

Unclassified

--UNITED-STATES--

1. Introduction

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legal-related services has naturally raised questions about the scope of legal practice, and defining the practice of law has been a difficult question for the legal profession for many years. The boundaries of the practice of law are frequently unclear and have varied significantly over time and from jurisdiction to jurisdiction.

5. A number of recent innovations have raised issues about the boundaries of the practice of law. Self-help resources such as legal self-help books and standardized paper legal forms for completion by a consumer have historically been available in a number of states.⁵ More recently, in response to consumer demands for less expensive ways to address their legal needs, software companies, entrepreneurs, and law firms have developed inexpensive interactive software for generating legal documents. These programs allow users to create wills, trusts, articles of incorporation, and other legal documents, based on answers to questions presented by the software. Individuals may complete many of these forms themselves, or with the assistance of a legal services provider, such as an attorney. Such programs have included physical software products (e.g., CD-ROMs), as well as web-based Internet applications and non-web-based Internet applications (e.g., smartphone-^v{ rg"öpcvkxgö"cr rñkecvkqpu+0" A number of state and federal courts⁶ and agencies⁷ also now provide online legal forms for use in their respective jurisdictions.

6. Beyond the development of low-cost software for creating legal forms, the United States legal services marketplace has experienced a number of additional changes in recent years. These trends include: client demands for more cost-effective and efficient services; unbundling of services and disaggregation of legal matters across multiple service providers; development of new billing models and law firm models; geograpd999877 Tm.6(ef)5(f)-3(i)-4(c)9BT1efinexpensive intapd999871(ex)9(pens)-3(i)-4(45-42(b)T

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12. Under their advocacy programs, the Agencies and their staff have provided comments to policymakers and stakeholders on the scope of the practice of law, the unauthorized practice of law, attorney advertising, and other aspects of the regulation of legal services.²² They have also submitted *amicus curiae* briefs to courts regarding the application of competition principles to the provision of legal services.²³

13. DOJ and the FTC have urged that the definition of the practice of law be limited to activities where: (1) specialized legal skills are required such that there is an implicit representation of authority or competence to practice law, and (2) a relationship of trust or reliance exists.²⁴ The Agencies have recognized District of Columbia Court of Appeals Rule 49 Commentary as being instructive.²⁵

14. In advocating that legislatures, courts, and state bars avoid undue restrictions on the performance

31. Interactive software programs for generating legal documents appear to be responsive to consumer demands for more cost-effective and efficient ways to address their legal issues. They may expand consumer access to legal services, facilitate the unbundling of legal services, promote a more efficient allocation of resources (e.g., among licensed attorneys, non-attorney providers, and self-help efforts), reduce transaction costs, increase convenience, and help some consumers more effectively to address their legal situations. For example, a consumer who cannot afford to retain a licensed attorney both to draft and review a legal document may be able to use interactive software to generate a draft document, and pay an attorney only to review the document, if desired. At the same time, however, such forms, and when the decision to seek the services of an attorney may be desirable. Software programs that require consumers to input information in order to generate legal forms may also raise data security, privacy, and identity theft issues.

4.3. Legal Matching Services

32. In May 2006, the FTC staff filed comments with the Professional Ethics Committee of the State Bar of Texas as it considered whether rules prohibiting attorneys from paying for referrals precluded participation in on-line legal matching services.⁴⁴ Many states required attorneys who wish to obtain legal referrals to do so only through certain approved programs, typically those operated by the local or regional bar associations, thus giving the bar associations a near-monopoly in providing referrals. Around this time, several businesses had begun to provide Internet-based attorney/client matching platforms as a competitive alternative to state-approved referral services.

33. Typically, these services recruited licensed attorneys who paid a fee to participate. In their applications, member attorneys might disclose their areas of practice, years of experience at the bar, how attorneys become members of the service and how the service could help the client identify an attorney to satisfy his or her legal needs. If the client wished to seek legal assistance from a member attorney, the client would usually complete a short on-line questionnaire describing the legal issues, the practice area of the attorney being sought, the amount of experience desired for the retained attorney, the geographic region or jurisdiction of the representation, and the requested fee range. The service would then send the questionnaire to attorneys in the designated practice area, and interested attorneys could send a response, which typically contained information such as fees, experience, and other qualifications. With this information, the client would determine which attorneys, if any, to contact, and initiate contact.

34. The FTC staff comments observed that, compared to many bar-operated referral programs, the online legal matching format allows consumers to compare more easily the price and quality among quality of legal services, online legal matching services are likely to facilitate consumers paying lower prices and/or obtaining higher quality legal services than they would have if they had used their next-best

products clearly and conspicuously state that the products are not a substitute for the advice of an

43 *Parsons*, 179 F.3d at 956.

44 FTC Staff Comments Before State Bar of Texas Professional Ethics Committee Regarding Online Attorney Matching Programs (May 26, 2006), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-professional-ethics-committee-state-bar-texas-concerning-online-attorney-matching/v060017commentsonarequestforanethicsopinionimage.pdf.

46. Regulation of new products and services relating to legal services should therefore focus primarily on deterring unfair or deceptive advertising and marketing practices, and addressing other consumer protection issues such as privacy, data security, or identity theft. The Agencies have generally recommended that any restrictions be narrowly drawn so that consumers may still receive the benefits of