
E-90-7 Living trust sales organizations, related representation

Facts

Various organizations engage in selling estate planning products, particularly living trust documents drafted by lawyers not licensed in Wisconsin. Some of these organizations solicit Wisconsin lawyers to work with them in reviewing their standard form documentation (for example, revocable living trusts) and in drafting other documentation (for example, a deed) that may be related to the estate planning.

Question

Under what circumstances may Wisconsin lawyers provide representation relating to the sale of such estate planning products?

Opinion

The threshold issue is whether any particular organization of this kind is engaged in the unauthorized practice of law. That is not an issue that this committee has the authority to address. *See generally*, Annot., 71 A.L.R.3d 1000, "Sale of books or forms designed to enable laymen to achieve legal results without assistance of attorney as unauthorized practice of law."

If such an organization is found to be engaging in the unauthorized practice of law, a lawyer may not assist in their activities. SCR 20:5.5(b).

A lawyer, at a client's request, may represent a client who is considering purchase of estate planning products. But we believe that nonwaivable conflicts of interest are created if the lawyer has some type of contractual association with a seller of an estate planning product to provide related legal services to client-buyers. SCR 20:1.7 and SCR 20:2.1.