

**UPL Opinion No. 206.**

**Whether a Non-Attorney Corporate Officer May Represent  
The Corporation in an Arbitration Conducted in Virginia Under  
The Rules of The AAA.**

You have asked the committee to opine as to whether: (1) it is the unauthorized practice of law for a non-attorney officer of a corporation to represent that corporation at an arbitration conducted in Virginia under the rules of the American Arbitration Association (“AAA”); (2) Virginia attorneys and or the AAA may be subject to sanctions for aiding and assisting in the unauthorized practice of law by participating in an arbitration where a corporate party is represented by a non-attorney officer; and (3) AAA rules control over Virginia’s rules regarding the unauthorized practice of law.

This is a revised opinion from that issued in May 2002. The Standing Committee on the Unauthorized Practice of Law reviewed the issues presented in light of commentary received following publication of the initial opinion. That initial opinion is now withdrawn and the Committee finds as follows.

The applicable authority is Virginia Unauthorized Practice of Law Rules UPR 1-101 (A) and (B), Unauthorized Practice Considerations 1-1 and 1-3 and the definition of the practice of law in Virginia:

**UPR 1-101.** Representation Before Tribunals

(A) A non-lawyer, with or without compensation, shall not represent the interest of another before a tribunal, otherwise than in the presentation of facts, figures or factual conclusions, as distinguished from legal conclusions. . .

(B) A non-lawyer regularly employed on a salary basis by a corporation appearing on behalf of his employer before a tribunal shall not engage in activities involving the examination of witnesses, the preparation and filing of briefs or pleadings or the presenting of legal conclusions.

**UPC 1-1.** The term “tribunal” shall include, in addition to the courts and judicial officers of Virginia or of the United States of America, the State Corporation Commission of Virginia and its various divisions, the Virginia Workers’ Compensation Commission, and the Alcoholic Beverage Control Board, or any agency, authority, board, or commission when it determines the rights and obligations of parties to proceedings before it, as opposed to promulgating rules and regulations of general applicability. Such term does not include a tribunal established by virtue of the Constitution or laws of the United States, to the extent that the regulation of practice before such tribunal has been preempted by federal law, nor does it include a tribunal established under the Constitution or laws of Virginia before which the practice or appearance by a non-lawyer on behalf of another is authorized by statute .

**UPC 1-3.** A corporation (other than a duly registered law corporation) does not have the same right of appearance before a tribunal as an individual and may not be represented by its officers, employees or agents who are not duly authorized or licensed to practice law in Virginia. A corporation can be represented only by a lawyer before a tribunal, with respect to matters involving legal conclusions, examinations of witnesses or preparation of briefs or pleadings.

## **PRACTICE OF LAW IN THE COMMONWEALTH OF VIRGINIA**

Specifically, the relation of attorney and client exists, and one is deemed to be practicing law whenever—

(1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.

(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.

(3) One undertakes, with or without compensation, to represent the interest of another before any tribunal — judicial, administrative, or executive— otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.

(4) One holds himself or herself out to another as qualified or authorized to practice law in the Commonwealth of Virginia.

*Part 6, §1, Rules of the Supreme Court of Virginia*

Based on this authority the Committee is of the opinion, in response to your first question, that it would not be the unauthorized practice of law for an officer of a corporation who is not a lawyer to represent the corporation in an arbitration proceeding in Virginia. The definition of the practice of law allows “a regular employee acting for his employer” to provide legal advice and prepare legal documents for this employer. While the definition and Rule 1-101 prohibit a non-lawyer from representing the interests of or appearing on behalf of his employer or a corporation before “a tribunal,” the definition of “tribunal” in UPC 1-1 does not include an arbitration proceeding.<sup>1</sup> It follows, therefore, that a non-attorney officer of a corporation can represent that corporation and provide legal advice to the corporation/employer within the context of an arbitration proceeding.

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<sup>1</sup> While an arbitration does determine “the rights and obligations of parties to proceedings before it,” under the current definition of “tribunal” it nevertheless does not satisfy the requirement that the entity making these determinations be “any agency, board, or commission.”

Whether Virginia attorneys or AAA would be subject to sanction for participating in an arbitration where the corporation was represented by a non-lawyer officer are questions beyond the purview of the UPL Committee but they become moot points in light of the Committee's opinion regarding the representation itself.

Finally addressing your third question, it is the Committee's opinion that the Virginia Unauthorized Practice of Law rules and findings in its opinions take precedence over the rules of the AAA. While the Committee acknowledges that AAA rules allow for non-attorneys to represent parties, including corporations, in arbitration proceedings, the Committee's finding herein as to the permissibility of a non-attorney officer of a corporation to do so was based solely on the Virginia Unauthorized Practice Rules and Virginia's definition of the practice of law. The AAA rule did not factor into this finding. The authority to define the practice of law and enforce violations of that definition rests with the Virginia State Bar ("the Bar") and this Committee. The Bar is the regulatory agency of attorneys in Virginia and membership in the Bar is mandatory. The AAA, on the other hand, is an organization offering services which parties can choose voluntarily to use or not. Based on this authority resting in the Bar, had the Committee made a finding that the activity herein was the unauthorized practice of law, that decision would supercede the AAA's rule allowing the activity.