BEFORE THE BOARD OF COMMISSIONERS
ON THE UNAUTHORIZED PRACTICE OF LAW
SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION	)	CASE NO. 02-02
	)	
Relator,	)	**MOTION OF NATIONAL**
	)	**ASSOCIATION OF INDEPENDENT**
ALLSTATE INSURANCE COMPANY,	)	**INSURERS, AMERICAN**
	)	**INSURANCE ASSOCIATION,**
Respondent.	)	**ALLIANCE OF AMERICAN**
	)	**INSURERS, NATIONAL**
	)	**ASSOCIATION OF MUTUAL**
	)	**INSURANCE COMPANIES, OHIO**
	)	**INSURANCE INSTITUTE, AND**
	)	**AMERICAN CORPORATE**
	)	**COUNSEL ASSOCIATION TO FILE**
	)	**AMICUS BRIEF, AND AMICUS**
	)	**BRIEF IN SUPPORT OF**
	)	**RESPONDENT**

I. MOTION FOR LEAVE TO APPEAR AND INTEREST OF THE AMICI

The National Association of Independent Insurers ("NAII"), American Insurance Association ("AIA"), Alliance of American Insurers ("AAI"), National Association of Mutual Insurance Companies ("NAMIC"), Ohio Insurance Institute ("OII"), and American Corporate Counsel Association ("ACCA"), by and through counsel and pursuant to Gov. Bar R. VII, Sec. 14 and Ohio Civ. R. 7(B), hereby respectfully move this Board for leave to appear as amici in this proceeding for purposes of filing an amicus brief in support of Respondent.

NAII, AIA, AAI, NAMIC, and OII are property and casualty trade organizations that collectively represent every insurance company that writes property and casualty insurance in the State of Ohio. Many of their member companies utilize both staff and outside counsel to defend insureds. Several have utilized the services of staff attorneys for decades to improve the efficient, effective delivery of insurance services. These Amici all have a keen interest in ensuring that their member companies have the ability to continue to explore ways to improve policyholder service, including the retention of highly-skilled, efficient and ethical trial lawyers.

ACCA is a bar association for attorneys who are employed as in-house counsel. ACCA's 15,000-plus members include hundreds of staff attorneys employed by insurance companies to defend insureds. One of ACCA's primary missions is to advance and protect the principle that the privileges and obligations of the legal professional apply equally to all attorneys, regardless of their practice setting.

The NAII, AIA, AAI, NAMIC, OII, and ACCA can provide this Board with both a state and national perspective on the unauthorized practice of law ("UPL") issue before it. Ohio was among the earliest states to recognize that the appointment of salaried attorneys to defend insureds does *not* constitute corporate UPL.[1] This amicus brief

[1] *Strother v. Ohio Cas. Ins. Co.* (C.P. 1939), 28 Ohio L.Abs. 550, 14 Ohio Op. 139, *aff'd without op.*

reviews the development of Ohio law and the numerous state court decisions and advisory opinions that have followed Ohio's lead.[2]

II. AMICUS BRIEF

In this brief, Amici first review the development of the doctrine of corporate UPL in Ohio, and demonstrate just how far the Complaint in this case strays from fundamental Ohio law. In fact, since 1939, Ohio courts have specifically recognized that an insurer's employment of staff attorneys to defend insureds does *not* constitute corporate UPL. Next is a survey of the numerous jurisdictions that have followed Ohio's lead, and rejected the flawed, unsupported allegations made by the Relator in this case. Finally, Amici will show that nothing in the Complaint filed in this proceeding supports changing the rule of law and public policy that has served Ohio policyholders well since 1939.

A. The Corporate Practice of Law – Ohio Statutes and Cases

This Board's authority to adjudicate UPL complaints arises from Ohio Gov. Bar R. VII, which defines UPL as:

> … the rendering of legal services for another by any person not admitted to practice in Ohio ….

Gov. Bar R. VII, Sec. 2(A). *Accord* R.C. 4705.01 ("No person shall be permitted to practice as an attorney … unless the person has been admitted to the bar by order of the Supreme Court in compliance with its prescribed and published rules"). This basic

[2] *See* Appendix A.

jurisdiction has no relevance here, however, where it is undisputed that insureds defended under a contract of liability insurance are represented by qualified, licensed Ohio attorneys.

1. Attorneys practicing law through a corporation is permissible; a corporation practicing law is not.

This proceeding involves the amorphous concept of the "corporate" practice of law. Under Ohio law, a corporation may be formed "for any purpose … for which individuals lawfully may associate themselves," including "for the purpose of carrying on the practice of any profession …." R.C. 1701.03. Or, attorneys may form a legal professional corporation for the practice of law. *See* R.C. 1785.02 ("An individual or group of individuals each of whom is licensed … to render within this state the same kind of professional service … may organize and become a shareholder or shareholders of a professional association"). Gov. Bar R. III recognizes both, providing that an attorney may practice law "through a legal professional association" formed under Chapter 1785, or through a "corporation … formed under Chapter[] 1701 … or licensed under Chapter 1703." These statutes and rule permit individual attorneys to practice law through a corporation, but do not permit the corporation itself to practice law.

The concept that a corporation cannot practice law is self-evident; only individual persons can obtain a license to practice law, so only individual persons can practice law. "Corporate UPL" has a slightly different meaning in Ohio case law – it prohibits the formation of a corporation for the purpose of charging a fee in exchange for the provision of legal services. An automobile "club," for example, that charges a membership fee in

exchange for a provision of a legal defense to members cited for traffic violations, is engaged in corporate UPL. *Dworken v. The Cleveland Automobile Club* (C.P. 1931), 49 Ohio N.P. (n.s.) 607. This form of corporate UPL may exist even though the corporation is formed and owned by licensed attorneys. *Cuyahoga County Bar Assoc. v. Gold Shield, Inc.*, 8th Dist. No. 35773 (Aug. 12, 1976) (corporation organized and run by lawyers engaged in corporate UPL because it charged a membership fee and commission for the provision of legal services to members). By procuring and providing legal services to another, for a fee, the corporation is effectively practicing law.

But if the corporation has a "direct and primary" interest in the litigation, it has every right to retain counsel to protect that interest, and may do so without engaging in corporate UPL. *Batelle Memorial Institute v. Green* (1962), 93 Ohio L.Abs. 516, 530 (Batelle's "direct and primary interest" in the legal services performed for others allowed it to retain such services without engaging in corporate UPL).

2. A corporation does not "practice law" by retaining legal services for another regarding a matter of mutual interest.

This distinction – no interest in the litigation for which legal services are retained, versus a direct and primary interest in the litigation for which services are retained – is the key to resolving corporate UPL allegations. Thus, in *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 23, the Ohio Supreme Court held that a title company engages in corporate UPL when it provides legal services to buyers and sellers of real estate, if the company "does not insure or guarantee" title to the real estate being

conveyed, and "has no direct or primary interest as principal or loan agent." *Id.* at 23. *See also*, syllabus at ¶ 5 (title companies cannot draft real estate conveyance papers "except" in those conveyances "wherein they have a direct or primary interest").

Similarly, in *Judd v. City Trust & Savings Bank* (1937), 133 Ohio St. 81, the Ohio Supreme Court held that banks could not use their salaried attorneys to draft wills and trusts for customers when the bank had no "direct or primary" interest in the wills and trusts. *Id.* at 81. The Court distinguished, however, the wholly proper use of the bank's salaried attorneys to assist the bank in carrying out its duties as a fiduciary for a customer's trust. Such a position gave the bank:

> … a very real, vital, and substantial interest to conserve on this or its own account – a direct and primary interest, if you please.

Id. at 91.

This well-established distinction became the basis for the 1939 decision of *Strother v. Ohio Cas. Ins. Co.* (C.P. 1939), 28 Ohio L.Abs. 550, 14 Ohio Op. 139, *aff'd without op.* *Strother* held that an automobile liability insurer had a direct and primary financial interest in litigation filed against one of its insureds, since the company was obligated to pay defense costs and any resulting judgment. It made "no difference" – for purposes of a corporate UPL analysis – whether the insurer decided to use staff or outside counsel to protect that interest:

> The insurance company would pay the judgment and costs, as well as attorney's fee, incurred in the defense of the claim. Therefore, to the extent of the policy, the insurance company has a direct pecuniary, financial interest, in any accident that occurs involving a claim against any person covered by one of its policies.
>
> . . .
>
> The insurance company has a right to protect that pecuniary interest, and it has a right to do so by attorneys of its own choosing …. [I]t makes no difference whether the attorneys are hired by the case, whether they are hired by the year or whether they are the same attorneys in each and every case, or whether the company changes attorneys with each and every case, so long as the company does not employ laymen to do any of these acts, it is not engaged in the practice of law.

28 Ohio L.Abs. at 553. *Accord Dowling v. Insurance Company of North America*, 8th Dist. No. 32527 (Nov. 16, 1973) ("An insurance company can use house counsel to handle the defense of a case, if the insurance company has a direct pecuniary interest in the outcome of the lawsuit"). *See also*, *Azzarello v. Legal Aid Soc. of Cleveland* (1962), 117 Ohio App. 471 (for purposes of a UPL analysis, the public policies promoted by legal aid societies constituted an adequate substitute for a direct pecuniary interest for purposes of a UPL analysis).

3. **Relator's complaint is contrary to well-established Ohio law.**

The Relator Cincinnati UPL Committee ("Relator") does not dispute that: 1) under governing Ohio law, a "direct and primary interest" is the controlling criterion for a corporate UPL analysis; 2) motor vehicle liability insurance companies have a direct and primary interest in personal injury actions filed against their insureds; and 3) insurance

companies are not engaged in UPL when they appoint "outside" counsel to defend their policyholders in litigation in which the company has a direct and primary interest. Relator simply says that *Strother* is wrong – that it does "make a difference" whether the insurance company decides to use staff attorneys or outside attorneys to protect that interest.

Relator's position makes no sense. The choice of outside or staff counsel has no impact on the linchpin of the legal analysis – the insurance company's direct and primary interest in the litigation. In the absence of any rational argument that Ohio's "direct and primary interest" rule is wrong, or that the use of staff counsel erodes or removes the insurance company's direct and primary interest, Relator's Complaint should be dismissed.

B. The Clear Majority of Jurisdictions Considering an Insurer's Use of Staff Counsel Agrees with *Strother.*

The ABA and 23 states (including Ohio) have issued opinions or decisions permitting an insurer's appointment of staff attorneys to defend insureds. *See* Appendix A, attached. The allegations of Relator's Complaint – that insurance companies practice law "vicariously" through their employee attorneys, and/or insurance companies have more "control" over staff attorneys – have been specifically and thoroughly rejected by those opinions and decisions.

1. The doctrine of vicarious liability does not support an allegation of "vicarious" practice of law.

Relator's claim that Respondent practices law vicariously through its employed attorneys, is based on a *non sequitur*. Passive liability does not equate with passive conduct. Just because a corporation is *responsible* for the acts of its agents and employees, does not mean that it *performs* the acts of its agents and employees. As succinctly explained by the Indiana Supreme Court in *Cincinnati Ins. Co. v. Wills* (Ind. 1999), 717 N.E.2d 151, 159-60:

> It is of course true that a legal entity can be responsible for the professional actions of its partners, employees and agents under standard doctrines of *respondeat superior*, and in that sense is viewed as engaged in the activity. But that does not mean the entity unlawfully practices law any more than Federal Express unlawfully pilots airplanes.

As the *Wills* court points out, the argument mis-states basic agency theory. An employer may be liable for the negligent acts of employees that cause injury to others, but the flip side of the coin is not true – the corporation does not *commit* those acts simply because it is liable for their consequences. Or, put another way, although a corporation may escape *vicarious* liability by hiring an independent contractor instead of an employee, a corporation cannot escape liability for its *own* unlawful acts simply because such acts may be performed by its agent rather than its employee.

The Missouri Supreme Court exposed another weak point in the argument – that it would apply *equally* to the retention of "outside" counsel:

> If … the respondent practices law by assigning employee attorneys to the defense of claims, it would just as logically be said to practice law by retaining independent contractors as counsel for its insured.
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> . . .
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> Counsel for the informants could not cite us to a single instance in the law in which a person may lawfully do something through an independent contractor which could not be done through an employee.

In Re Allstate Insurance Co. (Mo. 1987), 722 S.W.2d 947, 949. Since Relator concedes that insurance companies can appoint outside attorneys to defend insureds, its attempt to subject staff attorneys to a different rule of law is without merit.

Finally, the Alaska Bar Association notes that Relator's vicarious practice of law theory would not only prohibit insurance companies from retaining any attorneys to represent their insureds, but would also criminalize corporations' employment of in-house counsel to work on corporate matters. *See* Alaska Bar Assn. Ethics Op. 99-33 (listing the "absurd results" of an argument that insurance companies that appoint staff attorneys to defend insureds engage in corporate UPL):

> Banks or other lenders would be unable to pursue collections actions through their staff lawyers. Corporations of all kinds would be prohibited from using their own in-house lawyers in litigation matters. Union and other professional organizations would be unable to use staff lawyers in litigation for and against their membership. Government and quasi-governmental bodies would similarly be prohibited from using lawyer employees.

Ak. Eth. Op. 99-3, n. 4. Such is not the rule, of course, because corporations have a direct and pecuniary interest in the matters assigned to their employed attorneys. The same is true of insurance companies.

2. Relator fails to distinguish between control over litigation and interference with an attorney's professional judgment.

Relator's second claim – that insurance companies engage in UPL because they have more "control" over staff counsel – is both legally and factually flawed. It is legally flawed because it fails to account for the allocation of rights to control litigation within the "tripartite relationship" among the insurer, insured, and insurance defense attorney. That "control" is wholly separate and distinct from an attorney's ethical obligation to prevent interference with his or her professional judgment. It is factually flawed because it assumes that staff attorneys are incapable of complying with ethical mandates because they are paid a salary rather than an hourly fee. There is no basis for that assumption.

Liability insurance policies are bilateral contracts in which the insurer, in exchange for the payment of a premium, agrees to pay those sums for which the insured becomes legally liable, as a result of the insured's negligence. The contract gives the insurer the right and duty to defend any suit against the insured – including the right to appoint counsel to represent the insured – and the right to make such investigation and settlement of the claim as the insurer deems to be expedient, within policy limits. The right and duty to defend exists separately from the duty to indemnify, and the costs of defense to insurers can sometimes exceed policy limits.

Concomitant with its duties to defend and indemnify, the insurer decides: 1) which attorney it will appoint to defend the insured; and 2) how much to pay the attorney. As explained in ABA Formal Op. 282 (1950) (approving the use of salaried attorneys to defend insureds):

> The requirement that the insurance company shall defend any such action contemplates that the company … shall take charge of the incidents of such defense including the supervising of the litigation. … It is elemental that this includes retaining and compensating a lawyer at the company's expense.
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> . . .
>
> Under certain circumstances a person may by contract clothe another with power to retain a lawyer to conduct a defense. Especially this may be done when … the power is coupled with an interest resulting from covenants of insurance. Under these circumstances the lawyer selected by the company to conduct the defense cannot be said to be … lending his services to the "unauthorized practice of law" ….

In short, by paying a premium and entering into the insurance contract, the insured agrees to give the insurer control over the defense of a lawsuit filed against him or her. Such control is entirely appropriate, since the insurer is not only more experienced in claims investigation, claims resolution, and coordination of a defense, but also has an interest in resolving the matter favorably and economically.

Maintaining control of the *litigation*, however, is not synonymous with control over the insurance defense *attorney*. Rather, the insurer has those incidents of control and supervision which can be, and have been, delegated to it by the insured. The individual attorney – whether staff or outside – has an individual professional responsibility to comply with all applicable codes of professional responsibility and ethical rules, including those prohibiting conflicts of interest and interference with independent professional judgment.

Relator's suggestion that the way an attorney is paid – by a salary or by the hour –determines whether that attorney is capable of complying with ethical mandates, is based on "four questionable assumptions":

> First is the assumption that attorney-employees are not independent or capable of independence. Second is the assumption that outside attorneys are independent. Third is the assumption that outside attorneys are not profit motivated. Fourth is the assumption that profit motive by definition subverts ethical behavior.

Grace M. Giesel, *Corporations Practicing Law Through Lawyers: Why the Unauthorized Practice of Law Doctrine Should Not Apply,* 65 Mo. L. Rev. 151, 178 (2000).

The theory of economic coercion is severely flawed. In fact:

> Employed counsel has no bills to send out, justify or collect. There is no concern about receiving future assignments or an economic benefit in seeking to increase the volume of the business. Since the attorney's income usually is unaffected by the hours billed to a file, there is no financial incentive to maximize time. To the contrary, efficiency is a quality more likely to further counsel's legal career.

Ronald E. Mallen, *Insurance Malpractice* (5th Ed., 1997), Ch. 29, "'Staff' or 'House' Counsel," § 29.10, p. 272. As noted in *King v. Guiliani* (1993) Conn. Super. LEXIS 1889 (approving the use of salaried counsel to defend insureds):

> Attorneys who depend on an insurance carrier's referrals for a significant portion of their income could be said to be at risk of favoring the company over the client in a conflict situation in order to keep the carrier's business. … [T]he same could be said of any attorney where a single client is responsible for a major portion of the attorney's income.

See also, Cincinnati Ins. Co. v. Wills, supra, 717 N.E.2d at 163:

> [It is] unrealistic to suggest that an outside lawyer is immune from the blandishments of a client, particularly a high volume client, that may be the source of a significant portion of the firm's revenue.

C. Public Policy Supports the Use of Staff Attorneys to Defend Insureds.

Relator's Complaint is unsupported by Ohio law, which limits corporate UPL to those situations where the corporation has no direct or primary interest in the legal matter at issue. Moreover, the alternative bases Relator offers are legally flawed and factually unsupported, and have been rejected by numerous courts, including Ohio's. Finally, and perhaps most critically, Relator's Complaint not only fails to promote, but actively works against the public policy mandate delegated to this Board – the protection of the public from unscrupulous or incompetent acts by unlicensed persons.

This Board acts as an arm of the Ohio Supreme Court, with a mandate to carry out the Supreme Court's "responsibility to protect the public" by defining and preventing the unauthorized practice of law, "while at the same time not exercising this authority so rigidly that the public good suffers." *Heinize v. Giles* (1986), 22 Ohio St.3d 213, 217. The specific UPL from which the public is to be protected, is laypersons and unlicensed attorneys engaged in litigation. *See, e.g., Sharon Village Ltd. v. Licking County Bd. of Revisions* (1997), 78 Ohio St.3d 479, 481 (Ohio's UPL statute protects the public from "the very real possibility" of being "left with no recourse" if a non-attorney commits malpractice); *Union Sav. Ass'n v. Home Owners Aid, Inc.* (1970), 23 Ohio St.2d 60, 64:

> It is the responsibility of this court to provide effective standards for admission to the practice of law and for the discipline of those admitted to practice. Litigation must be projected through the courts according to established practice by lawyers who are of high character, skilled in the profession, dedicated to the interest of their clients, and in the spirit of public service. In the orderly process of the administration of justice, any retreat from those principles would be a disservice to the public. To allow a corporation to maintain litigation and appear in court represented by corporate officers or agents only would lay open the gates to the practice of law for entry to those corporate officers or agents who have not been qualified to practice law and who are not amenable to the general discipline of the court.

Conversely, the "public good" this Board should promote is the practice of litigation by licensed attorneys. The appointment of staff attorneys to represent insureds promotes the public good. Staff attorneys are experienced, specialized civil trial litigators, educated in the particulars of the tripartite relationship, and perfectly capable of conducting their profession with the highest ethical standards. The insured, insurer, and judicial system all benefit from the experience and efficiency of these highly skilled attorneys. *See, e.g., In Re Weiss, Healey & Re* (N.J. 1988), 536 A.2d 266, 269-70:

> These are not second-class lawyers; they are first class lawyers who are delivering legal services in an evolving format. If this form of practice results in lower legal costs, the public has an interest in seeing that able attorneys continue to be attracted to it.

See also, In Re Allstate Ins. Co., supra, 722 S.W.2d at 951:

> The legislature, in enacting the governing [UPL] statutes, surely had no purpose of dissuading insurance companies from pursuing economies in the defense of claim.

And *Cincinnati Ins. Co. v. Wills*, *supra*, 717 N.E.2d at 162 (speculative argument "does not require the abandonment of a mode of doing business that the insurer finds efficient and cost effective").

No public policy is furthered by arbitrary discrimination against qualified, licensed attorneys. The widespread and long-standing use of salaried attorneys to defend Ohio insureds has served citizens of the state well for over 60 years. It continues to do so.

D. Conclusion

Ohio courts have recognized that the appointment of salaried counsel to represent insureds does not constitute the unauthorized practice of law since 1939. Several jurisdictions have favorably cited the 1939 *Strother* decision – most recently in 2002 – in reaching the same conclusion.[3] Ohio does not "need" any further judicial pronouncements on the issue – it gave birth to them. Relator's ill-advised Complaint is

[3] *See In Re Allstate Ins. Co.* (Mo. 1987), 722 S.W.2d 947, 950 and 955; *Cincinnati Ins. v. Wills* (Ind. 1999), 717 N.E.2d 151, 155; *Coscia v. Cunningham* (Ga. 1983), 299 S.E.2d 880, 882; *King v. Guiliani*, 1993 Conn. Super. LEXIS 1889; *Gafcon, Inc. v. Ponsor & Associates* (2002), 98 Cal. App.4th 1388, 120 Cal. Rptr.2d 392.

not well grounded in fact or law, and seeks only to deprive Ohio policyholders of competent, effective, efficient counsel. It should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, via regular U.S. Mail, postage prepaid, this _____ day of February, 2003 to:

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APPENDIX A

Jurisdictions approving the use of salaried attorneys to defend an insured include:

Alabama:	Ala. State Bar Ethics Op. No. 81-533 (1981);
Alaska:	AK Bar Ethics Op. 99-3 (1999);
Arizona:	Ariz. State Bar Assn. Ethics Op. No. 75-4 (1975);
California:	*Gafcon, Inc. v. Ponsor & Associates* (2002), 98 Cal. App. 4th 1388, 120 Cal. Rptr.2d 392;
	Cal. State Bar Op. No. 1987-91;
Colorado:	Colo. Bar Assn., Formal Ethics Op. No. 91 (1993);
Connecticut:	*King v. Guiliani* (Conn. Super. 1993), 1993 Conn. Super. LEXIS 1889, 1993 WL 284462;
Florida:	*In re Rules Governing the Conduct of Attys.* (Fla. 1969), 220 So.2d 6;
Georgia:	*Coscia v. Cunningham*, 299 S.E.2d 880 (Ga. 1983);
Illinois:	Ill. State Bar Assn., Advisory Op. on Prof. Conduct, Op. No. 98-17 (1990);
	Kittay v. Allstate (Ill. App. 1979), 397 N.E.2d 200, 202 (Ill. App. 1979);
Indiana:	*Cincinnati Ins. Co. v. Wills* (Ind. 1999), 717 N.E.2d 151;
Iowa:	Iowa State Bar Assn., Ethics Op. 88-14 (1989);
Maryland:	Md. State Bar Assn., Ethics Op. 00-23 (2000);
Michigan:	Mich. Ethics Op. No. CI-1146 (1986);
Missouri:	*In Re Allstate Ins. Co.* (Mo. 1987), 722 S.W.2d 947 (en banc);
New Jersey:	N. J. Supreme Ct. Com. on Unauthorized Prac., Op. No. 23 (1984);
New York:	N.Y. State Bar Assn., Prof. Ethics Com. Op. No. 109 (1969);
	N.Y. State Bar Assn., Prof. Ethics Com. Op. No. 726 (2000);
Ohio:	*Strother v. Ohio Cas. Ins. Co.* (C.P. 1939), 28 Ohio L.Abs. 550, 14 Ohio Op. 139, *aff'd without op.*;
Oklahoma:	Ok. Ethics Op. 309 (1998);
Pennsylvania:	Pa. Bar Assn. Com. on Eth. and Prof. Respon., Formal Op. 96-196 (1997);

Tennessee:	*In Re Petition of Youngblood* (Tenn. 1995), 895 S.W.2d 322;
Texas:	*United Services Auto Assn. v. Zeller* (Tex. App. 1939), 135 S.W.2d 161;
	Tex. State Bar Com. on Canons of Ethics Op. No. 167 (1958);
	Tex. State Bar Comn. on Interp. of Canons of Ethics Op. 260 (1963);
Virginia:	Va. State Bar, Legal Ethics Op. No. 598 (1985);
West Virginia:	W.Va. Bar Assoc. Unlawful Practice Comm. Op. (1999);
	W.Va. Lawyer Disc. Bd., Op. L.E.I. 99-10 (1999).

See also:

ABA Formal Op. 282 (1950).

Two jurisdictions have disagreed. *See*:

American Insurance Assoc. v. Kentucky Bar Assoc. (Ky. 1996), 917 S.W.2d 568 (nominated by Professor Charles Silver as "my candidate for the title of 'Worst Opinion on a Professional Responsibility Topic in 1996.'" Silver, "Flat Fees and Staff Attorneys: Unnecessary Casualties in the Continuing Battle Over the Law Governing Insurance Defense Lawyers," 4 Conn. Ins. L. J. 205, 207);

Gardner v. North Carolina State Bar (N.C. 1986), 341 S.E.2d 517 (specifically basing its opinion on the uniqueness of North Carolina's UPL statute, that makes it "unlawful for any corporation to practice law …").