples include Illinois State Bar Association Advisory Opinion 95-7 (“an individual may complete the forms [for articles of incorporation and other corporate documents] for him/herself without receiving assistance”), State Bar of Georgia Advisory Opinion 2005-1 (“Under Georgia law, those who act on their own behalf are free to prepare those documents they deem necessary to effectuate a pro se incorporation.”), and Kentucky Bar Association Unauthorized Practice of Law Opinion 60 (1999) (“Where the drafter [of articles of incorporation] has no beneficial interest in the new entity, the drafter must be an attorney”).