

Is it OK to file legal pleadings secretly prepared by an attorney?

11 February 2010

For the attorney, this is called ghostwriting. Whether it is allowed depends on the jurisdiction and the specific court. For instance, in Massachusetts it has been allowed in the probate and family court in certain counties since 1 November 2006. When this ghostwriting is done, the filing must state it was "Prepared with the assistance of counsel" conspicuously. However, it is not allowed in other courts in Massachusetts. It is also not permitted in any federal court in Massachusetts, and presumably none in the entire country. Ellis v. Maine, 448 F.2d 1325, 1328 (1st Cir. 1971) (requiring any brief prepared in substantial part by an attorney to be signed by him); Durran v. Carris, 238 F. 3d 1268, 1273 (10th Cir. 2001) (same); Clarke v. United States, 955 F. Supp. 593, 598 (E.D. Va. 1997); United States v. Eleven Vehicles, 966 F. Supp. 361, 367 (E.D. Pa. 1997).

What is the concern about ghostwriting anyway? There are more than a few. First, rule 11 of the Federal Rules of Civil Procedure, and almost all equivalent state rules, requires that every pleading filed with the court to be signed by the attorney of record, if the party is represented, or the party himself if unrepresented. The rule also acts as a certification that the pleading/filing is not presented for an improper purpose, that the claims presented are warranted, and that the allegations made have evidentiary support. So when an attorney prepares the pleading but the pro se party (pro se means representing themselves) signs it, the attorney is allowed to skirt the requirements of rule 11. Another problem is that generally pleadings filed by pro se parties are held to a less stringent standard than those filed by attorneys. Haines v. Kerner, 404 U.S. 519, 520 (1972). So ghostwritten pleadings masquerading as ones being prepared by a pro se will be scrutinized under the less stringent standard for pro se prepared pleadings, which they do not deserve. Another issue is that the practice of ghostwriting allows lawyers to circumvent the rules covering their appearances and withdrawals from cases.

Some courts have taken a hard stance against ghostwriting and warned that not only will the offending attorney be subject to sanctions or discipline, but the pro se filer himself. Duran, 238 F.3d at 1272 (considering a ghostwritten pleading a misrepresentation by the pro se party as well as attorney); In re Mungo, 305 B.R. 762, 770 fn.2 (Bankr. D. S.C. 2003)(warning the ghostwritten pleadings filed by pro se parties could be stricken). So if you are considering filing a ghostwritten pleading, you should make sure that it is permitted in the particular jurisdiction and court you plan to file the pleading in.

Contact: George E. Bourguignon, Jr., Esq.

(413) 746-8008

[www.bourguignonlaw.com](http://www.bourguignonlaw.com)

Ghostwriting a legal pleading. Filing a motion prepared by an attorney. Filing a motion prepared by a lawyer. Is it OK to file a paper created by a lawyer?