

RHODE ISLAND SUPREME COURT
UNAUTHORIZED PRACTICE OF LAW COMMITTEE

In re SouthCoast Title and Escrow, Inc. :

UPLC-2017-7

COMMITTEE REPORT

June 7, 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 undertaken by the Committee 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 hearings have found that the charges in the complaint, that the respondent SouthCoast Title and Escrow, Inc. (“SouthCoast Title”) has engaged in the unauthorized practice of law, have been sustained by a preponderance of the evidence presented.¹

I. PROCEDURAL HISTORY

A. Complaint Received by the Committee.

On November 17, 2017, the Committee received a complaint filed by Attorney Robert A. D’Amico II regarding certain actions taken by SouthCoast

¹ All five Committee members, Debra Saunders, Robert Oster, Lise Iwon, David Strachman, and Jason Gramitt, voted in favor of the finding of unauthorized practice of law.

Title. *Tr. Vol. I, (January 31, 2018)*, 11, *Exhibit 1*. In his complaint, Attorney D’Amico alleged that SouthCoast Title may have been engaged in the unauthorized practice of law by providing certain real estate title services in Rhode Island, and also by holding itself out publically as an entity authorized to practice law in Rhode Island.²

B. Investigational Hearings.

In connection with its investigation, the Committee held investigational hearings on January 31, 2018 and May 29, 2018 at which it heard testimony from Attorney Anthony Senerchia (SouthCoast Title’s attorney-shareholder) and Attorney John T. Sheehan III (an attorney employed by SouthCoast Title).³ During the investigational hearing, SouthCoast Title was represented by Attorney Lauren Jones.

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:

² Attorney D’Amico represented Daniel S. Balkun and Balkun Title & Closing, Inc. which are the subjects of a separate investigation and report by the Committee (UPLC-2017-1).

³ The investigational hearings were stenographically recorded and a copy of the transcripts are included in the Appendix to this Report. *See Tr. Vol. I, (January 31, 2018); Tr. Vol. II, (May 29, 2018), Exhibit 13.*

Background

1. This complaint against SouthCoast Title has arisen out of the Committee's investigation of a prior complaint filed by Attorney Anthony Senerchia against Daniel S. Balkun ("Balkun") and Balkun Title & Closing, Inc. ("Balkun Title"). *Tr. Vol. I, 13, Exhibit 5*. During the Committee's investigation of that complaint against Balkun Title, Attorney Senerchia testified before the Committee in connection with his complaint. *Tr. Vol. I, 14, Exhibit 6*. Subsequent to Attorney Senerchia's testimony related to the Balkun matter, Attorney D'Amico filed this complaint against SouthCoast Title. *Tr. Vol. I, 11, Exhibit 1*.

Attorney Senerchia

2. Attorney Senerchia was admitted to practice law in the State of Rhode Island in 2008. *Tr. Vol. I, 15*. He was previously admitted to practice law in the Commonwealth of Massachusetts in 2001, and is also admitted to practice law in the States of Connecticut and Delaware. *Tr. Vol. I, 16*. He stated to the Committee that he has been active and in good standing in all jurisdictions since his respective admissions. *Tr. Vol. I, 16*.

SouthCoast Title

3. On April 4, 2004, SouthCoast Title and Escrow, Inc. was incorporated as a Rhode Island domestic business corporation under G.L. 1956 § 7-1.1-1 *et seq.*⁴ *Tr. Vol. I, 17-18, Exhibit 7, 43*. When the company was first incorporated in 2004, the shareholders were Attorney Senerchia, his wife Karen Senerchia, and Raymond Morris. *Tr. Vol. I, 18*. At the time SouthCoast Title was incorporated in 2004, Attorney Senerchia was admitted to practice law in Massachusetts, but he was not

⁴ Shortly after SouthCoast Title's incorporation on April 4, 2004, § 7-1.1-1 *et seq.* was repealed and replaced with the Rhode Island Business Corporation Act, § 7-1.2-101 *et seq.* See P.L. 2004, ch. 216 §§ 1, 2, eff. July 1, 2005; P.L. 2004, ch. 274, §§ 1, 2, eff. July 1, 2005.

admitted to practice in Rhode Island until 2008. *Tr. Vol. I*, 18-19, 101, 104. Neither of the other two shareholders were attorneys at the time of incorporation. *Tr. Vol. I*, 18-19.

4. At the present time, the two shareholders of SouthCoast Title are Attorney Senerchia and Karen Senerchia. *Tr. Vol. I*, 19. Attorney Senerchia owns seventy percent (70%) of the shares and Karen Senerchia owns thirty percent (30%) of the shares. *Tr. Vol. I*, 19. Attorney Senerchia testified that he and Karen are paid salaries by SouthCoast Title as “W-2” employees. *Tr. Vol. I*, 19-20.
5. Karen Senerchia is not an attorney. *Tr. Vol. I*, 19, 35. Her role at SouthCoast Title includes managing the company’s accounting functions and the disbursement of funds, the handling licensing, and the issuing some title insurance policies. *Tr. Vol. I*, 116-117.
6. SouthCoast Title operates from an office located at 150 Burnside Street, Cranston, Rhode Island. *Tr. Vol. I*, 17.
7. SouthCoast Title currently employs two attorneys: Attorney Senerchia and Attorney John T. Sheehan III. *Tr. Vol. I*, 17, 19; *Tr. Vol. II, Exhibit 13*.
8. SouthCoast Title maintains an Interest on Lawyers Trust Account (“IOLTA”). *Tr. Vol. I*, 21. SouthCoast Title uses its IOLTA account to hold all real estate settlement funds which it processes in the course of its business. *Tr. Vol. I*, 21. When asked why SouthCoast Title maintains an IOLTA account, Attorney Senerchia stated that the type of account had been selected by his bank, Bank of America (“BOA”), when the entity was incorporated in 2004. *Tr. Vol. I*, 21-22. He also stated that, since receiving the complaint which is before the Committee, SouthCoast Title has sought clarification from BOA as to whether an IOLTA account is appropriate for the organization. *Tr. Vol. I*, 21-22.
9. Attorney Senerchia stated that he does not view SouthCoast Title as a law firm, but rather, that he and Attorney Sheehan

“are employed as attorneys for the benefit of the corporation[.]”
Tr. Vol. I, 26-28; Tr. Vol. II, Exhibit 13.

Senerchia & Sheehan, P.C.

10. In addition to operating SouthCoast Title, Attorney Senerchia also maintains a separate law firm entity, Senerchia & Sheehan, P.C. *Tr. Vol. I, 23, 114-115.*
11. Senerchia & Sheehan, P.C. is operated out of the same office as SouthCoast Title at 150 Burnside Street, Cranston, Rhode Island. *Tr. Vol. I, 23, 115, 122-123.*
12. On February 25, 2011, Senerchia & Sheehan, P.C. was incorporated as a Rhode Island professional service corporation pursuant to G.L. 1956 § 7-5.1-1 *et seq.* *Tr. Vol. I, 23-24, Exhibit 8.* Senerchia & Sheehan, P.C. was granted a limited liability entity (“LLE”) license by the Rhode Island Supreme Court, pursuant to Article II, Rule 10 of the Supreme Court Rules, on January 27, 2012. *Tr. Vol. I, 24-25, Exhibit 9.*
13. Since the entity’s incorporation, Attorney Senerchia and Attorney Sheehan have been the only two shareholders. *Tr. Vol. I, 24; Tr. Vol. II, Exhibit 13.*
14. Senerchia & Sheehan, P.C. maintains its own IOLTA account which is distinct from the IOLTA account used by SouthCoast Title. *Tr. Vol. I, 24.*

Use of Two Entities

15. Attorney Senerchia stated that he has intentionally maintained two separate entities for conducting his business (SouthCoast Title and Senerchia & Sheehan, P.C.) because the SouthCoast Title entity facilitates the ability to “perform conveyancing work” and settlement services on a national level. *Tr. Vol. I, 28, 80, 100-101.* He stated that SouthCoast Title allows him to perform settlement services in numerous states based upon the reciprocity of his title insurance producer’s license, compared to using the law firm, Senerchia & Sheehan, P.C., which would

require that the law firm employ attorneys admitted in each of those states. *Tr. Vol. I*, 28-29, 101, 104.

16. Attorney Senerchia estimated that he spends between eighty and ninety percent (80-90%) of his professional time working for SouthCoast Title, and the remaining time working for Senerchia & Sheehan, P.C. *Tr. Vol. I*, 117, 124.

Services Provided by SouthCoast Title to Buyers

Title Insurance

17. Attorney Senerchia received a license to act as a title insurance agent from the Rhode Island Department of Business Regulation (“DBR”) on April 4, 2004. *Tr. Vol. I*, 30-34, *Exhibit 10*, *Exhibit 11*. Attorney Senerchia’s title insurance agent’s license has been active since it was first issued, with the exception of a short period in 2009 when the license briefly lapsed. *Tr. Vol. I*, 32-34.
18. Attorney Senerchia is currently a title insurance agent for Stewart Title Guaranty, Fidelity National Title, Chicago Title Insurance, and Connecticut Attorney Title Insurance Company. *Tr. Vol. I*, 66-67, 124.
19. Karen Senerchia received a title insurance agent’s license from the DBR on September 19, 2014. *Tr. Vol. I*, 34-35, *Exhibit 12*.
20. Attorney Senerchia estimated that he has acted as title insurance agent on a “few hundred” transactions in Rhode Island within the past one year. *Tr. Vol. I*, 37-38. When Attorney Senerchia acts as a title insurance agent in a transaction, SouthCoast Title is typically paid a fee ranging between seven hundred dollars (\$700) and sometimes “thousands.” *Tr. Vol. I*, 40-46.
21. Attorney Senerchia stated that when he acts as a title insurance agent on a transaction, he is providing that service to SouthCoast Title as an entity. *Tr. Vol. I*, 42-43, 104.

Title Searches and Examinations

22. When Attorney Senerchia is acting as title insurance agent, he also usually conducts a title search and examination on the underlying property. *Tr. Vol. I, 37, 47, 126.*
23. A title search consists of gathering documentation of all recorded activity concerning the underlying property from the registry of deeds for the purpose of later examination. *Tr. Vol. I, 47.* Attorney Senerchia estimated that he performs between fifty and one hundred title searches within the past one year. *Tr. Vol. I, 47.* In the majority of those transactions where Attorney Senerchia performed a title search on behalf of SouthCoast Title, he also acted as title insurance agent for the transaction, although there were occasions where Attorney Senerchia performed title searches without also acting as title insurance agent. *Tr. Vol. I, 47-48.* When Attorney Senerchia performed a title search during a transaction, SouthCoast Title was listed on the closing disclosure and was paid a fee between twenty five dollars (\$25) and “several hundred” dollars. *Tr. Vol. I, 48-49.*
24. Following his title searches, Attorney Senerchia has conducted title examinations to evaluate whether there were any defects that affected the marketability of title and, as a result, whether the title was insurable. *Tr. Vol. I, 49-50, 52-53, 73-75.* Attorney Sheehan has also performed title examinations on behalf of SouthCoast Title. *Tr. Vol. I, 50.* In the majority of those transactions where Attorney Senerchia performed title examinations on behalf of SouthCoast Title, he also acted as title insurance agent for the transaction, although Attorney Senerchia has performed title examinations without also acting as title insurance agent. *Tr. Vol. I, 50-51.* When Attorney Senerchia has performed a title examination during a transaction, SouthCoast Title has been listed on the closing disclosure and paid a fee. *Tr. Vol. I, 50-51, 53.*
25. After the title search and title examination are completed, SouthCoast delivers the results of the search and examination to the buyer’s lender. *Tr. Vol. I, 51.*

Closings

26. Attorney Senerchia has also conducted real estate closings in Rhode Island on behalf of SouthCoast Title during which the parties signed the final documents needed to convey the property. *Tr. Vol. I, 53*. Most of the closings performed by Attorney Senerchia were performed in transactions where he has acted as the title insurance agent. *Tr. Vol. I, 54*.
27. Attorney Senerchia estimated that he has performed between fifty and one hundred closings in Rhode Island within the past one year on behalf of SouthCoast Title. *Tr. Vol. I, 53, 115-116*.
28. When Attorney Senerchia conducts closings, he presents each of the closing documents, one after another, to the buyer for his or her signature. *Tr. Vol. I, 92, 94, 112-113*. Attorney Senerchia also notarizes those documents which require a notarization. *Tr. Vol. I, 94*.
29. The first closing document Attorney Senerchia presents to the buyer is the closing disclosure (previously referred to as a “HUD statement”). *Tr. Vol. I, 91-92*. When presenting the closing disclosure, Attorney Senerchia provides an overview of all of the payments to be made to the various parties, including the sales price, taxes, interest, monthly payments, and escrow funds. *Tr. Vol. I, 91-92*.
30. The next closing document presented is the note (i.e. the promissory note). When presenting the note to the buyer, Attorney Senerchia explains the term of payment, the interest rate, and the monthly payment amounts. *Tr. Vol. I, 92*.
31. The next closing document is the mortgage. *Tr. Vol. I, 92*. When presenting the mortgage, Attorney Senerchia explains, generally, that failure to make the required mortgage payments can result in foreclosure on the property, and also answers any questions the buyer may have regarding the “acceleration clauses” or any other provision of the mortgage. *Tr. Vol. I, 92, 112*.

32. Attorney Senerchia also presents the buyers with any other ancillary documents required by the particular lender that is providing the mortgage for the transaction. *Tr. Vol. I, 92-94.*
33. When Attorney Senerchia has performed a closing during a transaction, SouthCoast Title has been listed on the closing disclosure and paid a fee (as part of the settlement fee) which ranges between three hundred ninety five dollars (\$395) and five hundred dollars (\$500). *Tr. Vol. I, 54-55, 102.*
34. Attorney Senerchia stated that when he performs closings, he does so for SouthCoast Title which, in turn, is “doing it for the benefit of the lender as a beneficiary to the buyer.” *Tr. Vol. I, 55.*
35. SouthCoast Title has been performing closings in Rhode Island since it was incorporated in 2004, despite the fact that Attorney Senerchia was not admitted to the Rhode Island Bar until 2008. *Tr. Vol. I, 105-106.*
36. Karen Senerchia has not performed closings on behalf of SouthCoast Title. *Tr. Vol. I, 116.*

Settlement Services

37. After Attorney Senerchia conducts a closing, SouthCoast Title sometimes acts as settlement agent performing various tasks that are often referred to as “settlement services.” *Tr. Vol. I, 38, 94-96.*
38. The specific post-closing settlement services offered and performed by SouthCoast Title include recording the deed and mortgage, disbursing the monies in escrow to the various parties, and issuing the title insurance policies. *Tr. Vol. I, 38, 94-97.*
39. When SouthCoast Title has performed these settlement services during a transaction, SouthCoast Title has been listed as the provider of the services on the closing disclosure and been paid a settlement fee which ranges between three hundred ninety

five dollars (\$395) and five hundred dollars (\$500). *Tr. Vol. I*, 39-40, 54-55.

40. SouthCoast Title has been performing settlement services in Rhode Island since it was incorporated in 2004, despite the fact that Attorney Senerchia was not admitted to the Rhode Island Bar until 2008. *Tr. Vol. I*, 105-106.

Services Provided by Attorney Senerchia to Sellers

41. Attorney Senerchia has also provided certain services to the sellers of real estate. *Tr. Vol. I*, 56-62. Attorney Senerchia has only provided services to sellers in transactions where he was not acting as the title insurance agent. *Tr. Vol. I*, 57-58.
42. When representing a seller, Attorney Senerchia has drafted deeds, residency affidavits, and powers of attorney, all on behalf of the seller. *Tr. Vol. I*, 56-62.
43. Attorney Senerchia stated that, on all occasions where he has drafted such documents for sellers, he has done so as an attorney practicing law through his law firm, Senerchia & Sheehan, P.C., and that SouthCoast Title does not draft any documents on behalf of sellers. *Tr. Vol. I*, 59, 61-62, 98-99. When providing such services, Senerchia & Sheehan, P.C. is listed on the closing disclosure and paid a fee. *Tr. Vol. I*, 99.

60 Pine Hill Road

44. A real estate closing was scheduled to be held on December 2, 2016 to transfer property located at 60 Pine Hill Road in Johnston, Rhode Island, from Mary and Ronald Cellucci (“sellers”), mother and son, to Taylor Real Estate Investing LLC (“buyer”). *Tr. Vol. I*, 63-64, *Exhibit 5*.
45. Attorney Senerchia acted as the title insurance agent; SouthCoast Title was the settlement agent for the buyer; and, Attorney Senerchia, as an employee of SouthCoast Title, performed the closing. *Tr. Vol. I*, 66.

46. Balkun Title prepared documents for the seller. *Tr. Vol. I, 67.*
47. Prior to the closing, after SouthCoast Title performed a title search on the property, Attorney Senerchia performed a title examination and determined that there was a defect in the title caused by the filing of two deeds back in 1960 which had severed the joint tenancy of Mary Cellucci and her husband Carmino. *Tr. Vol. I, 68.* Attorney Senerchia was of the opinion that the previously recorded joint tenancy was severed, thereby converting it back to tenants in common. *Tr. Vol. I, 68.*
48. Based on his observations regarding the history of the title, Attorney Senerchia felt that it necessary to inquire as to whether Carmino Cellucci was still alive in order to determine the nature of any defect in the title. *Tr. Vol. I, 69.*
49. Upon inquiry, Balkun Title advised SouthCoast Title that Carmino was alive. *Tr. Vol. I, 69.*
50. At the closing on December 2, 2016—which Attorney Senerchia was prepared to conduct himself—it became known that Carmino Cellucci was, in fact, deceased. *Tr. Vol. I, 69.* The closing was stopped and Attorney Senerchia advised Ronald, the seller, that he should obtain counsel in order to open a probate matter to address Carmino’s interest in the property. *Tr. Vol. I, 70.*
51. Upon completion of the probate matter, the closing was rescheduled, Attorney Senerchia performed the closing, and the property was successfully transferred to the buyer. *Tr. Vol. I, 70.*
52. The final HUD-1 form, which was prepared by SouthCoast Title and completed at the closing, included an entry for payment for “Title Search Fee to SouthCoast Title and Escrow, Inc. [\$]275.00” which constituted payment for the title search, as well as Attorney Senerchia’s title examination. *Tr. Vol. I, 71, Exhibit 5, Internal Exhibit C, Line 1106.*

53. That same HUD-1 form included an entry for payment for “Attorney’s fees to SouthCoast Title and Escrow, Inc. [\$]550.00” which constituted payment for the performance of all settlement services, and SouthCoast Title collected that fee. *Tr. Vol. I, 71-72, Exhibit 5, Internal Exhibit C, Line 1107.* Attorney Senerchia stated that he had “misentered” the word “attorney’s fees” into the form, and that he should have entered the services as “settlement fees.” *Tr. Vol. I, 71-72.*

SouthCoast Title’s Website

54. On November 14, 2017, SouthCoast Title’s website included a section which stated:

“How we’re different. One of the biggest things that separates us from the rest is attention to detail and knowing that behind each file is a dedicated individual. During the closing process there is an attorney and paralegal available to meet your needs.” (Emphasis added.) *Tr. Vol. I, 83, Exhibit 1, Internal Exhibit A, pg. 1.*

Attorney Senerchia indicated that this reference to an attorney was meant to refer to him and Attorney Sheehan. *Tr. Vol. I, 83.*

55. On November 14, 2017, SouthCoast Title’s website included a section which stated:

*“About Us. * * * In addition to our experienced staff and attorneys we are ready to address any and all legal concerns that arise to facilitate a quick, effective resolution.”* (Emphasis added.) *Tr. Vol. I, 84-85, Exhibit 1, Internal Exhibit A, pg. 2.*

Attorney Senerchia indicated that this reference to legal concerns was meant to refer to “concerns that come up with title” (i.e. the marketability of title). *Tr. Vol. I, 85-86.*

56. On November 14, 2017, SouthCoast Title’s website stated that it provided “Legal & Vesting Reports.” *Tr. Vol. I, 86-87,*

Exhibit 1, Internal Exhibit A, pg. 4. Attorney Senerchia indicated that a Legal & Vesting Report is, in essence, “a copy of the most current vesting deed” which establishes who the current owner of the property is and how they are vested. *Tr. Vol. I*, 85.

57. On November 14, 2017, SouthCoast Title’s website stated that it provided “Full service title clearance.” *Tr. Vol. I*, 87, *Exhibit 1, Internal Exhibit A*, pg. 4. Attorney Senerchia indicated that the services referenced in this statement occur when his title examination yields any number of defects in the property. *Tr. Vol. I*, 87-88. Upon discovering a defect, he has worked to clear title by generally contacting individuals who have judgments or claims against the property, and worked to obtain and record a release of any encumbrances. *Tr. Vol. I*, 87-88.
58. On November 14, 2017, SouthCoast Title’s website included a section which stated “There is a paralegal or attorney on call during closing no additional charge!” *Tr. Vol. I*, 88, *Exhibit 1, Internal Exhibit A*, pg. 8. Attorney Senerchia indicated that the services referenced in this statement are no longer offered by SouthCoast Title. *Tr. Vol. I*, 88-89.
59. Subsequent to receiving a copy of the complaint, SouthCoast Title updated its website to remove any language suggesting that the entity was qualified to practice law. *Tr. Vol. I*, 99-100, 132-135, *Exhibit 4* at pg.3; *Tr. Vol. II, Exhibit 13*, ¶¶ 9-13. The current website is located at www.sctitleinc.com; however, in the interest of full disclosure to the Committee, SouthCoast Title preserved its old website for the Committee’s inspection (www.sctitleinc.com/old/). *Tr. Vol. II*, 6, *Exhibit 13*, ¶¶ 9-13

III. ANALYSIS

A. The Complaint.

The complaint filed with the Committee by Attorney D’Amico alleged that SouthCoast Title—a corporate entity co-owned by an attorney (Attorney

Senerchia) and a non-attorney (Karen Senerchia)—engaged in the unauthorized practice of law by providing certain real estate title services in Rhode Island, and by also holding itself out publically as an entity authorized to practice law in Rhode Island.

The question before the Committee is whether the services provided by SouthCoast Title constitute the practice of law, and if so, whether it is authorized to provide those services by the Rhode Island Supreme Court.

The Supreme Court has recognized that the “practice of law at a given time cannot be easily defined,” *Unauthorized Practice of Law Comm. v. State, Dep’t of Workers’ Comp.*, 543 A.2d 662, 664 (R.I. 1988), 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 v. Automobile Service Association*, 55 R.I. 122, 134, 179 A. 139, 144 (1935) (internal quotations omitted)).

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)) (internal quotations omitted). The Committee’s research shows that the Court has not squarely addressed whether the various services which are part of a real estate conveyance constitute the practice of law, and further, whether a lawyer must perform them.

B. Respondent’s Position.

In response to the complaint, Attorney Senerchia asserted that, by virtue of his individual title insurance agent’s license, the *Rhode Island Title Insurers Act* (“*Title Insurers Act*”), § 27-2.6-1 *et seq.* confers on him—and by extension, SouthCoast Title—the authority to perform its various services in transactions where Attorney Senerchia acts as the title insurance agent. *Tr. Vol. I*, 60, 107-110, 130.

SouthCoast Title also referenced the provision of § 11-27-16(a) (“Practices permitted to corporations and associations”), *Tr. Vol. I*, 131, which provides, in relevant part:

“(a) Nothing in §§ 11-27-2 -- 11-27-11 or §§ 11-27-16 -- 11-27-18 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[.]”

C. Case Law and the Rhode Island General Laws.

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.*, 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*, 55 R.I. 122, 179 A. 139 (1935)). The Supreme Court has recognized that the Legislature 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 Legislature 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 lawyers 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 lawyers at law.” G.L. 1956 § 11-27-2.

In § 11-27-16(a), the Legislature carved out a broad exception for title insurers to “conduct [their] business” and to draft legal documents.

To determine what precisely the Legislature meant when, in § 11-27-16(a), it exempted the business of insuring titles to real property from the prohibition on the unauthorized practice of law, the Committee looked to the *Title Insurers Act*. Section 27-2.6-3(18) of the *Title Insurers Act* defines the title insurance business as follows:

“(18) ‘Title insurance business’ or ‘business of title insurance’ means:

(i) Issuing as insurer or offering to issue as insurer, a title insurance policy;

(ii) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of, or in conjunction with, the issuance of a title insurance policy:

(A) Soliciting or negotiating the issuance of a title insurance policy;

(B) Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and proprietary leases and for all liens or charges affecting the same;

(C) *Handling of escrows, settlements or closings;*

(D) Executing title insurance policies;

- (E) Effecting contracts of reinsurance.
- (iii) Guaranteeing, warranting or insuring searches or examination of title to real property or any interest in real property;
- (iv) Guaranteeing or warranting the status of title as to ownership of or liens on real property and personal property by any person other than the principals to the transaction; or
- (v) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subsection in a manner designed to evade the provisions of this chapter.” (Emphasis added.)

The *Title Insurers Act* gives title insurance agents the authority to perform various real estate services, including the handling of real estate closings. Section 27-2.6-3(17) provides:

“‘Title insurance agent’ or ‘agent’ means an authorized person, other than a bona fide employee of the title insurer who, on behalf of the title insurer, performs the following acts, in conjunction with the issuance of a title insurance report or policy:

- (i) Determines insurability and issues title insurance reports or policies, or both, based upon the performance or review of a search or abstract of title; and
- (ii) Performs one or more of the following functions:
 - (A) Collects or disburses premiums, escrow or security deposits or other funds;
 - (B) *Handles escrows, settlements or closings;*
 - (C) Solicits or negotiates title insurance business; or
 - (D) Records closing documents.” (Emphasis added.)

Section 11-27-16(a) and the *Title Insurers Act* do not preclude the Supreme Court from finding that SouthCoast Title engaged in the unauthorized practice of law. As the Supreme Court noted in *In re Little Compton*, the Legislature may enact statutes to aid the Court in its duty to regulate the practice of law, “but may not in and of itself ‘grant the right to anyone to practice law save in accordance

with standards enunciated by this [C]ourt.” *In re Town of Little Compton*, 37 A.3d at 92. These provisions appear to go beyond criminalizing the unauthorized practice of law and instead unilaterally authorize non-lawyers to engage in conduct that constitutes the practice of law, and as discussed in greater detail below, outside of the standards set by the Court. *See* Art. II, Rule 10 (“Limited Liability Entities”) of the Supreme Court Rules.

The complaint also referenced two other statutory provisions. The first is § 11-27-3(a) (“Receipt of fees as practice of law”), which states, in relevant part:

“(a) Except as provided in subsection (b), any person, partnership, corporation, or association that receives any fee or any part of a fee for the services performed by an attorney at law shall be deemed to be practicing law contrary to the provisions of this chapter.”

The other is § 11-27-17, which provides criminal penalties for corporations engaged in the unauthorized practice of law, and states further, in relevant part:

“[T]he fact that any officer, trustee, director, agent, or employer shall be entitled to practice law in this state shall not be held to permit or allow any corporation or association to do any of the acts prohibited in this chapter, nor shall that fact be a defense upon the trial of any corporation or of any of the persons mentioned in this section for a violation of any of the provisions of §§ 11-27-3, 11-27-4, and 11-27-16 -- 11-27-18.”

At issue in this complaint is whether non-lawyers can perform the following services related to a real estate conveyance: title searches and examinations, closings, settlement services, and drafting certain legal documents. At all times relevant to the complaint, Attorney Senerchia was acting as an agent of SouthCoast

Title. SouthCoast Title is not a law firm. The specific real estate conveyancing services at issue are: title searches and examinations, closings, settlement services, and drafting certain legal documents.

In *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.*, 946 N.Ed.2d 665 (Mass. 2011), the Massachusetts Supreme Judicial Court addressed whether the particular services in a modern day real estate conveyance constitute the practice of law. In that case, the 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 regarding the unauthorized practice of law to the Supreme Judicial Court.

When the Supreme Judicial Court decided the case in 2011, the legal landscape in Massachusetts appears to have been much like it is today in Rhode Island and the Supreme Judicial Court's precedent was limited to an earlier pronouncement that the practice of law "embraces conveyancing." The Supreme Judicial Court then looked to the definition of conveyancing:

“[t]he act or business of drafting and preparing legal instruments, esp. those (such as deeds or leases) that transfer an interest in real

property.”” *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.Ed.2d at 675 (citing Black’s Law Dictionary 383 (9th ed. 2009)).

The Supreme Judicial Court concluded that “modern conveyancing of real property interests” “typically involves many more activities than merely drafting and preparing legal instruments.” The Supreme Judicial Court found,

“[m]any of the discrete services and activities that may fall within the penumbra of modern conveyancing do not qualify as the practice of law, and the talismanic invocation of the word ‘conveyancing’ is not sufficient to require that all of them be performed by or under the supervision of an attorney. Whether a particular service or activity constitutes the practice of law remains a fact-specific inquiry.” *Id.*, 946 N.Ed.2d at 675 (internal citations omitted.)

The Supreme Judicial Court addressed the various services performed in connection with real estate transactions and concluded:

1. “[T]he first step of the process, investigation of the record at the registry of deeds and preparation of a title report or abstract, generally *does not* constitute the practice of law[.]” *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.Ed.2d at 668 (Emphasis added).
2. “The second step in the process—analyzing title abstracts and other records to render a legal opinion as to marketability of title—*does* constitute practice of law[.]” *Id.* (Emphasis added.)
3. The drafting for others of deeds to real property *does* constitute the practice of law. *Id.* at 678.
4. Preparing settlement statements, like HUD-1 and HUD-1A, which are standardized government forms, and other mortgage-related forms for its lender clients *does not* constitute the practice of law. *Id.*
5. Issuance of title insurance commitments and policies to lenders and borrowers as a title insurance agency for underwriters generally *does not* constitute the practice of law. *Id.* at 681-682.

6. Handling of real estate closings *does* constitute the practice of law.⁵ *Id.* at 684-687.
7. Post-closing services which include reviewing closing documents to ensure valid execution, delivering documents to the appropriate registry of deeds for recording, disbursing mortgage funds in and of itself *does not* constitute the practice of law in Massachusetts. *Id.* at 679-681.

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 lawyers—along with the lawyers’ 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 concluded that “[t]he duties of a settlement agent are similar to an escrow agent and are limited to disbursing funds

⁵ When asked by the Committee to explain how real estate transactions in Rhode Island differ from those in Massachusetts, Attorney Senerchia stated that “the only difference is that a member of the Massachusetts Bar must participate in a substantial part of the actual transaction and closing in the Commonwealth of Massachusetts.” *Tr. Vol. I*, 82, 80-83, 97.

as per the closing instructions and filing settlement statements," and that serving as a settlement agent "in and of itself, does not qualify as the practice of law[.]" *Id.* at 36.

He further concluded that issuing title insurance policies is not the practice of 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.* As a result, Justice Silverstein dismissed all counts against Pilgrim Title.

When examining whether Pilgrim Title provided legal services during the handling of real estate closings, Justice Silverstein found that separate legal counsel performed those closing services in that case. In distinguishing closings from those real estate services that Justice Silverstein determined do not constitute the practice of law, Justice Silverstein appears to have found that the handling of real estate closings constitutes the practice of law stating,

"closing lawyers, 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." *See Rhode Island Resource Recovery Corp.*, CA No. PB10-5194, at 36 (citing *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 679).

Although the foregoing holding has no preclusive effect on this Court's determination of the ultimate issue, it nonetheless is a useful examination of some of the same issues now facing the Court.

On the issue of real estate closings, some jurisdictions have prohibited non-lawyers from performing real estate closings,⁶ while others have expressly allowed non-lawyers to perform real estate closings.⁷

The Committee finds the opinion of the Supreme Judicial Court in *Real Estate Bar Ass'n for Massachusetts, Inc.* and the decision of the Superior Court in *Rhode Island Resource Recovery Corporation* to be particularly instructive in resolving the current complaint and, for the following reasons, the Committee finds that SouthCoast Title engaged in the unauthorized practice of law.

To aid the Court in its consideration of this matter, the Committee addresses each of the services related to a real estate conveyance performed by SouthCoast Title and its agents.

⁶ Massachusetts (*Real Estate Bar Ass'n for Massachusetts, Inc.*, 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)).

⁷ 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 (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)).

1. Title Searches and Examinations

When Attorney Senerchia serves as title insurance agent on a transaction, SouthCoast Title is usually responsible for facilitating both a title search (or “abstract”) on the subject property and a title examination in order to determine marketable title.

The Committee understands the first phase of this task, the title search or abstract, to consist of the largely administrative function of compiling the documentation of all recorded acts pertaining to the subject property. An individual conducting a title search is typically limited to simply locating the relevant documents and assembling them for later examination. In light of the administrative nature of this function, and persuaded by the pronouncements on this issue by the Supreme Judicial Court and our Superior Court, the Committee finds that the title search and preparation of the title abstract is not the practice of law. *Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 677 n.15 (citing *Goldblatt v. Corporation Counsel of Boston*, 277 N.E.2d 273 (1971) (making reports and even recommendations about information discovered during search at registry of deeds is presumably not practice of law)); *Opinion of the Justices*, 194 N.E. 313 (1935) (“search[ing] of records of real estate to ascertain what may there be disclosed” is not practice of law)); *see also Rhode Island Resource Recovery*

Corporation, CA No. PB10-5194, at 15 (“[g]enerally, title examiners who examine record title and prepare title abstracts are not engaged in the practice of law[.]”)

The subsequent title examination, however, is of a more legal nature. After the title search is completed, Attorney Senerchia conducts an examination of the title to determine whether any defects encumber the title being transferred. Given that the precise function of a title examination is to determine the legal status of the title, along with the correlating legal consequences that status may have on the particular transaction, the Committee concludes that conducting a title examination is the practice of law. *See Real Estate Bar Ass'n for Massachusetts, Inc.*, 946 N.E.2d at 677 (“title examinations and providing title abstracts by themselves[] * * * may well constitute the practice of law when they are provided in conjunction with giving legal advice or providing legal opinions about the marketability or quality of the title or on any other subject.”) (Internal citations omitted).

Since the Committee finds that performing a title examination to determine the marketability of title is the practice of law, the next question is whether Attorney Senerchia’s provision of that service through SouthCoast Title was authorized. The Committee finds that having Attorney Senerchia perform those title examinations does not protect SouthCoast Title from the claim of unauthorized practice of law. It has been established that Attorney Senerchia performs title examinations on behalf of SouthCoast Title and that SouthCoast

Title is paid for those services. SouthCoast Title is a title insurance company, not a law firm. Attorney Senerchia may provide legal services to SouthCoast Title, but he cannot provide legal services to the customers of SouthCoast Title. When Attorney Senerchia provides legal services to the customers of SouthCoast Title, SouthCoast Title, in essence, functions as a law firm.

Law firms are subject to Article V of the Rhode Island Supreme Court Rules of Professional Conduct which includes rules on confidentiality (*Art. V, Rule 1.6*), conflicts of interest (*Art. V, Rules 1.7, 1.8, 1.9*), safekeeping property (*Art. V, Rule 1.15*), false and misleading communications concerning services (*Art. V, Rule 7.1, 7.4*), bookkeeping (*Art. V, Rule 1.19*), professional independence (*Art. V, Rule 5.4*), and firm names and letterheads (*Art. V, Rule 7.5; Art. II, Rule 10(j)*). The operation of SouthCoast Title most specifically implicates the sharing of legal fees between a lawyer (Attorney Senerchia) and a non-lawyer (Karen Senerchia) (*Art. V, Rule 5.4*) and the responsibilities regarding law-related services (*Art. V, Rule 5.7*).⁸ These professional obligations are not being met by SouthCoast Title.

⁸ The Commentary to Rule 5.7 (“Responsibilities Regarding Law-Related Services”) states:

“A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. *Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological*

Moreover, Rhode Island lawyers are authorized by the Supreme Court to practice law in this state as one of the approved corporate forms outlined in Article II, Rule 10 of the Supreme Court Rules (Professional service corporations, professional service benefit corporations, limited liability partnerships, and limited liability companies (limited liability entities)).⁹

SouthCoast Title fits none of the corporate forms authorized in Rule 10(a); rather, it is a title insurance company organized as a corporation under § 7-1.2-1701 (the Rhode Island Business Corporation Act).

SouthCoast Title contends that it is authorized to provide these real estate services under § 11-27-16(a) and the *Title Insurers Act* § 27-2.6-3(18)(ii)(B),(iii)-(iv) and § 27-2.6-3(17)(i). Again, the Committee is mindful that the Legislature

counseling, tax preparation, and patent, medical or environmental consulting.” *Id.* at Paragraph 9 (Emphasis added).

⁹ Article II, Rule 10(a) of the Supreme Court Rules, which states:

“(a) Lawyers at law admitted to practice before this Court may engage in the practice of law in the form of professional service corporations as provided by the Professional Service Corporation Law, G.L. 1956 §§ 7-5.1-1 to 7-5.1-12, as amended, professional service benefit corporations as provided by G.L. 1956 §§ 7-5.3-1 to 7-5.3-13, as amended, registered limited liability partnerships, as provided by the Uniform Partnership Act, G.L. 1956 §§ 7-12-31.1, 7-12-56 to 7-12-59, as amended, or as limited liability companies, as provided by the Rhode Island Limited Liability Company Act, G.L. 1956 §§ 7-16-1 to 7-16-75, as amended.”

can declare acts of unauthorized practice 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), but the Committee finds that the Legislature cannot unilaterally declare that certain conduct does not constitute the practice of law and it cannot authorize attorneys to practice law in contravention of Supreme Court Rules. *See* Article II, Rule 10 and Article V of the Supreme Court Rules.

2. Closings

The record in this matter confirms that Attorney Senerchia conducts real estate closings in Rhode Island through SouthCoast Title. During a real estate closing, the person conducting the closing functions to facilitate a valid conveyance of the property. This involves receiving the necessary items from the seller (i.e. the deed to the property and the keys) and also, most prominently, presenting the buyer with a series of documents for his or her review and signature. These “closing documents” are generally provided to the closer by the buyer’s lending institution (in a mortgage transaction) and include, among other things, the mortgage, the closing disclosure (previously referred to as a “HUD-1 Statement”), the promissory note, and other assorted financial documents usually required by the buyer’s lender in a mortgage transaction to secure financing for the property. The closer then presents these documents in successive order to the buyer for

signature, which are often times notarized by the closer, after which the documents are collected for recording and final settlement.

Attorney Senerchia indicated to the Committee that when he conducts a closing, he provides the buyer with an explanation and overview of each document and obtains the buyer's signature before moving to the next document. The Committee recommends that the Supreme Court find that conducting a real estate closing is the practice of law in Rhode Island because a real estate closing is an important transaction with monumental legal consequences. As noted by the Supreme Judicial Court in *Real Estate Bar Ass'n for Massachusetts, Inc.*:

“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.” 946 N.E.2d at 684.

Since the Committee concludes that conducting a real estate closing is the practice of law, the next inquiry is whether Attorney Senerchia's provision of that service through SouthCoast Title was authorized by the Supreme Court. Attorney Senerchia performs closings mostly in transactions where he has acted as the title insurance agent. Attorney Senerchia estimated that he personally conducted between fifty and one hundred closings in Rhode Island each year. When Attorney

Senerchia performs a closing, SouthCoast Title is listed on the closing disclosure and collects the fee.

Attorney Senerchia is licensed by the DBR as a title insurance agent and SouthCoast Title—of which he is a shareholder—might reasonably be considered to be in “the title business.” Nonetheless, neither § 11-27-16(a) nor the *Title Insurers Act* can unilaterally authorize the practice of law through an entity not approved by the Supreme Court.

The Committee recognizes that 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. As noted by Justice Silverstein, the closer has 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. Accordingly, the Committee recommends that the Supreme Court reserve this important function to duly licensed lawyers.

The Committee concludes that having Attorney Senerchia perform closings does not protect SouthCoast Title from the claim of unauthorized practice of law. Attorney Senerchia, as a licensed Rhode Island attorney, is individually authorized to practice law in Rhode Island. Here, Attorney Senerchia performs closings for customers of SouthCoast Title. SouthCoast Title is listed on the closing disclosure

and accepts payment. SouthCoast Title is a title insurance company, not a law firm. Attorney Senerchia can provide legal services to SouthCoast Title, but he cannot provide legal services to the customers of SouthCoast Title. When Attorney Senerchia provides legal services to the customers of SouthCoast Title, SouthCoast Title, in essence, functions as a law firm.

SouthCoast Title is not authorized to practice law in Rhode Island—it is a title insurance company organized as a corporation—and the company does not operate within the professional obligations of lawyers.

3. Settlement Services

After the closing documents have been signed, the transaction enters into the final settlement phase. The settlement begins when, after the closing, SouthCoast Title facilitates various final acts needed to complete the transaction, such as recording the deed, issuing the title insurance policies, and disbursing the funds in escrow to the buyer and any other parties entitled to payment as listed on the closing disclosure form. SouthCoast Title is paid a fee for performing these final settlement services which is recorded on the closing disclosure form. SouthCoast Title regularly provides these final settlement services in transactions where Attorney Senerchia has also acted as the title insurance agent.

The Supreme Judicial Court concluded that “[n]either reviewing documents to ensure valid execution nor delivering documents to the appropriate registry of

deeds for recording constitutes the practice of law” and “disbursing mortgage funds does not in and of itself qualify as the practice of law[.]”). *Real Estate Bar Ass’n for Massachusetts, Inc.*, 946 N.E.2d at 679-680. Justice Silverstein reached a similar conclusion 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,” and that serving as a settlement agent “in and of itself, does not qualify as the practice of law[.]” *Id.* at 36.

The record before the Committee establishes that SouthCoast Title provides settlement services which generally include recording the deed, issuing the title insurance policies, and disbursing the funds in escrow to the buyer and other parties to the transaction. However, the Committee finds that, based on the limited record before it, it cannot conclude that these component parts of the settlement service constitute the practice of law.

4. Preparation of Documents

On the seller-side of a transaction, Attorney Senerchia regularly provides sellers with “document preparation” services. These services consist of drafting the deed conveying the property from the seller to the buyer, along with residency affidavits and/or powers of attorney, if needed. When asked by the Committee, Attorney Senerchia testified that whenever he has drafted such documents for sellers, he has done so as an attorney practicing law through his law firm,

Senerchia & Sheehan, P.C., and that SouthCoast Title does not draft any documents on behalf of sellers. *Tr. Vol. I*, 59, 61-62, 98-99. Based on the record for it, the Committee concludes that SouthCoast Title does not draft documents for sellers and, therefore, is not engaged in the unauthorized practice of law in this respect.

D. Findings as to Specific Complaint Allegations and Other Facts.

1. 60 Pine Hill Road, Johnston

The facts of the particular transaction at 60 Pine Hill Road in Johnston are cataloged above. It is enough to state here that during that transaction, Attorney Senerchia acted as title insurance agent, and he also performed the title search, the title examination, and the closing. SouthCoast Title acted as settlement agent. For Attorney Senerchia's title search and examination, SouthCoast Title was paid \$275.00, and for SouthCoast Title's settlement services, SouthCoast Title was paid \$550.00. As analyzed above, the Committee finds that the performance of title examinations and closings constitute the practice of law.

Accordingly, because SouthCoast Title was paid for Attorney Senerchia's performance of the title examination and closing for the transaction—despite not being organized as one of the entity types approved under Article II, Rule 10 of the Supreme Court Rules—that practice has not been authorized by the Supreme Court.

The Committee is aware—as pointed out in the complaint—that SouthCoast Title’s provision of settlement services for the transaction were listed on the closing disclosure as “Attorney’s fees to SouthCoast Title and Escrow, Inc. [\$]550.00.” When specifically questioned by the Committee regarding the reference to attorney’s fees on the closing disclosure, Attorney Senerchia acknowledged that it was improper for him to have characterized the settlement services as attorney’s fees. Likewise, in response to the complaint, Attorney Sheehan performed a search of roughly seventy-five to eighty percent (75-80%) of the closing disclosures used in SouthCoast Title’s Rhode Island transactions dating back to 2014 (an estimated two hundred transactions) which showed a total of three instances (including the transaction at 60 Pine Hill Road) where SouthCoast Title’s settlement services were listed as attorney’s fees. *Tr. Vol. II, 7-19 Exhibit 13, ¶¶ 3-9.* SouthCoast Title attributed these three instances of listing their settlement services as “attorney fees” to a failure to “override the hard-coded description” automatically generated by their closing disclosure software. *Tr. Vol. II, Exhibit 13, ¶ 8.*

At this time, the Committee has nothing before it to suggest that SouthCoast Title made a regular practice of listing its settlement services as attorney’s fees on closing disclosures. Furthermore, during his testimony, Attorney Senerchia

assured the Committee that SouthCoast Title has taken active measures to ensure that such services are not described in that manner in the future.

2. SouthCoast Title’s Website

The complaint also made allegations that SouthCoast Title held itself out publically on its website as an entity authorized to practice law in Rhode Island. *See* § 11-27-12 (“Unauthorized holding out as qualified to practice law”); § 11-27-1¹⁰ (“‘Hold himself or herself out’ and ‘person’ defined”).

At the time of the complaint, SouthCoast Title’s website contained statements that could be interpreted to mean that it employed attorneys who could provide its customers with legal services. For example: “there is an attorney and paralegal available to meet your needs”; “[i]n addition to our experienced staff and attorneys we are ready to address any and all legal concerns that arise to facilitate a

¹⁰ Section 11-27-1 states, in full:

“(a) ‘Hold himself or herself out’ as used in this chapter includes the following: the assumption, use, or advertisement of the title of lawyer, attorney, attorney at law, counselor, counselor at law, solicitor, or any term or terms conveying the idea that the person in connection with whose name they or any of them are used is competent, qualified, authorized, or entitled to practice law, or the use of any kind of sign, token, symbol, card, letterhead, envelope, stationery, circular, or other writing, printing, or painting, or any representation by word or act, the purpose or tendency of which is to convey that idea.

(b) ‘Person’ when used in the phrase “another person” in this chapter, unless the context otherwise requires, includes partnerships, corporations, and associations.”

quick, effective resolution”; “There is a paralegal or attorney on call during closing no additional charge!”

The Committee concludes that the statements on the website, given their context, constituted the holding out of SouthCoast Title as an entity authorized to practice law. During the investigational hearing, Attorney Senerchia and counsel for SouthCoast Title indicated that the complaint had caused the company to recognize the issue with the offending language and that the company had taken immediate measures to remove the language from the website. *Tr. Vol. I*, 132-135; *Tr. Vol. II*, 6, *Exhibit 13*, ¶¶ 9-13. A review of the newly-edited website (www.sctitleinc.com) indicates that the language was indeed removed.

Consequently, because SouthCoast Title has recognized the concerns of public perception regarding its authority to practice law and taken remedial measures, the Committee recommends that no particular action be taken with respect to the website’s previous language.

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 SouthCoast Title have been sustained by a preponderance of the evidence and that they have engaged in the unauthorized practice of law.

In light of the various statutory provisions which have created a confusing legal landscape in Rhode Island for anyone in the title insurance business, the Committee recommends that no civil or criminal proceedings be initiated against SouthCoast Title and its agents, but that the Court make a pronouncement that the following acts constitute the practice of law and can only be performed by a lawyer: (a) conducting a title examination to determine the marketability of title, and (b) conducting a real estate closing.

The Committee further recommends that the aforementioned services, as the practice of law, can only be performed by lawyers in either an unincorporated law firm or as a law firm licensed by the Supreme Court pursuant to Article II, Rule 10 of the Supreme Court Rules.