

WEST VIRGINIA STATE BAR

COMMITTEE ON UNLAWFUL PRACTICE OF LAW

ADVISORY OPINION 2007-01

This opinion addresses the issue of whether any of a “Landman’s” traditional work involves the practice of law.

Non-lawyers can represent themselves in legal disputes. For all others, practicing law without a license is prohibited by state law. What constitutes the practice of law is established by state statutory laws, court rules and by a case-by case analysis. A review of state definitions of the practice of law shows how difficult it is to define precisely what is the practice of law.

In West Virginia the definition of the practice of law was first promulgated by the Supreme Court of Appeals on March 28, 1947. One is deemed to be practicing law whenever he or it furnishes to another advice or service under circumstances which imply the possession or use of legal knowledge and skill. West Virginia does not have a precise and comprehensive definition of the practice of law and it does not attempt to prescribe limits to the scope of that activity.

However, in West Virginia the following activity, with or without compensation and whether or not in connection with another activity, is clearly defined as the unauthorized practice of law. ¹

(1) To undertake to advise another in any matter involving the application of legal

¹ STATE COURT RULES DEFINITION OF THE PRACTICE OF LAW

principles to facts, purposes or desires;

- (2) To undertake to prepare for another legal instruments of any character;
- (3) To undertake to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures...”²

WHAT IS THE JOB OF A LANDMAN?

The law does not appear to provide an exact definition of the functions of a landman. Landmen work in the mineral industry. We know that a landman is a person who is, or should be, skilled in many areas. A landman needs a specialized knowledge of mineral law, real estate law and contract law. Their work involves examining county records to determine mineral land leasehold ownership, determining and locating heirs of mineral owners, negotiating and obtaining business agreements and leases that provide for the exploration for and/or development of minerals, negotiating for the acquisition or divestiture of mineral rights, completing real estate transactions involving mineral interests, working to cure title problems, managing rights and/or obligations derived from ownership of interests in minerals, and unitizing or pooling of interests in minerals. The landman may work for a company or be self-employed.

Landmen are not licensed or subject to the jurisdiction of any board or required to have any credentials. Many of them have broadened their knowledge to include subjects that help them in their landwork. Approximately 8,500 belong to the American Association of Professional Landmen (AAPL). A Code of Ethics is contained in the Bylaws of AAPL and it provides that

² The definition provides a specific exemption for a lay person appearing as an agent before a [magistrate]. A bona fide full-time lay employee performing legal services for his regular employer (other than in connection with representation of his employer before any judicial, executive or administrative tribunal, agency or officer) in matters relating solely to the internal affairs of such employer, as distinguished from such services rendered to or for others, is also exempt under the definition.

“The Land Professional shall represent others only in his areas of expertise and shall not represent himself to be skilled in professional areas in which he is not professionally qualified.”³

The AAPL also has Standards of Practice that provide:

A land Professional shall provide a level of competent service in keeping with the standards of practice in those fields in which a Land Professional customarily engages. The Land Professional shall not represent himself to be skilled in, nor shall he engage in professional areas in which he is not qualified, such as the practice of law, geology, engineering, or other disciplines.⁴

Of concern to the Unlawful Practice Committee, in its role of protecting the public from anyone who falsely represents that he or she is qualified in matters connected with the law, is the fact that AAPL is a voluntary organization. AAPL does investigate allegations of violations of ethical standards by its members and it can censure, suspend or expel a landman who violates these standards. However, if the landman chooses to resign his or her membership and continues these unethical practices there is nothing AAPL can do. The AAPL can do nothing to control the work of landmen who do not belong to AAPL.

ARE LANDMEN PRACTICING LAW?

The answer to the question of whether any of a landmen’s traditional work involves the practice of law seems self-evident if the issue is presented as a question about the activity of others doing the same work as landmen, but without the deference traditionally given to landmen. Assume that a non-lawyer was:

- (1) interpreting documents found in a title search;
- (2) locating heirs AND having them sign quit claim deeds and leases;

³ Am. Ass’n of Prof’l Landmen, *The Landman’s Directory and Guidebook* 2003, at 8.

⁴ *Id.*

(3) offering advice to Landowners and mineral rights owners of their legal ownership interest and the meaning of contract language:

(4) preparing operating agreements and similar contracts to be executed by other parties;

Could it be plainer that the Unlawful Practice Committee would not hesitate to find that the non-lawyer was engaged in the unauthorized practice of law?

The Committee is sensitive to the needs of consumers and recognizes that non-lawyers should not be prohibited from offering services to the public that benefit consumers. Our charge is not to protect lawyers from competition. As a committee we consider the facts of each complaint before we decide whether one is engaging in the unauthorized practice of law. We will address any complaint about a landman practicing law in the same way.

The issue of landman practicing law came to the attention of the West Virginia Unauthorized Practice of Law Committee, not by any complaint by a lawyer or a consumer, but by Landmen seeking an opinion from the Committee that they are not practicing law in their work. It does appear to the Committee, that under the West Virginia practice of law definition, that many of the duties of landmen involve the practice of law. We acknowledge that, for some unknown reason, only a handful of Courts in the United States have held that the traditional duties of a landman constitute the practice of law.⁵

In Texas the issue of landmen practicing has been addressed by legislation. By a revised 2003 Texas statute, the practice of law does not include acts relating to the lease, purchase, sale, or transfer of a mineral or mining interest in real property or an easement or other interest associated with a mineral or mining interest in real property if:

- (1) the acts are performed by a person who does not hold the person out as an attorney licensed to practice law in this state or in another jurisdiction; and

⁵ Brian R. Bjella, Are Landmen Practicing Law? The Legal and Ethical Issues, 49 Rocky Mt. Min. L. Inst.25.01(2003).

(2) the person is not a licensed attorney.⁶,

The Committee acknowledges that Landmen are engaged in tasks and work that many lawyers do not want to do. We do not know how many landmen there are in West Virginia or how many of them belong to the American Association of Professional Landmen. We know that landmen perform many valuable services that, while they could have legal implications, do not constitute the unauthorized practice of law. We also agree that the speculative nature of the oil and gas business means that those involved in this speculative business are reluctant to pay the legal fees that lawyers would have to charge for performing the work done by Landmen.

It is not the intention of this Committee to interfere or limit a landman's ability to do traditional land work. However, the Unlawful Practice Committee has no choice in this matter. The Committee is entrusted with the responsibility to protect our citizens from the unauthorized practice of law.

CONCLUSION

We do not have a specific complaint before us. Therefore no finding is made that a specific Landman is practicing law. However, the work of a Landmen is neither exempted or excepted from the West Virginia definition of the practice of law. Until the issue is addressed by the West Virginia Legislature, it is the recommendation of the Unlawful Practice Committee that Landmen perform the work, that seems to fit within the prohibition against the unauthorized practice of law, only under the direct supervision and control of an attorney licensed to practice law in West Virginia.

⁶ Texas Statutes and Codes, Occupations Code, Chapter 954. Petroleum and mineral land services, eff. Sept. 1, 2005.