

1977 S.C. Op. Atty. Gen. 263 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-331, 1977 WL 24670

Office of the Attorney General

State of South Carolina

Opinion No. 77-331

October 25, 1977

*1 TO: Frank S. Potts
General Counsel
South Carolina Department of Social Services

QUESTION:

Does an appearance by a ‘paralegal’ at hearings conducted by the Department of Social Services constitute the unauthorized practice of law when that ‘paralegal’ represents an individual who has requested legal representation, and that ‘paralegal’ performs services generally rendered only by licensed attorneys?

STATUTES AND CASES:

§ 40–5–80, § 40–5–320., Code of Laws of South Carolina (1976); § 11–27–1, § 11–27–12 (1969) R.I. Gen. Laws Ann.; Rule 14 of the Rules on Examination and Admission to Practice Law, Code of Laws of South Carolina (1976).

DISCUSSION:

The Supreme Court Rules on Examination and Admission to Practice Law prohibit anyone from practicing law in the State who is not a licensed attorney and member of the Bar Association. The two exceptions contained in Rule 14 of the Rules on Examination and Admission to the Bar apply to any person prosecuting or defending his own cause, and to law students authorized under the Student Practice Rule. Section 40–5–80 of the Code permits persons to appear for others with permission of the Court and without a fee. The exceptions enumerated above do not apply to paralegal assistants employed for a fee.

The South Carolina Code of Laws, in Section 40–5–320 states that:

It shall be unlawful for any corporation or voluntary association . . . (c) to hold itself out to the public as being entitled to practice law or render or furnish legal services or advice . . .

The Legislature of Rhode Island has defined the phrase ‘hold himself out’ to include:

The assumption, use or advertisement of the title of lawyer, attorney, attorney at law conveying the idea that the person in connection with whose name they . . . are used is competent, qualified, authorized or entitled to practice law . . . R.I. Gen. Laws Ann. §§ 11–27–1 (1969); 11–27–12 (1969).

Under this well-accepted definition, a paralegal assistant signing his name along with the title ‘Staff Attorney’ or ‘Attorney’ is holding himself out to be an attorney at law qualified to perform legal services. If that paralegal is not a duly licensed attorney and member of the Bar Association, then he is engaging in the unauthorized practice of law.

The letter written by a Ms. Hanken as ‘Staff Attorney’ for Neighborhood Legal Assistance Program, Inc., requests a hearing and opportunity for Ms. Hanken to examine a client's case file. The intent to engage in the performance of legal services is

clear. These type services are to be performed only by a duly licensed attorney, and therefore the performance of such services by one not an attorney constitutes the unauthorized practice of law.

CONCLUSION:

In holding itself out as a legal assistance program where the public requests its services thinking them to be legal services, the Neighborhood Legal Assistance Program is engaging in the unauthorized practice of law through the illegal use of its paralegal assistants.

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