

UPL— We Need Your Input



John T. Berry

Allen Shayo, an attorney I worked with in Arizona, wrote an interesting statement about the unauthorized practice of law (UPL) that goes like this: “Want to get rid of that pesky aneurism, but want to avoid paying those outrageous doctor bills? Want to build a 40-story building, but don’t want to pay sky-high architect fees? Want to resolve a complex legal matter that may have profound implications on your rights, but don’t want to pay a lawyer? Call 1-800-NOT-QUALIFIED. At Not Qualified, we’re cheap, unregulated, and totally unaccountable for our actions. So call 1-800-NOT-QUALIFIED today—for those times when a trained and regulated professional just won’t do.”

Much of my career has been spent enforcing UPL rules and being involved in the policy considerations leading to the enactment of those rules.

State Bar of Michigan Rule 16 adopted by the Michigan Supreme Court provides:

The State Bar of Michigan is hereby authorized and empowered to investigate matters pertaining to the unauthorized practice of law and, with the authority of its Board of Commissioners, to file and prosecute actions and proceedings with regard to such matters.

The policy consideration behind that rule and similar rules throughout the country is the placement of public protection as the cornerstone principle. That principle is not inconsistent with the proposition that only trained, tested, and regulated professionals should be allowed to practice law. To what extent that regulation to protect the public should extend to nonlawyers is the question.

The issue over the extent of UPL prosecution is complicated. Who should be in charge of enforcing these rules? How do we define the practice of law? How far must we first go to provide more uniform and affordable access to justice before we embark on an increased prosecution effort? What kinds of cases should be prosecuted? How important is it to educate the public and listen to their opinion on this important topic? How does this responsibility of the Bar rate compared to all others?

The discussion of those and other questions will follow in a future article, but for now it is my hope and purpose to accomplish one thing today. We need your observations and feelings.

After hearing from you, we will compile the input and report back to you your fellow lawyers’ thoughts.

This may not be the most scientific sampling of members’ opinions, but my guess is that your comments will reflect both great insight and strongly felt emotions. This is your time to add your more than two cents’ worth. This article has not attempted to pontificate, sway, or even educate. It is for you to help educate us on your feelings and day-to-day experiences.

Few, if any of us, will remain unaffected by the decisions we make on this issue. Some decisions may be made outside of our control but now is your time to say what we should do. If for no other reason you will be “touched” by the future direction we take as it relates to how your hard earned dues money is being spent.

At the Representative Assembly meeting on April 28, 2001, I made a presentation on UPL. At the end of the presentation, I asked the members to raise their hands if they felt this was an important issue to both them and their constituents. Almost all hands went up—no, they shot up, as if the first hand up would receive a free trip to Hawaii next December.

If they were correct, we truly need you to e-mail us. If you do not, there are at least three possible reasons, which are all hard for me to swallow. First is that you don’t care. Second is that you care but you think your opinion does not matter. Last, and worst of all, is that no one out there is reading this.

Whether you care or not is your decision, but we at the Bar will listen to what you think and it is our hope that by seeking your input on matters affecting your lives that you will read these articles.

Thanks in advance for your help.

P.S. Anyone out there feel so strongly about this issue that they would volunteer their time, if requested, to help litigate extremely time-consuming UPL cases? ♦

**Share your
thoughts/concerns**

Please forward comments to
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