## Ethics Opinion No. 73-1

## Use of Legal Assistants.

The question to be considered is whether or not a legal assistant who investigates workmen's compensation claims, directly deals by telephone with the claim managers and agents of insurance companies regarding the settlement of such claims and who additionally dictates letters of correspondence setting forth his employer's position, as a representative of a client, regarding their settlement is engaged in the unauthorized practice of law if at all times his status as a legal assistant is fully disclosed to the other party with whom he is dealing and his activities are consistently supervised and reviewed by an employer attorney admitted to practice law in the State of Alaska.

Although American Bar Association Opinion 198, October 21,1939 held that a determination of what constitutes the unauthorized practice of law in a given locality, is not for an ethics committee to decide but rather a question for the local courts to decide, it is the position of the Ethics Committee of the Alaska Bar Association that its opinion would be helpful in resolving this particular matter without the necessity of court intervention.

## Canon 35 of the Canons of Professional Ethics states in part:

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest or such intermediacy. A lawyer's relation to his client should be personal and the responsibility should be direct to the client. . . .

## Canon 47 of the Canons of Professional Ethics states:

No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

As stated in American Bar Association Code of Professional Responsibility, Canon 3, Ethical Consideration 3 - 6, it is not unusual for a lawyer to delegate tasks to clerks, secretaries, and other lay persons. It further states that such a delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. Such a delegation enables a lawyer to render legal services more economically and efficiently.

As further pointed out in American Bar Association Opinion 316, 1967, an attorney may employ non-lawyers to do any task for him except counsel

clients about law matters, engage directly in the practice of law, or appear in court or in formal proceedings a part of the judicial process, so long as it is the attorney who takes the work and vouches for it to the client and is responsible to the client. While a lawyer cannot delegate his professional responsibility to a law student employed in his office, "[He] may avail himself of the assistance of the student in many of the field of the lawyer's work, such as examination of case law, finding and interviewing witnesses, making collections of claims, examining court records, delivering papers, conveying important messages, and other similar matters . . .. The student in all his work must act as agent for the lawyer employing him, who must supervise his work and be responsible for his good conduct. . . . Any such employee negotiating adjustments must report proposed settlements to the lawyer for final decision." American Bar Association Opinion 85, 1932. Drinker, Legal Ethics, 1954 at page 180 also states that it is not unethical for a lawyer to employ a layman to negotiate insurance adjustments for the lawyer's approval provided that such services do not constitute the practice of law and the layman's compensation is not a proportion of the lawyer's fee.

It is, of course, true that that lay assistant is, in all cases, bound by the Code of Professional Responsibility, and the attorney who employs the lay assistant will be personally subject to discipline if the lay assistant violates a disciplinary rule. Also, disclosure that the lay assistant is not an attorney must be made in all transactions in such a manner as to assure that that fact is known and understood by the person with whom the lay assistant is dealing.

Adopted by Board of Governors on October 6, 1973.

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