


Reply to: ■ Pleasanton  
6155 Stoneridge Drive, Suite 200  
Pleasanton, California 94588-3283  
Telephone: 925.224.7780  
Facsimile: 925.224.7782

**Hoge  
Fenton  
Jones &  
Appel Inc.**  
Attorneys at Law  
San Jose ■ Pleasanton

■ San Jose  
60 South Market Street, Suite 1400  
San Jose, California 95113-2396  
Telephone: 408.287.9501  
Facsimile: 408.287.2583

Steven D. Siner

July 14, 2003

James N. Wood, President  
Attorneys Trust Document Service, Inc.  
P.O. Box 2090  
San Ramon, CA 94583

Re: General Business  
Our File No.: 71499

Dear Mr. Wood:

This letter is to provide you with an analysis of your business practices to determine whether you are engaging in the unauthorized practice of law. After reviewing the facts and law, we are of the opinion that Attorney Trust Document Service, Inc. ("ATDS") is not engaging in the unauthorized practice of law. Please note that we have based our analysis on the facts you have provided and we have not independently investigated or verified them.

Facts As Presented:

ATDS was established as a scrivener service to prepare estate-planning documents for California attorneys. ATDS expanded its operations to provide estate-planning documents to financial advisors. It enlisted attorneys, through ads in the California Bar Journal, to accept referrals from non-lawyer customers and represent their clients, in order to determine the appropriate estate plan and direct ATDS in document preparation. All clients retain independent attorneys for legal advice, and ATDS' stated policy is that it "does not render any legal advice."

A licenced California estate-planning attorney developed ADTS' estate planning documents. Its procedures for generating the estate planning documents are as follows: ATDS provides data input forms to its customers (attorneys or financial advisors). The customer and client fill out the form and provide details about the client's specific estate planning needs, subject to review by the client's chosen attorney. ATDS then inputs the information and generates a draft of the estate planning documents for the client's attorney and sends it to him or her. After reviewing the plan and any recommended documents with his/her client, the attorney notifies ATDS of any changes in the draft documents. If ATDS' standard forms do not provide sufficient options, the client's attorney must provide guidance in drafting and amending a particular form. Thereafter, ATDS finalizes the documents in accordance with the changes and send them to the customer for delivery to the client.

ATDS's requirement that the independent attorneys provide estate-planning advice to non-attorney's client for a fee is their endeavor to keep "the [non-attorney] sales agent free of engaging in the unauthorized practice of law, give the client assurance that obtaining a trust from a non-attorney is safe, and ensure that the legal needs of the client are served by competent counsel."

ATDS has the following customer types: Attorneys, Independent Agents/Brokers, Trust Sales Companies (with licensed and unlicensed agents) and Independent Contractors of ATDS. With all of these customers (except for attorneys), it appears that the recipient of the estate-planning documents pays an attorney for recommending an estate plan and directing the document preparation. ATDS appears to be paid solely for the document preparation, but never by the ultimate recipient. As for attorney customers and some trust sales companies, ATDS is paid directly by the attorney for preparing the documents.

Statutes and Case law relating to the Unauthorized Practice of Law:

Business & Professions Code §§ 6125 and 6126 prohibit the unauthorized practice of law. This statute does not define the "practice of law." Rather, the definition has evolved through case law. The "practice of law" is generally understood to mean, "doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matters may or may not be pending in court." *People v. Landlords Professional Services*, 215 Cal.App.3d 1599, 264 Cal.Rptr 548 (1989). This includes the drawing of agreements, the organization of corporations and preparing papers connected therewith, and the drafting of legal documents of all kinds. *Smallberg v. State Bar* 212 Cal. 113, 119-120, 297 P. (1931).

However, providing clerical services and merely filling in blanks on a form selected by the parties or acting as a scrivener in recording the parties' agreement does not constitute the practice of law. Additionally, the mere sale of legal forms is not considered the unauthorized practice of law. *Landlords Professional Services*, supra, at 1605-1606. Nor does the sale of legal forms constitute the practice of law where the seller fills in forms at the direction of the client and files and serves those forms as directed by the client. *Id.* at 1606. However, it may be the unauthorized practice of law for the seller to determine for the parties the kind of legal document they should use in order to effectuate their purpose (e.g., a trust deed vs. a mortgage). *Id.* citing *People v. Sipper*, supra, 61 Cal.App.2d Supp. at 847, 142 P.2d 960, 962 (1943).

A company may be engaging in the unauthorized practice of law if it assists another company who is engaging in the unauthorized practice of law. In *People v. Fremont Life Insurance Company* (2002) 104 Cal.App.4<sup>th</sup> 508, 128 Cal.Rptr. 2d 463 (2002), the defendant, an insurance company, combined with the Alliance for Mature Americans (AMA) to sell inter vivos trusts and annuities to senior citizens. AMA representatives identified themselves as "certified trust advisors" or as experts in estate planning. These representatives offered to sell estate planning documents, which included standardized forms, but without any cautionary and instructive information. The documents included inter vivos trusts, pour-over-wills, and various

powers of attorney. When the documents were delivered, the AMA representative presented them for signature and notarized some of them. At the same time, sales agents from Fremont Life Insurance Company would attempt to persuade the consumer to purchase an annuity policy. The court found that the relationship between Fremont Life Insurance Company and AMA and their joint conduct resulted in the unauthorized practice of law. The court, however, does not explain what conduct in particular constituted the unauthorized practice of law.

#### Application of Law to ATDS' services based on Customer Type

##### All Customers

Based on the information you provided, it appears that ATDS performs a clerical function and merely inputs data after the client selects the types of estate plan to be prepared. Further, ATDS does not appear to have any contact with the parties for whom the documents are prepared. Rather, that party is required to consult with an attorney of his or her own choosing to select an estate plan. All of its customers pay ATDS a document preparation fee. Since ATDS performs clerical and document-preparation services for its clients, in general, it does not appear to be engaging in the unauthorized practice of law. As to the practices of its non-lawyer customers, it is less clear as to whether their conduct constitutes the unauthorized practice of law. However, even if the non-attorney overreaches and improperly advises a client, ATDS never accepts instruction from the non-attorney agent or the client. In other words, ATDS accepts direction solely from a licensed attorney regarding preparation of the various documents. Therefore, ATDS does not appear to be engaging in the unauthorized practice of law.

##### Attorney Customers

Attorneys pay ATDS to prepare estate-planning documents for their clients and ATDS performs a paralegal function for the attorneys. Under California law, a paralegal must be supervised by a licensed attorney. Based on the information you provided, it appears that the attorney selects the estate plan and provides direction to ATDS in preparing the documents. This practice would not be considered the unauthorized practice of law if ATDS is directly supervised by a licensed attorney.

##### Independent Agents/Brokers, Trust Sales Companies and Independent Contractors

As to these customers, the client pays an attorney for recommending an estate plan, and the client pays the non-attorney agent for the cost of document preparation, assistance in delivery of the final documents, and if a trust is provided, for clerical help funding the trust. The agent in turn pays ATDS for preparing the documents.

While ATDS seems to perform a purely clerical function in preparing the documents, under *People v. Fremont Life Insurance Company, supra*, except for the intervention of the independent attorneys, it's unclear whether the relationship between ATDS, Independent Agents/Brokers, Trust Sales Companies and Independent Contractors and their joint conduct would constitute the unauthorized practice of law. If the agent were to determine which forms to use based on the information provided by the client, and in turn gave the information to ATDS to

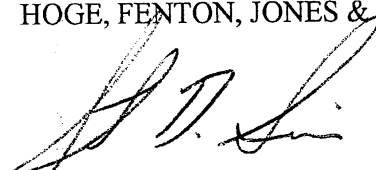
prepare the forms, the agent may be engaging in the unauthorized practice of law. Consequently, under *People v. Fremont Life Insurance Company, supra*, ATDS' joint conduct with the agent may constitute the unauthorized practice of law. However, since ATDS does not accept any direction from the non-lawyer agent or the client, but only from an independent attorney representing the client, ATDS does not appear to be engaging in the unauthorized practice of law.

Conclusion

While there is no bright line test to determine what constitutes the unauthorized practice of law, it is unlikely that ATDS' clerical and document-preparation services, working under the direction of active members of the Bar, constitute the unauthorized practice of law.

Very truly yours,

HOGE, FENTON, JONES & APPEL, INC.

A handwritten signature in black ink, appearing to read "S. D. Siner", is written over the typed name below.

Steven D. Siner

SDS:tn