RHODE ISLAND SUPREME COURT
UNAUTHORIZED PRACTICE OF LAW COMMITTEE

In re William E. Paplauskas, Jr. : UPLC 2015-6

COMMITTEE REPORT
May 9, 2018

Pursuant to Rule 8(b) of the Governing Rules of the Unauthorized Practice of Law Committee ("Committee"), this report is being furnished to the Supreme Court for its consideration in connection with investigational hearings conducted by the Committee on March 1, 2017 and May 9, 2017 in this matter. In accordance with Rule 7(c)(ii)(p) of the Committee's Rules of Procedure, a majority of the Committee members who were present during the investigational hearing have found that the charges in the complaint that the respondent, William E. Paplauskas, Jr., has engaged in the unauthorized practice of law, have been sustained by a preponderance of the evidence presented.[1]

[1] The three member majority consists of Committee members Carolyn Barone, Debra Saunders and David Strachman. Committee members Megan Maciasz DiSanto and Vincent Vespia voted against a finding of unauthorized practice of law. A dissenting opinion authored by Committee member Megan Maciasz DiSantis follows the recommendation of the majority and is joined by Committee member Vincent Vespia.

I. PROCEDURAL HISTORY

A. Complaint Received by the Committee

On August 11, 2015, the Committee received a complaint from Attorney John A. Pagliarini, Jr. regarding certain actions taken by William E. Paplauskas, Jr., a non-attorney notary public. *Tr. Vol. I (March 1, 2017)*, 12-13, *Exhibit 1*; *Tr. Vol. II (May 9, 2017)*, 10. The complaint specifically alleged that Paplauskas may have been engaged in the unauthorized practice of law while participating in a real estate closing on July 21, 2015 in relation to a property located at 528 Nanaquaket Road, Tiverton, Rhode Island. In his complaint, Attorney Pagliarini—who represented the sellers of the subject property during the transaction—alleged that Paplauskas engaged in the unauthorized practice of law by conducting the subject real estate closing and explaining the real estate closing documents to the buyers of the property.

B. Investigational Hearing

In connection with its investigation of Paplauskas, the Committee held investigational hearings on March 1, 2017 and May 9, 2017, at which it heard testimony from Paplauskas,[2] Attorney Pagliarini, Attorney Hailey Munns, Vincent

[2] Rule 7(c)(ii)(k)(5) of the Committee's Rules of Procedure provides that "[t]he Respondent shall attend the hearing without the necessity of a subpoena being served upon him or her, he or she shall take the witness stand and shall testify in the same manner as if under subpoena." This rule—like all of the Committee's

Majewski, and Rebecca Majewski.[3] During the investigational hearing, Paplauskas was represented by Attorney Gregory Piccirilli.[4]

II. FINDINGS OF FACT

After a review of the exhibits submitted and testimony offered at the investigational hearings, the Committee makes the following findings of fact:

1. In July 2015, residential real estate property located at 528 Nanaquaket Road in Tiverton, Rhode Island, was sold from Earl Pooler and Nina Szulewski-Pooler ("the sellers") to Vincent and Rebecca Majewski ("the Majewskis" or "the buyers"), husband and wife. *Tr. Vol. II*, 10-11, 103.

Rules of Procedure—was approved by the Supreme Court pursuant to Rule 8(a) of the Committee's Governing Rules.

At the beginning of the first hearing, consistent with these rules, Paplauskas was called as a witness, but his counsel refused to have him sworn in, arguing broadly that requiring Paplauskas' testimony, without a subpoena, would be an unconstitutional due process violation. *Tr. Vol. I*, 13-16, 25-30. Later, upon the Committee's denial of his motion to dismiss the complaint, Paplauskas' counsel permitted him to testify. *Tr. Vol. I*, 40-41.

[3] The investigational hearings were stenographically recorded, and a copy of the transcripts are included in the Appendix to this Report.

[4] At the beginning of the March 1, 2017 hearing, counsel for Paplauskas inquired whether the hearing was subject to the Open Meetings Act ("OMA"), G.L. 1956 § 42-46-1 *et seq*. *See Tr. Vol. I*, 6-7. In response, the Chairwoman indicated that the investigational hearings of the Committee are not subject to the OMA. *See* G.L. 1956 § 42-46-5(c) ("[t]his chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town."); § 42-46-5(a)(4) ("[a] public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes: * * * (4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal."). Nonetheless, consistent with the Committee's Rules of Procedure, the hearings in this matter were open to the public. *See* UPLC Rules of Procedure, Rule 9 ("*Closed meetings and confidentiality.* Other than the investigational hearings held by the Committee pursuant to Rule 7(c)(ii), the Committee meetings shall be closed to the public.").

Attorneys for the Sellers

2. During that transaction, the sellers were represented by Attorney John A. Pagliarini, Jr. and his associate, Hailey Munns.[5] *Tr. Vol. II,* 11-12, 68.

3. Attorney Pagliarini was admitted to the Rhode Island bar in June of 2000. Since that time he has practiced law full-time in Rhode Island. *Tr. Vol. II,* 8. His legal practice is focused on real estate matters, including residential and commercial closings, zoning and planning, land use, and property tax appeals. *Tr. Vol. II,* 8-9. Attorney Pagliarini estimated that his office performs about one hundred fifty real estate closings per year. *Tr. Vol. II,* 9, 84.

4. Attorney Munns was admitted to the Rhode Island bar in 2013. Since her admission to the bar she has been in private practice, focusing on residential and commercial closings. *Tr. Vol. II,* 68, 84. Attorney Munns estimated that she performs about fifty real estate closings per year. *Tr. Vol. II,* 68.

5. In advance of the closing at issue, and as part of their representation of the sellers, Attorney Pagliarini and Attorney Munns prepared the sellers' deed. *Tr. Vol. I,* 152-153, *Exhibit 10*; *Tr. Vol. II,* 11-12, 72-73.

Paplauskas, as Notary Public

6. Paplauskas was sixty seven years old at the time of the subject closing, and he has been in the mortgage business since 1969. *Tr. Vol. I,* 41-42.

7. Paplauskas has never been admitted to practice law in Rhode Island, or any other state. *Tr. Vol. I,* 42.

[5] At the time of the closing, Attorney Munns was known by her maiden surname, Conn. In this Report she will be referred to by her current married surname, Munns.

8. Paplauskas described his occupation as a "notary public mortgage closer." He indicated that he has functioned as a notary "off and on since 1969," but that it has been his primary full-time occupation for the past ten years. *Tr. Vol. I,* 42.

9. Paplauskas is essentially a freelance notary who is hired by "title companies and other signing agencies" to perform real estate closings in Rhode Island. *Tr. Vol. I,* 42-43, 68, 70-71. In this capacity, he is generally paid between seventy five dollars ($75) and one hundred twenty five dollars ($125) per closing, and he estimated that he has conducted an average of fifty to seventy five closings per month over the past twelve months in Rhode Island. *Tr. Vol. I,* 43-44, 46, 66. He further estimated that in ninety-five percent of the closings he performs as a notary public, the buyer of the property is not represented by an attorney. *Tr. Vol. I,* 92-93.

10. Paplauskas previously operated as a notary mortgage closer in Massachusetts, but that he stopped "three or four years ago." *Tr. Vol. I,* 46.

Pre-Closing

11. Prior to the closing, the buyer's lendor, JPMorgan Chase Bank, N.A., engaged ServiceLink to act as settlement agent for the transaction.[6] *Tr. Vol. I,* 20, *Exhibit 9*.

12. ServiceLink, in turn, contacted and engaged Paplauskas to conduct the closing as a notary public.[7] At that time, an employee of ServiceLink emailed Paplauskas copies of the various closing documents it wanted executed at the closing,

[6] Paplauskas described ServiceLink as a "title" company that does "title searches, closing, [and] appraisals." *Tr. Vol. I,* 48, 68, 70-71. It appears that ServiceLink acted as what is referred to in the industry as the "settlement agent," which coordinates various tasks in connection with the conveyance of real estate.

[7] Paplauskas was not an employee of ServiceLink, but, rather, was hired as a "1099 person," meaning an independent contractor. *Tr. Vol. I,* 68.

along with the contact information of the sellers' attorney, Munns.[8] *Tr. Vol. I,* 48-50.

13. Paplauskas then printed two copies of those closing documents: one to be signed and executed at the closing; the other to be provided to the buyers for their own records. *Tr. Vol. I,* 49-50, 105.

14. When defining the scope of his role in the closing, Paplauskas described himself as an "impartial witness," and not a representative of either ServiceLink or of the buyer or seller; and further, that he was "there to make sure that the person signs the documents, has some understanding of what he is doing, and is the person that's in front of [him]." *Tr. Vol. I,* 52.

The Closing

15. On July 21, 2015, a real estate closing was conducted at Attorney Pagliarini's law office in Tiverton for the purpose of executing the closing documents necessary to convey the property from the sellers to the Majewskis. *Tr. Vol. II,* 12, 74.

16. The closing was conducted in a designated conference room within the law firm's office suite. *Tr. Vol. II,* 12. When the closing began, those present in the conference room included: Attorney Munns as attorney for the sellers[9]; the buyers, Vincent and Rebecca Majewski; and Paplauskas as the notary conducting the closing. *Tr. Vol. I,* 54-55; *Tr. Vol. II,* 12, 161-162. During the entirety of the closing, Attorney Pagliarini was in his personal office elsewhere in the office suite, and not in the conference room. *Tr. Vol. I,* 55; *Tr. Vol. II,* 12-13, 23. Some of the testimony indicated that one or two real estate agents may have been present in the conference room at

[8] *See* "Residential First Mortgage Closing Instructions." *Tr. Vol. I,* 24-25, *Exhibit 10,* 135.

[9] The sellers were not present at the closing because they had executed a power of attorney permitting their attorney, Ms. Munns, to act on their behalf. *Tr. Vol. I,* 72, 79-80.

intermittent parts of the closing. *Tr. Vol. I,* 55-56, 100-101; *Tr. Vol. II,* 82-83, 107, 135-136, 161-163.

17. Prior to the commencement of the closing, Attorney Munns exited the conference room and told Attorney Pagliarini that Paplauskas was not an attorney. *Tr. Vol. II,* 13-15, 75-76, 81. Upon learning this information, Attorney Pagliarini instructed Attorney Munns, as his associate, to remove herself from the conference room during the closing. *Tr. Vol. II,* 15, 26-27, 77, 82. As a result, Attorney Munns did not remain in the conference room during the closing. *Tr. Vol. II,* 15, 76-77, 110.[10]

18. At the beginning of the closing, Paplauskas provided the Majewskis with a one-page document titled "Notary Held Harmless." *Tr. Vol. I,* 56-57, *Exhibit 4*; *Tr. Vol. II,* 108, 163-164. By its language, that document indicated that Paplauskas was acting only as a notary public, that he was not an attorney, and that he was not authorized to discuss any aspects of the real estate closing documents.[11] Paplauskas handed that document to the Majewskis at that time, provided them with a brief overview of the document, and requested their signatures. *Tr. Vol. I,* 59, 72-73. Upon being handed the "Notary Held Harmless" document, the Majewskis expressed surprise that Paplauskas not an attorney,[12] but both proceeded to sign that

[10] Paplauskas testified that Attorney Munns was present in the conference room during the entirety of the closing proceeding, *Tr. Vol. I,* 56, 72; however, Attorney Pagliarini and Attorney Munns testified that Attorney Munns was not present in the conference room during the closing signature process. *Tr. Vol. II,* 15, 75-76. Mr. Majewski could not recall Attorney Munns' whereabouts during the closing signature process. *Tr. Vol. II,* 110.

[11] Paplauskas created that "Notary Held Harmless" document based upon a similar form he said is used by "The National Notary Association," and brought it to the closing on his own initiative (that is, not at the direction of ServiceLink). *Tr. Vol. I,* 57-58, 76.

[12] Mr. Majewski testified that—based upon communications with a representative of the lender prior to the closing, and also upon his prior experience with real estate transactions in Massachusetts—he believed that he would be represented by an attorney in the transaction; if not an attorney of his choice, then one provided by

document when it was presented to them. *Tr. Vol. I,* 59-60, 71; *Tr. Vol. II,* 22, 109, 163-164.

19. Next, Paplauskas began to present the closing documents to the Majewskis one after another, in successive order. *Tr. Vol. I,* 61; *Tr. Vol. II,* 11, 165. The specific closing documents which were presented by Paplauskas to the Majewskis during the closing were:

a) "All Terms Met." This document was signed by both Mr. and Mrs. Majewski, and notarized by Paplauskas. *Tr. Vol. I,* 21, *Exhibit 9*, 13; *Tr. Vol. II*, 113-114.

b) "Signature/Certification Affidavit." This document was signed by Mr. Majewski, and notarized by Paplauskas. *Tr. Vol. I*, 21, *Exhibit 9*, 14.

c) "Signature/Certification Affidavit." This document was signed by Mrs. Majewski, and notarized by Paplauskas. *Tr. Vol. I*, 20, *Exhibit 9*, 15.

d) "Borrower's Identification Statement." This document was signed by both Mr. and Mrs. Majewski, and notarized by Paplauskas. *Tr. Vol. I,* 20, *Exhibit 9*, 16; *Tr. Vol. II*, 114.

e) "Errors and Omissions/Compliance Agreement." This document was signed by both Mr. and Mrs. Majewski, and notarized by Paplauskas. *Tr. Vol. I*, 21, *Exhibit 9*, 25; *Tr. Vol. II*, 115.

f) "Mortgage." This document was signed by both Mr. and Mrs. Majewski, and notarized by Paplauskas. *Tr. Vol. I,* 21-22, *Exhibit 9*, 47-73; *Tr. Vol. II,* 116.

g) "Settlement Statement, HUD-1." This document was initialed and signed by both Mr. and Mrs. Majewski. *Tr. Vol. I*, 22-23, *Exhibit 10*, 78-81; *Tr. Vol. II,* 117.

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the lender. *Tr. Vol. II*, 104-106, 144-148, 151. Likewise, Mrs. Majewski testified that she expected an attorney to be present at the closing. *Tr. Vol. II*, 167.

h) "Truth in Lending Disclosure." This document was initialed and signed by both Mr. and Mrs. Majewski. *Tr. Vol. I,* 23, *Exhibit 10*, 86-87; *Tr. Vol. II*, 118-119.

i) "Note." This document was signed by Mr. Majewski. *Tr. Vol. I*, 23, *Exhibit 10*, 90-92; *Tr. Vol. II*, 119.

j) "Uniform Residential Loan Application." This document was signed by Mr. Majewski. *Tr. Vol. I,* 23, *Exhibit 10*, 93-96; *Tr. Vol. II*, 120.

k) "Request for Taxpayer Identification Number and Certification." This document was signed by Mr. Majewski. *Tr. Vol. I*, 23, *Exhibit 10*, 99; *Tr. Vol. II*, 120-121.

l) "Request for Transcript of Tax Return." This document was signed by Mr. Majewski. *Tr. Vol. I,* 23, *Exhibit 10*, 104; *Tr. Vol. II*, 121-122.

m) "Document Correction Agreement." This document was signed by Mr. Majewski. *Tr. Vol. I,* 23-24, *Exhibit 10*, 108; *Tr. Vol. II*, 122.

n) "Lock-In Agreement." This document was signed by Mr. Majewski. *Tr. Vol. I,* 24, *Exhibit 10*, 109-110.

o) "Acknowledgement of Receipt of Appraisal/Evaluation." This document was signed by Mr. Majewski. *Tr. Vol. II,* 122-123, *Exhibit 10*, 111.

p) "Notice of Nonrefundability of Loan Fees." This document was signed by Mr. Majewski. *Tr. Vol. I,* 24, *Exhibit 10*, 117; *Tr. Vol. II*, 113-114.

q) "Mortgage Commitment Letter." This document was signed by Mr. Majewski. *Tr. Vol. I,* 24, *Exhibit 10*, 118-120; *Tr. Vol. II*, 124-125.

r) "Initial Escrow Account Disclosure Statement." This document was initialed by Mr. Majewski. *Tr. Vol. I,* 24, *Exhibit 10*, 125; *Tr. Vol. II,* 125-126.

s) "Tax Information Sheet." This document was initialed by Mr. Majewski. *Tr. Vol. I,* 24, *Exhibit 10*, 126; *Tr. Vol. II,* 126.

t) "Settlement Agent Fee Sheet." *Tr. Vol. I,* 24, *Exhibit 10,* 131.

20. Paplauskas indicated that, when presenting each closing document to the Majewskis, he identified each document by its title, handed it to the Majewskis, and asked them to review and sign it, if or where applicable. *Tr. Vol. I,* 61-62. Paplauskas insisted that he did not provide the Majewskis with any opinion regarding any of the closing documents, but that he "gave them an overview of the document[s]." *Tr. Vol. II,* 61-62, 74-76, 94-100. Paplauskas specifically stated that his "overview" consisted of the name and terms of the document (i.e. the loan amount, the interest rate, dates of payment, prepayment penalty), but that he did not "talk about what happens if there's a breach of the note[.]" *Tr. Vol. II,* 74-76, 94-100, 103.

21. Mr. Majewski testified that Paplauskas told him "what each document was when he handed it to [him] and why [he] needed to sign it" and that he remembered Paplauskas "explaining stuff," but couldn't remember any details about such explanation. *Tr. Vol. II,* 111-113, 131-132, 138-139. The only closing documents that Mr. Majewski could recall having Paplauskas generally explain the contents to him were the mortgage and the HUD-1 form. *Tr. Vol. II,* 117-118.

22. Mrs. Majewski, when asked whether Paplauskas gave her any explanation of the contents of the closings documents, testified that she could not recall. *Tr. Vol. II,* 165-166.

23. After Paplauskas obtained all of the necessary signatures, he collected the signed copies of the closing documents, along with the deed to the property as provided to him by the sellers'

attorney,[13] in order to mail them to ServiceLink via FedEx using an envelope provided to him by ServiceLink. *Tr. Vol. I,* 63-64; *Tr. Vol. II,* 16-17, 78-79.

Post-Closing

24. After Paplauskas exited the conference room, but before he exited the office suite, Attorney Pagliarini approached Paplauskas to ask him when the deed would be recorded and the money disbursed to the sellers from escrow. *Tr. Vol. I,* 63-64; *Tr. Vol. II,* 16. Paplauskas responded that he did not know, and that those tasks were the responsibility of ServiceLink. *Tr. Vol. I,* 63-64.

25. Paplauskas then left the office and proceeded to mail the executed closing documents, the $126,908.90 cashier's check, and the deed to ServiceLink.[14] *Tr. Vol. I,* 65, *Exhibit 10,* 106-107.

26. Following the mailing those closing documents, Paplauskas had no further involvement with the transaction, other than to receive payment for his services from ServiceLink. *Tr. Vol. I,* 65-66.

27. Paplauskas acknowledged that he was paid a fee for his services as notary at the closing; however, the precise amount of that fee could not be determined. *Tr. Vol. I,* 52-54. The completed HUD-1 settlement statement included a five hundred fifty dollar ($550) "settlement or closings fee" to ServiceLink, *Tr. Vol. I, Exhibit 10,* 79 (line 1102), but Paplauskas refused to testify as to what portion of that total fee was paid to him. *Tr. Vol. I,* 52-54.

28. After the closing, the Majewskis moved some of their belongings into the house, but they were not able to fully move in or take possession of the property until the deed was

[13] *See* "Warranty Deed." *Tr. Vol. I,* 25, *Exhibit 10,* 152-153; *Tr. Vol. II,* 126-127.
[14] *See* "Updated Shipping Instructions." This document was signed by Paplauskas. *Tr. Vol. I,* 25, *Exhibit 10,* 150.

recorded six days later, on July 27, 2015. *Tr. Vol. I,* 25, *Exhibit 10*, 152; *Tr. Vol. II,* 22-23, 133-137, 141-143, 154.

Filing of the Complaint

29. Subsequently, on August 11, 2015, Attorney Pagliarini filed his complaint with the Committee alleging that Paplauskas may have been engaged in the unauthorized practice of law by conducting the subject closing. *Tr. Vol. I,* 12-13, *Exhibit 1*; *Tr. Vol. II,* 10, 17.

30. When testifying before the Committee in regards to his motivation for filing the complaint, Attorney Pagliarini indicated that the transaction made him uncomfortable because, as sellers' counsel, he was in the position of having to relinquish the property deed to Paplauskas, who could not make reciprocal assurances regarding when the deed would be recorded or when the funds would be released to the sellers. *Tr. Vol. II,* 16-20, 23-25, 73, 77.

III. ANALYSIS

The question before the Committee is whether, at any time during the July 21, 2015 real estate closing, Paplauskas engaged in the practice of law, and, if so, whether he was authorized to do so by the Rhode Island Supreme Court.

The Supreme Court alone has "the ultimate and exclusive authority to determine what does and does not constitute the practice of law within the state and to regulate those people qualified to engage in the practice." *In re Town of Little Compton*, 37 A.3d 85, 88 (R.I. 2012); *Unauthorized Practice of Law Comm. v. State, Dep't of Workers' Comp.*, 543 A.2d 662, 664 (R.I. 1988); *Berberian v. New England Telephone and Telegraph Co.*, 114 R.I. 197, 330 A.2d 813 (1975); *In*

re Rhode Island Bar Association, 106 R.I. 752, 263 A.2d 692 (1970); *Rhode Island Bar Association v. Automobile Service Association*, 55 R.I. 122, 179 A. 139 (1935). The Court has recognized that the "practice of law at a given time cannot be easily defined," *State, Dep't of Workers' Comp.,* 543 A.2d at 665, and that the "[p]ractice of law under modern conditions consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court." *In re Ferrey*, 774 A.2d 62, 64 (R.I. 2001) (quoting *Rhode Island Bar Association*, 55 R.I. at 134, 179 A. at 144) (internal quotations omitted).

The complaint filed by Attorney Pagliarini alleged that, on the occasion of the subject real estate closing, Paplauskas explained or otherwise advised the buyers of the property on the substance of the closing documents before them and, thus, specifically violated G.L. 1956 § 11-27-2(2) ("The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court action or judicial proceeding brought or to be brought.").

The Supreme Court has recognized that the General Assembly has the power to declare acts of unauthorized practice of law illegal, *In re Town of Little Compton*, 37 A.3d at 92 (citing *Rhode Island Bar Association*, 55 R.I. at 127, 179 A. at 141), which it has done with the enactment of Chapter 27 of Title 11. For its purpose, the General Assembly has defined the practice of law as follows:

> "'Practice law' as used in this chapter means the doing of any act for another person usually done by attorneys at law in the course of their profession, and, without limiting the generality of the definitions in this section, includes the following:
>
> (1) The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body;
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> (2) The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court action or judicial proceeding brought or to be brought;
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> (3) The undertaking or acting as a representative or on behalf of another person to commence, settle, compromise, adjust, or dispose of any civil or criminal case or cause of action;
>
> (4) The preparation or drafting for another person of a will, codicil, corporation organization, amendment, or qualification papers, or any instrument which requires legal knowledge and capacity and is usually prepared by attorneys at law." G.L. 1956 § 11-27-2.

The Committee finds that serving as a notary public during a real estate closing to obtain signatures on closing documents does not itself constitute the practice of law. However, it is undisputed that Paplauskas' involvement at the closing on July 21, 2015 went beyond that, and that he in fact conducted the real estate closing.[15]

[15] The buyers' lender, JPMorgan Chase Bank, N.A., hired ServiceLink to act as the settlement agent for the transaction. ServiceLink, after engaging Paplauskas as a notary public, provided him with the yet-to-be-signed closing documents. Then, in accordance with ServiceLink's instructions, Paplauskas appeared at the closing in order to secure the buyers' signatures. Paplauskas reviewed each closing

The Supreme Court has said that the practice of law "embraces conveyancing" and "the giving of legal advice on a large variety of subjects, and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs*."* *Rhode Island Bar Association, supra*, (quoting *In re Opinion of the Justices to the Senate (Mass.)* 194 N. E. 313, 317 (1935)) (emphasis added; internal quotations omitted). Yet, the Committee's research indicates that the Supreme Court has not squarely addressed whether the activities which are part of a real estate conveyance constitute the practice of law, and further, whether they must be performed by an attorney.

Some jurisdictions have prohibited non-attorneys from performing real estate closings,[16] while others have expressly allowed non-attorneys to perform real estate closings.[17] A review of the opinions that have addressed the issue

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document with the Majewskis as they were presented to them for signature. Once all of the closing documents were signed by the buyers, Paplauskas then mailed them back to ServiceLink, who completed the transaction by recording the deed and disbursing the monies held in escrow.

[16] Massachusetts (*Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.*, 946 N.E.2d 665 (2011)); Georgia (*In re UPL Advisory Opinion 2003–2*, 588 S.E.2d 741 (Ga. 2003), *Formal Advisory Opinion No. 04-1*, 626 S.E.2d 480 (Ga. 2006)); South Carolina (*State v. Buyers Service Co., Inc.*, 292 S.C. 426, 357 S.E.2d 15 (1987), *In re Foster*, 356 S.C. 129, 587 S.E.2d 690 (2003)); West Virginia (*Dijkstra v. Carenbauer*, No. 5:11-CV-152, 2014 WL 791140, at *8 (N.D.W. Va. Feb. 26, 2014)). *See also* Alabama (*Coffee County Abstract and Title Co. v. State ex rel. Norwood*, 445 So. 2d 852 (Ala. 1983)).

[17] Arizona (Ariz. Const. art. XXVI, § 1); Kentucky (*Countrywide Home Loans, Inc. v. Kentucky Bar Ass'n*, 113 S.W.3d 105 (Ky. 2003)); Minnesota (Minn. Stat. Ann. § 82.641; *Cardinal v. Merrill Lynch Realty/Burnet, Inc.*, 433 N.W.2d 864

suggest that the decision of most jurisdictions about whether non-attorneys may perform real estate closings hinge upon the jurisdiction's determination as to whether a closing constitutes the practice of law. In Rhode Island, however, despite the lack of express authorization for notary closings by the Supreme Court, such closings are evidently a common practice throughout this state.

The Committee finds the opinion of the Supreme Judicial Court of Massachusetts in *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs., supra*, to be instructive in resolving the current complaint. In that case, the Massachusetts real estate bar association brought an action against a Pennsylvania-based real estate settlement services provider, claiming that various activities engaged in by that company constituted the unauthorized practice of law. The action was removed to federal court and the U.S. District Court for the District of Massachusetts entered a judgment against the bar association. The bar association then appealed to the U.S. Court of Appeals for the First Circuit, which vacated in part, reversed in part, and certified questions to the Supreme Judicial Court of Massachusetts regarding the unauthorized practice of law.

The Supreme Judicial Court then engaged in a thorough analysis of the various services and functions performed in connection with real estate

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(Minn. 1988)); New Jersey (*In re Opinion No. 26 of Committee on Unauthorized Practice of Law*, 139 N.J. 323, 654 A.2d 1344 (1995)); Virginia (Va. Code Ann. § 55-525.18(B)(1)); Nevada (Nev. Rev. Stat. Ann. § 692A.110(1)(b).

transactions, ultimately concluding that only attorneys may perform real estate closings. The Court explained its reasoning in the following expanded passage:

> "As a matter of common and long-standing practice in the Commonwealth, an attorney must be involved in the closing or settlement of real property conveyances, a fact that the parties here do not dispute. Some States do not require that an attorney conduct these closings. [] We decline here to follow their lead and overturn our established practice.
>
> The closing is where all parties in a real property conveyancing transaction come together to transfer their interests, and where the legal documents prepared for the conveyance are executed, often including but not limited to the deed, the mortgage and the promissory note. The closing is thus a critical step in the transfer of title and the creation of significant legal and real property rights. *Because this is so, we believe that a lawyer is a necessary participant at the closing to direct the proper transfer of title and consideration and to document the transaction*, thereby protecting the private legal interests at stake as well as the public interest in the continued integrity and reliability of the real property recording and registration systems. [] *In other words, many of the activities that necessarily are included in conducting a closing constitute the practice of law and the person performing them must be an attorney*.
>
> Implicit in what we have just stated is our belief that the closing attorney must play a meaningful role in connection with the conveyancing transaction that the closing is intended to finalize. If the attorney's only function is to be present at the closing, to hand legal documents that the attorney may never have seen before to the parties for signature, and to witness the signatures, there would be little need for the attorney to be at the closing at all. *See Goldblatt v. Corporation Counsel of Boston,* 360 Mass. at 665 n. 4, 277 N.E.2d 273 ('the public interest will not be served by requiring that routine duties be performed by attorneys when laymen could adequately and more economically perform the functions'). We do not consider this to be an appropriate course to follow. Rather, precisely because important, substantive legal rights and interests are at issue in a closing, we consider a closing attorney's professional and ethical

> responsibilities to require actions not only at the closing but before and after it as well." *Id.*, 946 N.E.2d at 684-687 (Emphasis added; Some internal citations omitted).

The Rhode Island Superior Court has also had occasion to make observations regarding the intersection between real estate closings and the practice of law. In July 2012, the Superior Court (Silverstein, J.) issued a decision in *Rhode Island Resource Recovery Corporation v. Albert G. Brien and Associates, et al.*, CA No. PB10-5194 (R.I. Super. Ct. July 16, 2012), in which several attorneys—along with the attorneys' commonly-owned title company, Pilgrim Title, and their law firm, Belliveau & St. Sauveur, LLP—were named as defendants. The plaintiff, Rhode Island Resource Recovery Corporation ("RIRRC"), alleged that Pilgrim Title provided RIRRC with legal services. The counts against Pilgrim Title included breach of fiduciary duty and legal malpractice or professional negligence.

In his decision, Justice Silverstein stated that, in the particular arrangement between RIRRC and Pilgrim Title, Pilgrim Title served only as title insurance agent and/or settlement agent and that such services do not rise to the level of legal services. Justice Silverstein stated that "[g]enerally, title examiners who examine record title and prepare title abstracts are not engaged in the practice of law[,]" *Id.* at 35 (citing *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 676-77), and he further concluded that the issuers of title insurance policies do not practice

law, either, as "title insurance protects against defects in title, but does not guarantee the state of the title or impose any duty on the title insurer to disclose title defects." *Id.* Additionally, Justice Silverstein stated that "[t]he duties of a settlement agent are similar to an escrow agent and are limited to disbursing funds as per the closing instructions and filing settlement statements." *Id.* at 36. As such, Judge Silverstein concluded that serving as a settlement agent, "in and of itself, does not qualify as the practice of law[,]" *id*. at 36, and he dismissed all counts against Pilgrim Title. *Id*. at 82.

Nevertheless, with regard to conducting the actual closing process, Justice Silverstein stated that "closing attorneys, in contrast, have a number of duties to the clients, including protecting the interest of their clients in the transaction, ensuring marketable title, and effectuating a valid conveyance." *Id.* at 36 (citing *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 679).

The Committee recognizes that custom and practice may play a role in determining whether a particular activity is considered the practice of law. *See In re Town of Little Compton*, *supra*, *Real Estate Bar Ass'n for Massachusetts, Inc.*, *supra*. While it is apparent to the Committee that Paplauskas has handled many real estate closings in Rhode Island over his forty-eight year career as a notary public, the Committee is mindful that attorneys have historically performed real estate closings in Rhode Island.

The Committee also acknowledges that certain provisions of the General Laws arguably purport to authorize corporations or non-attorneys to provide certain services, such as closings, which might be considered the practice of law. For example, the *Rhode Island Title Insurers Act* purports to authorize a title insurer to "[p]erform ancillary activities * * * when not in contemplation of, or in conjunction with, the issuance of a title insurance policy," G.L. 1956 § 27-2.6-5(3), and also defines "'[t]itle insurance business' or 'business of title insurance'" to include the "[h]andling of escrows, settlements *or closings*," § 27-2.6-3(18)(ii)(c) (emphasis added). In addition, G.L. 1956 § 11-27-16(a)(1) (Practices permitted to corporations and associations) provides that:

> "Nothing in §§ 11-27-2 -- 11-27-11 or §§ 11-27-16 -- 11-27-18 [the provisions related to the unauthorized practice of law] shall be construed to limit or prevent: (1) Any corporation, or its officers or agents, lawfully engaged in the insuring of titles to real property from conducting its business, and the drawing of deeds, mortgages, and other legal instruments in or in connection with the conduct of the business of the corporation[.]"

The Committee reiterates that the Supreme Court has exclusive authority in this regard, and notes that the Court has not yet specifically passed on these provisions, and has not expressly authorized non-attorneys to draft deeds and other legal instruments or to perform closings in Rhode Island. Notwithstanding, the existence of the foregoing statutory provisions creates a confusing landscape for real estate practitioners.

A real estate closing is an important transaction with monumental legal consequences for consumers.[18] Buying a home is often the single most significant purchase people make. At the point of a scheduled closing, emotions are high, time is of the essence, and the average buyer and seller are unaware of the pitfalls that may be lurking in the shadows.

For these reasons, the Committee recommends that the Court find that conducting a real estate closing is the practice of law and also recommends that the Court reserve the handling of this important function to attorneys exclusively. The Committee echoes the sentiment of the Supreme Judicial Court of Massachusetts, that "the purpose in limiting the practice of law to authorized members of the bar is not to protect attorneys from competition but rather to protect the public welfare." *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 673.

IV. ARGUMENTS BY THE RESPONDENT

Throughout the Committee's investigational hearing, the respondent, Paplauskas, has offered several arguments in defense of his performance of the

[18] We borrow the following thorough description of a real estate closing from the Supreme Judicial Court of Massachusetts:

> "The closing is where all parties in a real property conveyancing transaction come together to transfer their interests and where the legal documents prepared for the conveyance are executed, often including but not limited to the deed, the mortgage and the promissory note. The closing is thus a critical step in the transfer of title and the creation of significant legal and real property rights." *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 684.

closing. The Committee addresses each of those proffered arguments here, but it finds that none have the vitality to negate the Committee's ultimate conclusion that Paplauskas engaged in the unauthorized practice of law in conducting the real estate closing at issue.

A. <u>General Laws 1956 § 19-9-6</u>

During the investigational hearing, Paplauskas' offered a copy of G.L. 1956 § 19-9-6[19] into the record for the proposition that "it's the lending institution's obligations to provide a document to the borrower indicating their right to have their own title attorney do the title to the property, and then to give them the option to not have that done, and let the title company or the mortgage company pick the title attorney." *Tr. Vol. I*, 107-108; *Tr. Vol. II*, 35-42, *Exhibit 11*. Based upon his interpretation of § 19-9-6, Paplauskas asserted that the Majewskis must have been notified in writing by the bank in advance of the closing that they had a right to

[19] Section 19-9-6 (Lending institutions--Title attorney) provides, in relevant part:

> "(a) Every lending institution that accepts an application for any residential mortgage loan or any commercial mortgage loan and requires that a title attorney search the title of the subject real estate, or requires a policy of title insurance, shall permit the prospective mortgagor to select a qualified title attorney or title insurance company of his, her or its own choice to search the title of the subject real estate and to furnish title insurance. * * *
>
> (b) In the event the prospective mortgagor does not select a qualified title attorney or title insurance company, the prospective mortgagor shall sign a waiver permitting the lending institution to select an attorney. * * *"

select a title attorney themselves, or to have one selected for them by the bank, and that the Majewskis, therefore, knowingly chose to proceed to the closing without selecting an attorney.

The Committee finds that even if the Majewskis (or any other buyer for that matter) affirmatively stated in writing that they agreed to have a notary perform the closing, such an agreement, written or otherwise, would not be determinative as to whether such practice (notary closings) is permitted under the laws of this State.

B. General Laws 1956 § 42-30-8

Paplauskas has also argued that G.L. 1956 § 42-30-8 authorized him to conduct the closing.[20] *Tr. Vol. I,* 107; *Tr. Vol. II,* 53-57, *Exhibit 12*. Specifically, Paplauskas asserted that § 42-30-8 "say[s] that notaries public have the power not only to explain what is involved in a mortgage, but they can prepare the documents[.]" *Tr. Vol. I,* 54. The Committee does not read § 42-30-8 to authorize a notary public to provide legal guidance about the documents they are notarizing, to conduct real estate closings, or to otherwise engage in the practice of law in

[20] Section 42-30-8 (Powers of notaries) states, in full:

> "Notaries public may, within this state, act, transact, do, and finish all matters and things relating to protests and protesting bills of exchange and promissory notes, and all other matters within their office required by law, take depositions as prescribed by law, and acknowledgments of deeds and other instruments."

Rhode Island; nor could the Committee find anything to suggest that the Supreme Court has authorized notaries to do so.

C. <u>Notary Standards</u>

Similar to his argument regarding § 42-30-8, Paplauskas averred that conducting a closing as a notary public is authorized by the "Standards of Conduct for Notaries Public in the State of Rhode Island and Providence Plantations" ("Notary Standards"), as promulgated by the Governor and filed with the Secretary of State (last amended November 18, 2009). *Tr. Vol. II,* 56-59, *Exhibit 13*. Section 6 (Prohibition Against the Unauthorized Practice of Law) of the Notary Standards states:

> "(a) A non-attorney notary public should not assist a non-attorney in drafting, completing, selecting or understanding a document or transaction requiring a notarial act, rendering legal advice or otherwise engage in the practice of law.
>
> (b) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field."

Before the Committee, Paplauskas stressed that the language of subsection (b) authorizes him, as a person with thirty-years of experience in the mortgage lending industry, to present closing documents for signature and completion during a real estate closing. However, this argument notably ignores the substance of subsection (a) of Section 6, which prohibits a "non-attorney notary public," such as

Paplauskas, from assisting a non-attorney in "completing, selecting or understanding a document or transaction requiring a notarial act."

Nonetheless, regardless of whatever acts or practices the Executive Branch professed to authorize through its Notary Standards, the power to determine who may practice law in Rhode Island is, again, reserved to the Supreme Court alone.

D. Federal Agency "Advocacy Letters"

Lastly, at the conclusion of the investigational hearing before the Committee, Paplauskas entered into the record two "advocacy letters" authored jointly by the Federal Trade Commission and the Department of Justice ("federal agencies"). *Tr. Vol. II*, 168-169, *Exhibit 14* and *Exhibit 15*. In the first letter, dated March 29, 2002, the federal agencies wrote to Rhode Island legislative leadership to voice their opposition to a then-proposed bill in the Rhode Island House of Representatives, H. 7462, which would have amended "the definition of 'practice of law' to require lawyers to represent buyers in almost all aspects of the real estate closing process." *Tr. Vol. II, Exhibit 14*. At the time, the federal agencies contended that a law prohibiting non-attorneys from performing various tasks related to the conveying real estate, including closings, would be adverse to the public interest based on the theory that such legislation would restrict competition for the performance of such services, resulting in an increased cost to consumers. That proposed bill never became law in Rhode Island.

In the second letter, dated December 20, 2002, the federal agencies wrote to the American Bar Association's Task Force on the Model Definition of the Practice of Law to offer public comment on the then-proposed Model Definition of the Practice of Law. *Tr. Vol. II, Exhibit 15*. As part of their comment, the federal agencies urged the Task Force to reject the proposed Model Definition of the Practice of Law because the agencies viewed that definition to be "overbroad and could restrain competition between lawyers and non-lawyers to provide similar services to the American consumer." This opposition specifically asserted that the proposed definition, by restricting non-attorneys from performing "lay real estate closings," would raise consumer costs.

The Committee finds that the policy positions expressed in the "advocacy letters" of these federal agencies during the tenure of bygone federal administrations have no effect on the question before this Committee: whether the conducting of a real estate closing constitutes the practice of law, and whether non-attorneys, such as Paplauskas, may provide that service in Rhode Island.

V. RESPONSE TO DISSENT

The majority offers the following brief points in response to the dissent. The Committee is charged with investigating complaints of unauthorized practice of law and making recommendations to the Supreme Court. The Committee is not tasked with advising the Supreme Court as to how to proceed with

recommendations from the Committee. In this instance, despite the dissenting members' assertions to the contrary, the majority has not recommended *against* the Court inviting public comment from interested parties as it saw fit to do *In re Town of Little Compton*. Indeed, such a course of action may be advisable; however, such decisions are beyond the purview of the Committee to recommend.

Actual harm is not required for this Committee to find that an individual has engaged in the unauthorized practice of law. Furthermore, providing "good" advice, or getting a "good" result, are not defenses to the charge of unauthorized practice of law.

The Committee is not confined to G.L. 1956 § 11-27-2(2) when determining whether an individual has engaged in the unauthorized practice of law. The Supreme Court has authorized the Committee "to investigate complaints alleging that a person(s) has violated the provisions of Chapter 11-27 of the Rhode Island General Laws *and/or has otherwise engaged in the unauthorized practice of law*." Rule 2 of the Governing Rules of the Unauthorized Practice of Law Committee (Jurisdiction) (Emphasis added.) It is well settled that only this Court can determine what constitutes the practice of law, thus the Committee is not bound to the strictures of Chapter 11-27 when evaluating and investigating a complaint of the unauthorized practice of law, as the dissent argues. To adhere to this argument

would be to say that the legislature has greater power than this Court in the arena of defining what constitutes the practice of law.

The Committee is mindful that the Supreme Court has looked to custom and practice to determine whether certain conduct is the practice of law and whether such conduct should be reserved to lawyers. *In re Town of Little Compton*, *supra*. However, whether "everyone else is doing it" is not a consideration for this Committee in resolving complaints of the unauthorized practice of law in Rhode Island. Moreover, conduct should not escape review for unauthorized practice of law simply because it managed to evade review by this Committee and the Court for some time.[21] Nor should the Committee or the Court be swayed by the fact that a recommendation or decision may impact an industry or long-standing practice if such practice actually involves the unauthorized practice of law which this Court does not see fit to allow.

The Committee is charged with determining whether conduct complained of constitutes the practice of law and, if so, whether the Supreme Court has authorized nonlawyers to engage in the conduct. A majority of the Committee members that heard this matter concluded that the handling of real estate closings constitutes the practice of law and that nonlawyers have not been authorized by the

[21] Carl and Samuel Lovett engaged in the unauthorized practice of law in Rhode Island for over eighteen years before coming before this Committee and then the Supreme Court. *In re Lovett*, 117 A.3d 417 (R.I. 2015).

Supreme Court to handle real estate closings. The majority recommends to the Court that it reserve the handling of real estate closings to duly licensed attorneys, but acknowledges that it is up to the Supreme Court, not this Committee and not the Legislature, to determine whether nonlawyers, including notary publics, should be authorized to perform real estate closings in Rhode Island.

VI. RECOMMENDATION

Rule 7(c)(ii)(p) of the Rules of Procedure of the Committee provides that, when reporting its findings to the Supreme Court, the Committee shall recommend that the Court authorize:

> "1. the Committee to initiate civil proceedings in the Superior Court to enjoin the conduct; or
>
> 2. the referral of the matter to the Department of Attorney General for civil or criminal proceedings, or
>
> 3. such other disposition as the Committee deems appropriate and which is in the public's best interest."

Consistent with its prescribed duties, the Committee has determined that the allegations against Paplauskas have been sustained by a preponderance of the evidence and that he engaged in the unauthorized practice of law by conducting the real estate closing on July 21, 2015. The Committee recommends that no civil or criminal proceedings be initiated against Paplauskas, but that the Court make a pronouncement that conducting a real estate closing constitutes the practice of law and must be handled exclusively by an attorney in this state.

VII. DISSENTING OPINION

Committee member DiSanto, with whom Committee member Vespia joins, dissenting.

I respectfully dissent from the Unauthorized Practice of Law Committee's ("the Committee") recommendation in this matter, for two reasons. First, I believe neither the evidence nor existing law support a conclusion that William E. Paplauskas, Jr. engaged in the unauthorized practice of law. Second, by virtue of its recommendation, the Committee is spring-boarding this Court, purposefully or otherwise, into a long-raging "turf war" between lawyers (bar associations, unauthorized practice of law committees) and non-lawyer real estate professionals (title companies, realtors) without the benefit of either a full-scale review of industry practices, consumer rights, or actual harm to the public, or input from the various stakeholders whose perspectives are incredibly relevant to this well-known, heated debate.[22]

Accordingly, ***I respectfully urge this Court to reject the Committee's recommendation or, alternatively, invite well-needed input and participation*** from the legal community, the real estate industry, consumer rights advocates,

[22] *See* Joyce Palomar, *The War Between Attorneys and Lay Conveyancers-Empirical Evidence Says "Cease Fire!"*, 31 Conn. L. Rev. 423, 430 (1999) ("The dispute between attorneys and other real estate settlement service providers has been as prolonged as it has been heated, with cases reported consistently since at least 1917.") (hereinafter "Cease Fire").

other governmental authorities, and other stakeholders ***before forming an opinion in this matter*** that undoubtedly will have a significant impact in Rhode Island.

A. Relevant Background

The Committee certainly has set forth detailed factual background for this Court to consider. I write separately, however, to draw this Court's attention to those facts I believe to be relevant to this dissent.

As a brief refresher of the facts at issue in this matter, Paplauskas was hired by ServiceLink, a mortgage services company that provides title and closing services, to act as their agent at a closing—by witnessing signatures as a notary public on the closing documents and then mailing those documents to ServiceLink—on a purchase of residential real estate by buyers Vincent and Rebecca Majewski from sellers Earl Pooler and Nina Szulewski-Pooler. *Exhibit 9; Exhibit 10* at p.150*; Tr. Vol. I,* 48-52, 62-66, 68-70, 78. The closing took place at the law office of the sellers' attorneys John Pagliarini and Hailey Munns (neé Conn), who were present at the office but who apparently did not take part in or remain for the entirety of the closing.[23] *Tr. Vol. I,* 54-56*; Tr. Vol. II,* 12, 14-15, 26-27, 67, 69-70, 74-76.

There is no dispute that, at the closing, Paplauskas promptly and immediately informed the buyers, the only parties to the transaction to appear, that

[23] Pagliarini instructed Munns not to remain at the closing after learning Paplauskas was not an attorney. *Tr. Vol. II,* 14-15, 77.

he was not an attorney and would not be providing them with legal advice. *Tr. Vol. I*, 55-59, 72*; Tr. Vol. II*, 12, 76, 107-09, 163-64*; Exhibits 5 and 6.* He also had the Majewskis sign a hold harmless agreement that he had prepared, which document clearly provided that he was not an attorney and could not render legal advice or explanations about the contents of the closing documents. *Exhibit 4; Tr. Vol. I*, 56-60. Thereafter, Paplauskas identified each document, gave an "overview" of the document to the Majewskis, and obtained their signatures where needed. *Tr. Vol. I*, 60-62, 67, 74-75*; Tr. Vol. II*, 111-12*; Exhibits 5 and 6.*

Paplauskas testified repeatedly before the Committee that he did not give the Majewskis legal advice at the closing. *Tr. Vol. I*, 61-62, 67, 74-76, 103, 106. Significantly, the Majewskis did not testify otherwise, and they did not recall posing any questions to Paplauskas at the closing. *Tr. Vol. II*, 112, 132, 138, 144, 164-65. They also testified that they chose not to hire counsel but had expected their lender to provide an attorney to represent them. *Tr. Vol. II*, 103-06, 144-46, 166-67.

Paplauskas' compensation for the closing was from ServiceLink, not the Majewskis. *Tr. Vol. I*, 70, 80. Although the buyers paid $550 as a "settlement or closings fee" to ServiceLink, *Exhibit 10* at p.131, and Mr. Papluaskas refused to testify as to what portion of that total fee was paid to him, *Tr. Vol. I*, 52-54, he testified that he is generally paid between $75 and $125 per closing and that he was

paid less than $550 at the closing in question.[24] *Tr. Vol. I,* 43, 54.

Paplauskas testified that he has been performing this type of work since 1969, that it has been his full-time occupation for the last decade, and that he appeared at approximately 75 closings in Rhode Island per month over the year prior. *Tr. Vol. I,* 42-44, 46. He indicated that other notaries public perform this type of work in Rhode Island, and that it is not uncommon for buyers or sellers or both to have attorneys present at the closings at which he appears. *Tr. Vol. I,* 79-80. Pagliarini, who brought the complaint against Paplauskas, testified that he concentrates his practice in real estate law and that his office performs around 150 real estate closings per year. *Tr. Vol. I,* 4-5*; Tr. Vol. II,* 8-11*; Exhibit 1*. He also testified, however, that notaries public perform closings in Rhode Island on a "daily" basis. *Tr. Vol. II,* 25-26. Munns, a former associate of Pagliarini, testified that her area of focus is real estate law and that she appeared at about 50 closings per month in the nine months prior, though much less often before that. *Tr. Vol. II,* 67-69. From this it appears that Paplauskas appeared at more real estate closings that year than Pagliarini and Munns. This was the full extent of the evidence before the Committee as to whether real estate closings customarily are handled by

[24] The Committee never garnered additional evidence to explain the balance between what was paid the notary public and the total settlement/closing fee. Nothing prevented the Committee from subpoenaing ServiceLink for testimony to explain this fee structure or what services or costs the total fee covered. *See* R.I. Gen. Laws § 11-27-19(d)(5).

attorneys in Rhode Island.

There was no evidence of any harm to the sellers, buyers, or lender to this transaction.[25]

B. Neither the Facts Nor Existing Law Support the Committee's Finding of Unauthorized Practice of Law

Contrary to the majority's recommendation, neither the evidence gathered in this matter nor existing law support a conclusion that Paplauskas engaged in the unauthorized practice of law. The Committee's report to this Court seems to concede as much—recommending that this Court "pronounce" that real estate closings constitute the practice of law and must be handled by lawyers in Rhode Island. In other words, the Committee seems to acknowledge that it is asking the Court to define the practice of law to include Paplauskas' conduct so that it may conclude that he, in fact, engaged in the unauthorized practiced of law. I find

[25] The buyers were not able to move in to the house until a few days after the closing. *Tr. Vol. II*, 136-37. There was some indication this may have been caused by a delay in the recording of the deed, due to the fact Paplauskas had to mail the closing documents to ServiceLink. *Tr. Vol. II*, 16, 25. However, it was not clear that, had Paplauskas been an attorney, the deed would have been recorded any earlier. There was testimony that it was not unusual for a deed to be recorded three days after a closing, such as a closing held on a Friday afternoon. *Tr. Vol. II*, 86-87. Mr. Majewski, in any event, remembered the delay being caused by some other reason related to the sellers' poor health and inability to appear at the closing in person. *Tr. Vol. II*, 129-30, 133-35, 141. In any event, this amounted to a mere inconvenience, as no damages resulted to either buyer or seller.

problematic this circular approach.[26]

It is clear that the Supreme Court has the exclusive and ultimate authority to determine who may and may not engage in the practice of law in this state. *See, e.g., In re Town of Little Compton*, 37 A.3d 85, 88 (R.I. 2012); *In re Ferrey*, 774 A.2d 62, 64 (2001). Nonetheless, the Supreme Court has recognized the General Assembly's power to declare certain acts to be the unauthorized practice of law and subject to civil and criminal prosecution, which the Legislature has done by the enactment of Chapter 27 of Title 11 ("the UPL Act"). *See In re Town of Little Compton*, 37 A.3d at 92 (citing *Unauthorized Practice of Law Comm. v. State Dep't of Workers' Comp.,* 543 A.2d 662, 664 (R.I.1988)) ("Rhode Island's Practice of Law Statute, chapter 27 of title 11, may serve to aid this Court in its duty to regulate such activity, but may not in and of itself 'grant the right to anyone to practice law save in accordance with the standards enunciated by this [C]ourt'"); *see also* R.I. Gen. Laws § 11-27-1 *et seq*.

Although the Supreme Court has the authority to overrule state statute pursuant to its inherent constitutional authority to regulate the practice of law, in the past it has declined to do so. *See In re Town of Little Compton*, 37 A.3d at 88

[26] It is relieving that the Committee has recommended the Court not initiate civil or criminal proceedings against Paplauskas, but, in the interim, he has had to hire counsel to defend his livelihood, endure two days of hearings, and worry about the potential consequences to befall him. Even without future prosecution, the Committee's recommendation leaves this long-time real estate professional without his occupation.

("recogniz[ing] that the General Assembly has, from time to time, enacted statutes that to some extent codified and regulated the practice of law with little interference by this Court"); *see also, e.g., Dep't of Workers' Comp.*, 543 A.2d at 666 (holding that two statutes authorizing laypersons to aid injured employees in informal hearings did not violate this Court's exclusive authority to regulate the practice of law after recognizing the public need and deferring to the Legislature's assessment of the statutes' necessity); *In re Rhode Island Bar Ass'n*, 263 A.2d 692, 697 (R.I. 1970) (finding that state law allowing attorneys to practice as professional corporations did not violate the separation of powers or the inherent power of the court relating to the practice of law because the act "is not compulsory; it is in aid of the authority of the court, and not subversive of it").

Indeed, it appears that on those occasions where the General Assembly has attempted to address an unauthorized practice of law issue, this Court has expressed trust and reliance on the Legislature's determination that the "exceptions enacted … constitute[] a response to a public need … [and] that the persons authorized to carry out the permitted activities were qualified to do so." *Dep't of Workers' Comp.*, 543 A.2d at 664-65. *See In re Town of Little Compton*, at 93 ("the General Assembly has *without interference by this court* permitted a great many services that would have come within the definition of the practice of law") (emphasis added).

From my review of existing state statute, Paplauskas has not engaged in the unauthorized practice of law. Although the "practice of law at a given time cannot be easily defined," *Dep't of Workers' Comp.*, 543 A.2d at 66, the General Assembly has purported to define the practice of law with a definition set forth in § 11-27-2 of the General Laws.[27] The evidence in this matter does not support a conclusion that Paplauskas engaged in the unauthorized practice of law as so defined.

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[27] Section 11-27-2 provides as follows:

> "Practice law" as used in this chapter means the doing of any act for another person usually done by attorneys at law in the course of their profession, and, without limiting the generality of the definitions in this section, includes the following:
> (1) The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body;
> (2) The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court action or judicial proceeding brought or to be brought;
> (3) The undertaking or acting as a representative or on behalf of another person to commence, settle, compromise, adjust, or dispose of any civil or criminal case or cause of action;
> (4) The preparation or drafting for another person of a will, codicil, corporation organization, amendment, or qualification papers, or any instrument which requires legal knowledge and capacity and is usually prepared by attorneys at law.

Section 11-27-2 contains four subparts, of which only one is potentially relevant here—whether Paplauskas engaged in the "giving or tendering to another person for consideration, direct or indirect, of any advice or counsel pertaining to a law question." R.I. Gen. Laws § 11-27-2(2). It appears undisputed that, although Paplauskas gave an "overview" of the closing documents, he did not furnish legal advice or counsel to the Majewskis for consideration.

First and foremost, it is not illegal for a layperson to discuss the law or to talk about legal documents. In other words, the law is not the exclusive domain of lawyers. Rather, for example, neighbors may inform each other of pertinent zoning regulations, police officers may advise drivers of new traffic laws, car salesmen may describe the terms of a lease agreement with prospective leases, and accountants may explain tax ramifications to their clients. The examples are endless. Discussions about the law or legal documents are unlawful in Rhode Island only where an individual is tendering advice on a legal question ***for*** consideration.[28]

[28] Nonetheless, as recognized in the Massachusetts opinion relied upon by the Committee, "the proposition cannot be maintained, that whenever, for compensation, one person gives to another advice that involves some element of law, or performs for another some service that requires some knowledge of law, or drafts for another some document that has legal effect, he is practising [sic] law." *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.*, 946 N.E.2d 665, 674 (Ma. 2011).

Here, although Paplauskas was paid for his notary services by ServiceLink, he was not paid, by either ServiceLink or the Majewskis, ***for*** the tendering of advice or counsel on a legal question. To the extent Paplauskas identified a document, or gave an overview of its contents, he did so with full disclosure that he was not providing the Majewskis with legal advice. Indeed, it appears that the Committee's recommendation does not find a violation of the unauthorized practice of law as defined in § 11-27-2.

Section 11-27-2 does contain a general provision, however, loosely defining the practice of law as "the doing of any act for another person usually done by attorneys at law in the course of their profession." Whether or not attorneys "usually" perform real estate closings in Rhode Island is a fact that is erroneously assumed by the Committee and unsupported by the evidence. Although I have no doubt attorneys perform real estate closings in Rhode Island, whether they do so most of the time, or a majority of the time, or customarily, is a fact entirely unexplored by the Committee during the investigational hearing. The record of this matter contains, in the words of Paplauskas' counsel, "zero evidence as to what the custom and practice is of conducting closings in this state." *Tr. Vol. I, 32*. Instead, the Committee assumes that "attorneys have historically performed real estate closings in Rhode Island" without evidence to support this critical statement, imbedding what is irrefutably a factual finding in its analysis.

The evidence before the Committee suggests, instead, that closings in Rhode Island are commonly performed without an attorney: Paplauskas testified that he has been engaged full-time as a notary public in the real estate industry for a decade, that he appears at around 75 closings per month, and that he has been performing this type of work for almost 50 years. *Tr. Vol. I,* 42-44, 46. He further testified that other notaries public perform these functions in Rhode Island. *Tr. Vol. I,* 79. Pagliarini told the Committee that notaries public perform closings "daily" in Rhode Island. *Tr. Vol. II,* 25-26. Indeed, the majority acknowledges that notary closings are "evidently a common practice throughout this state." The only evidence regarding attorneys conducting real estate closings was Pagliarini's and Munns' testimony regarding their own real estate practices. This is, in my opinion, insufficient to determine that real estate closings are the exclusive domain of lawyers as defined in the general provision of § 11-27-2.[29]

Perhaps more significantly, however, and as mentioned by the Committee, ***the* UPL Act *permits non-lawyers acting on behalf of title companies to conduct real estate closings in Rhode Island***. More particularly, § 11-27-16 provides that

[29] The General Assembly has declined to specifically include real estate transactions in the statute defining the practice of law. House bill H7462, introduced in 2002, would have amended § 11-27-2 to include "[t]he evaluation of the legal rights and obligations of buyers, sellers, lenders or borrowers in a real estate transaction, including, but not limited to, … supervising the disbursement of funds and responding to questions and ramifications of a transaction."

the business of title insurance does not constitute the unauthorized practice of law, stating that

> "[n]othing in §§ 11-27-2 – 11-27-11 or § 11-27-16 – 11-27-18 [which includes the practice of law, defined, *see* § 11-27-2] shall be construed to limit or prevent … [a]ny corporation, or its officers or ***agents***, lawfully engaged in the ***insuring of titles*** to real property from ***conducting its business***, and the drawing of deeds, mortgages, and other legal instruments in or in connection with the conduct of the business of the corporation." R.I. Gen. Laws § 11-27-16(a)(1) (emphasis added).

Notably, the *Rhode Island Title Insurers Act* ("the Title Act"), defines the business of title insurers and their agents to include the "handling of escrows, settlements or closings" when performed in conjunction with the issuance of a title insurance policy.[30] R.I. Gen. Laws § 27-2.6-3(17)(ii)(B) and (18)(ii)(C).

Put differently, the *UPL Act* expressly prohibits the practice of law from being defined so as to prevent those lawfully engaged in title insurance from conducting their business, and the *Title Act* defines that business to include real estate closings. Paplauskas is routinely retained by title companies, like ServiceLink, to act as their agent at real estate closings in Rhode Island, and, thus,

[30] Additionally, state statute regulating financial institutions, including mortgage providers, defines "loan-closing services" to mean "providing title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies, ***conducting loan closings***, and preparation of loan-closing documents when performed by, or under the supervision of, a licensed attorney, licensed title agency, ***or*** licensed title insurance company." R.I. Gen. Laws § 19-14-1(34) (emphasis added). This provision contemplates that a licensed title agency or title insurance company may conduct closings in Rhode Island.

it appears his conduct at real estate closings is not the unauthorized practice of law under the *UPL Act*.

The Committee seems to acknowledge as much but disregards the current state of the law because this Court has yet to "specifically pass[] on these provisions." It is my humble opinion that subjecting an individual such as Paplauskas to an investigational hearing with the potential for civil and criminal prosecution because this Court ***might*** overturn controlling law, and using it as an opportunity to ask this Court to change the law, is an overstep of the Committee's authority.[31]

The Committee relies upon the Supreme Court's exclusive authority to define the practice of law in order to sidestep these statutory provisions. While that is true, the Supreme Court also has the power to pass on the constitutionality of any state statute. This power, indubitably and rightfully held by the judiciary, does not render meaningless or unenforceable those statutes not yet reviewed by this honorable Court. Indeed, unlike the Committee, this Court itself has been hesitant

[31] The *UPL Act* arguably renders this matter outside of the Committee's jurisdiction. Although the Committee is considered an arm of the Supreme Court and the Supreme Court appoints its members, the Committee itself is created by state statute, as are its duties and powers. *See* R.I. Gen. Laws § 11-27-19. More particularly, the Committee is empowered to "enforce the provisions of ***this chapter*** [i.e., the *UPL Act*] and to investigate and prosecute all violations." R.I. Gen. Laws § 11-27-19(b) (emphasis added). Where, as here, the *UPL Act* permits particular conduct, there is no violation for the Committee to investigate and nothing for the Committee to enforce.

to completely disregard state statute regulating the practice of law. *See In re Town of Little Compton*, 37 A.3d at 88; *Dep't of Workers' Comp.*, 543 A.2d at 666*; In re Rhode Island Bar Ass'n*, 263 A.2d at 697.

The Committee's justification for ignoring existing law and asking this Court to declare it otherwise is that real estate closings entail significant purchases with monumental legal consequences and thus bestowing a monopoly over the function of real estate closings to attorneys is best for the public's welfare. Passing over for a moment whether doing so is actually in the public interest (this is discussed *infra*), the General Assembly has already recognized a need and afforded statutory protection for both buyers and sellers at various stages of a real estate transaction.

As but a few examples: Rhode Island law mandates certain seller disclosures before a purchase contract is signed. *See* R.I. Gen. Laws § 5-20.8-1 *et seq.* (*Rhode Island Real Estate Sales Disclosure Act*). State law protects borrowers against predatory lending practices in residential real estate. *See* R.I. Gen. Laws § 34-25.2-1 *et seq*. (*Rhode Island Home Loan Protection Act*). There are extensive regulations in place for lenders and loan brokers, including, as mentioned by the Committee, a state statute that requires lending institutions to permit prospective mortgagors to select their own attorney to search title and furnish title insurance and sign a waiver if they accept the attorney retained by the lender. *See* R.I. Gen.

Laws § 19-9-6; *see also*, *e.g.*, R.I. Gen. Laws § 19-14.1-1 *et seq.* Real estate brokers in Rhode Island must be licensed and are subject to state law and regulation. *See* R.I. Gen. Laws §§ 5-20.5-1 *et seq.* and 5-20.6-1 *et seq*. Additionally, title companies in Rhode Island must be licensed and are regulated by the *Title Act*. *See* R.I. Gen. Laws § 27-2.6-1 *et seq.* In addition, the United States Congress has recognized the need for uniformity in consumer real estate transactions. *See* 12 U.S.C. §§ 2601-2617 *(Real Estate Settlement Procedures Act*); 15 U.S.C. §§ 1601-1693 (*Truth in Lending Act*).

Furthermore, the *Title Act*, as amended in 2014, *see* P.L. 2014, ch. 393, § 1 and P.L 2014, ch. 521, § 1, permits title insurers to provide "closing or settlement protection" in Rhode Island—insurance that protects the parties to the transaction, eliminating the concern that attorney ethics and legal malpractice claims are the only recourse for sellers or buyers harmed by errors or misdeeds related to real estate closings. *See* R.I. Gen. Laws §§ 27-2.6-6 and 13. In other words, with regard to real estate closings in this state, buyers and sellers currently have the option of retaining an attorney or purchasing closing insurance for their protection, or doing neither.[32]

[32] I pause here to note that an attorney is not required in order for property owners to transfer, sell, or assign property and that these are constitutionally protected rights. Query at what point the activities required to transfer real estate or an interest in property become complex enough to constitute a conveyance that requires an attorney at the closing. Not all real estate transactions involve a bank

It is this last choice, the right to proceed without counsel, that the Committee suggests be abolished. It is my opinion that a much more searching inquiry be performed before the Court accepts or rejects this recommendation, and that it explore and adopt clearer parameters, as I discuss next.

C. This Court Should Invite Participation From Relevant Stakeholders and Develop a Fuller Record Regarding the Public Welfare Before Forming an Opinion as to Whether Real Estate Closings Constitute the Practice of Law

With all due respect to the Committee, I believe it has entered a fray with blinders on as to the significant and competing interests that are at play when attorneys insist that they alone may assist with the conveyancing of property.[33] The Committee has formed an opinion after a mere two-day hearing involving one residential real estate transaction, yet its conclusion involves issues that have sparked a decades-long debate as to whether such a market monopoly is a good thing for parties to real estate transactions and has resulted in conflicting opinions

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loan and mortgage, like the Majewski's purchase. For instance, pursuant to the Committee's recommendation, does a transfer with nominal consideration, say $1, between father and son require an attorney? Does an arms-length cash transaction without financing require an attorney? Does a purchase money mortgage require an attorney? Does a refinance or new equity line require an attorney?

[33] This dissenter does not purport to have such understanding. Rather, as explained *infra*, I believe an adequate understanding of the issues at stake requires far more participation, input, and evidence than was gathered in this matter.

from state legislatures, state courts, national and local bar associations, and the federal government.[34]

This Court has made clear that, since 1935, the thrust of reserving the practice of law to lawyers duly licensed by the Court is "to ensure 'that the public welfare will be served and promoted.'" *In re Town of Little Compton*, 37 A.3d at 85 (citing *Rhode Island Bar Ass'n v. Automobile Serv. Ass'n,* 179 A. 138, 140 (R.I. 1935)). The Court's concern then, as now, was that "[g]reat and irreparable injury can come to the people, and the proper administration of justice can be prevented, by the unwarranted intrusion of unauthorized and unskilled persons into the practice of law." *Id.* (citing *Automobile Serv. Ass'n*, 179 A. at 140). This Court has explained that, in determining what constitutes the practice of law, it "keep[s] the public welfare at the forefront of [its] considerations" and "weigh[s] the public policy interests involved." *Id.; see also Automobile Serv. Ass'n*, 179 A. at 143 ("[a]ssuring protection to duly licensed attorneys and counselors against invasions of their franchise by unauthorized persons is only incidental or secondary to this primary purpose").

The principal problem with the majority's recommendation to this Court is its failure to rely upon any evidence in support of its assertion that the public needs the protection this Court would be imposing by enforcing unauthorized practice

[34] *See generally Cease Fire*, *supra* n.1.

laws against lay real estate settlement service providers. The Committee ***assumes*** that the public will endure more harm when laypersons close real estate transactions than when attorneys perform those services.

It appears that this assumption may be faulty. In the only empirical study I have found, the data gathered, albeit in a law review article from 1999, drew only one clear conclusion: "that the evidence does not substantiate the claim that the public bears a sufficient risk from lay provision of real estate settlement services to warrant blanket prohibition of those services under the auspices of preventing the unauthorized practice of law." Joyce Palomar, *The War Between Attorneys and Lay Conveyancers-Empirical Evidence Says "Cease Fire!"*, 31 Conn. L. Rev. 423, 520 (1999) (hereinafter "Cease Fire").[35] That study found that title insurers reported slightly higher losses incurred to premiums earned (averaging 2.8% higher over a five-year period) in attorney-closing states than in title company-closing states and concluded that—regardless of how this might be explained—such an insignificant difference did not warrant prohibiting parties to real estate transactions from determining for themselves whether the cost of an attorney outweighs the risks and depriving them of a choice. *Id.* at 493, 497, 502, 509-10.

[35] According to this article's author, this article had but one goal: to gather empirical data to replace the assumptions and anecdotal evidence used in the protracted dispute between attorneys and lay real estate professionals. *Cease Fire*, *supra* n.1, at 432.

Indeed, this Court may take judicial notice of its prior opinions and orders demonstrating that, at least in recent memory, Rhode Island has had its share of attorney misconduct among real estate professionals. *See In the Matter of Richard A. Pacia*, No. 2014-104 M. (Order June 11, 2014) (former bar association president resigned from his presidency and his membership in the bar after a disciplinary "investigation revealed substantial discrepancies in [that attorney's] client account, resulting in a shortfall of funds which he should have been retaining for clients and third parties"); *Credit Union Cent. Falls v. Groff*, 966 A.2d 1262, 1265 (R.I. 2009) (recovery action resulting from attorney who failed to discharge mortgages and instead used money for personal ends). Of course, these instances do not paint a complete picture, but neither do the Committee's assumptions.

If the public's welfare is the keystone for deciding difficult questions regarding what conduct constitutes the unauthorized practice of law, this dissenter believes the record in this case is too bare to determine whether reserving real estate closings to attorneys alone is in the public's interest. I submit that this Court, like "[s]everal state courts and legislatures, as well as both the Federal Trade Commission and the United States Department of Justice, … decline[] to accept mere assumptions as grounds for … restrict[ing] lay providers' right to pursue their occupation and the public's right to choose." *Cease Fire*, *supra*, at 431. *See also United Mine Workers Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 224-25

(1967) (United States Supreme Court refused to accept abstract claims of harm as justification for broad prohibition against lay assistance with the provision of group legal services, asking instead for concrete evidence of "abuse, of harm to clients, [or] actual disadvantages to the public").

In reliance on its assumptions, the Committee points this Court to an advisory opinion from the Supreme Judicial Court of Massachusetts and disregards opinion letters from the Federal Trade Commission ("FTC") and the United States Department of Justice ("DOJ") submitted by Paplauskas. I suggest that this Court not follow the Committee's approach.

The Committee places support for its recommendation on *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.*, 946 N.E.2d 665 (Ma. 2011), but, in that case, the issue of whether an attorney must be involved in real estate closings ***was not in dispute***. *Id.* at 684. Accordingly, that Court, like the Committee, assumed without exploring that this was the established practice in Massachusetts and that requiring an attorney at a closing "protect[s] the private legal interests at stake as well as the public interest in the continued integrity and reliability of the real estate recording and registration systems."[36] *Id.*

[36] It may be worth noting that the Supreme Judicial Court of Massachusetts declined, notwithstanding the urging of the real estate bar association in that state, to hold that "'conveyancing' is a unitary, indivisible activity that constitutes the practice of law," instead opining that "[m]any of the discrete services and activities that may fall within the penumbra of modern conveyancing do not qualify as the

As to the FTC and DOJ opinion letters, the Committee acknowledges the opposition of these federal agencies to laws that prohibit non-attorneys from performing various tasks associated with the conveyancing of property, including real estate closings, because these laws restrict competition for the performances of those services, resulting in increased costs to consumers. The Committee disregards these opinions for reasons that are not entirely clear, stating that these views from "bygone federal administrations" have "no effect" on this matter. The Committee fails to acknowledge that the FTC and the DOJ have held these positions unwaveringly since at least 1996 ***through today***.[37] Furthermore, because this Court looks to the public interest in determining what constitutes the practice of law, increased consumer costs is entirely relevant to the issues presented here. *See, e.g.*, *In re Town of Little Compton*, 37 A.3d at 93 (declining to hold that layperson representation in labor arbitrations constitutes the practice of law because it would "raise the cost for both parties").

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practice of law, … and the talisman invocation of the word 'conveyancing' is not sufficient to require that all of them be performed by or under the supervision of an attorney." *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.*, 946 N.E.2d 665, 675 (Ma. 2011).

[37] *Cease Fire*, *supra* n.1, at 430 (describing identical FTC and DOJ opinions from the nineties). The FTC's current position is available at: https://www.ftc.gov/news-events/blogs/competition-matters/2016/06/competition-innovation-legal-services. The DOJ's current position is available at: https://www.justice.gov/atr/comments-proposed-definition-practice-law.

Instead, I respectfully urge that this Court look to the methodology utilized by the Supreme Court of New Jersey in *In re Opinion No. 26 of Comm. on Unauthorized Practice of Law*, 654 A.2d 1344, 1345, 1348 (N.J. 1995), in reaching its conclusion that the public interest did not require that attorneys conduct residential real estate closings. In that matter New Jersey's highest court first took briefing and oral argument from all parties interested in the matter, including the organized bar, title officers, and real estate brokers. *Id.* at 1347. Thereafter, the court remanded the matter to a special master to develop a fuller record for the purpose of "examining in depth the many factors that would enable the [Supreme] Court [of New Jersey] to determine whether and to what extent allowing parties to proceed without counsel in such transactions disserved the public interest." *Id.*

At the request of the high court, the scope of the remand included the factual aspects of real estate transactions completed without an attorney, impacts on buyers and sellers including costs and risks, the knowledge of the parties of those risks, conflicting interests of title officers and real estate brokers, the frequency of transactions in which neither party was represented by counsel, comparable advantages and disadvantages to consumers in proceeding with and without counsel, the actual incidence of harm in both circumstances, remedies available to buyers and sellers for damage caused by non-lawyer real estate professionals, and consumer satisfaction, among other factors. *Id.* The special master held ***sixteen***

days of hearing before rendering a report with findings and recommendations that covered all of the issues posed as well as issues that arose in the course of the hearing. *Id.*

Following these extensive proceedings, the special master found, *inter alia*, no proof of actual damages resulting from the handling of real estate transactions by non-lawyer real estate professionals and that the parties to the transaction saved substantial costs by foregoing attorneys' fees. *Id.* at 1348. Based thereon, the special master determined that, although he strongly urged the retention of counsel, the public interest did not require that parties to a residential sale of real estate be deprived of the right to choose to proceed without counsel, so long as various conditions were met designed to ensure the decision was informed. *Id.* at 1348, 1359. Thereafter, the Supreme Court of New Jersey held subsequent oral argument and briefing by the parties who participated in the hearing before ultimately concluding that the practice of conducting real estate closings without the presence of attorneys did not constitute the unauthorized practice of law. *Id. at 1348*.

In other words, in New Jersey, two rounds of appellate-like briefing and argument and a sixteen-day fact hearing were held before that state's highest court reached a decision as to whether residential real estate closings needed to be performed by attorneys.

Without advocating that this Court go to such great lengths or reach the same result as in New Jersey, I strongly urge that this Court develop a fuller record regarding the benefits and risks of proceeding with and without counsel before acting on the Committee's recommendation. Such an approach is not foreign to this Court. *See In re Town of Little Compton*, 37 A.3d at 88, 88 n.10 (inviting interested parties to file briefs addressing issues raised by lay representation in labor arbitrations and reviewing *amicus curiae* briefs from seven different interested parties). At a minimum, I respectfully suggest that this Court invite input from the Rhode Island bar, realtor groups, the title insurance industry, consumer protection agencies, other governmental agencies, and other interested stakeholders in helping it to decide this matter.

This dissenter additionally suggests that any decision from this Court as to whether real estate closings must be performed by attorneys include clearer guidelines, such as whether an attorney is required at all real estate closings or only residential real estate closings,[38] whether all parties are required to retain counsel or not, and, if not, which party (buyer, seller, or lender, if a lender is involved) is

[38] The Committee's recommendation seems to rely on the rarity of and lack of sophistication among parties to residential real estate closings. The Committee determines it is not beholden to the provisions of the very *UPL Act* that brought the Committee into existence because "[b]uying a home is often the single most significant purchase people make" where, "[a]t the point of a scheduled closing, emotions are high, time is of the essence, and the average buyer and seller are unaware of the pitfalls that may be lurking in the shadows." It is not clear these elements would be present in commercial transactions.

required to provide counsel to perform the closing. Furthermore, if fewer attorneys are required than interested parties to the transaction, this Court should explore the closing attorney's ethical and fiduciary obligations, and to whom they are owed—an endeavor the Committee's recommendation does not attempt. These missing pieces are relevant and important to this matter because the Committee purports to rely upon the "public welfare" in determining that Paplauskas engaged in the unauthorized practice of law, but it is unclear how, had he been an attorney, this would have improved the public welfare.

For instance, the Majewskis believed their lender would be providing an attorney to represent them, but there is no discussion by the Committee of the "murky ethical waters" of real estate counsel and what obligations an attorney retained by the lender would have to the Majewskis. *Groff*, 966 A.2d at 1270 (discussing ethical duties owed to a nonclient lender in the context of an attorney retained by the buyers). In other words, it remains unclear from the Committee's recommendation what would have been different in this matter had the closing been performed by an attorney—i.e., what protections that would have provided for the buyers, the sellers, and/or the lender. Furthermore, it is unclear from the Committee's recommendation whether, had the sellers' attorney, who was present and able, been willing to remain at or perform the closing, this would have been sufficient to assuage the Committee's concerns.

At the sake of redundancy, this dissenter respectfully suggests that this Court not act on this recommendation until it has invited the input of all stakeholders, reviewed evidence regarding the benefits and risks of proceeding with and without counsel, developed a fuller record regarding the public welfare, and established clearer standards than has been established in this case. This matter undoubtedly will have real life implications on both buyers and sellers of real estate and the occupations of layperson real estate professionals, as well as on attorneys, and it is deserving of more careful attention.

For these reasons, I respectfully dissent from the Committee's recommendation.