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September 14, 2012

Hon. Robert P. Young, Jr.
Michigan Supreme Court
3034 W Grand Blvd Ste 8-500
Detroit, MI 48202-6010

Dear Chief Justice Young and Justices,

The State Bar of Michigan, with the endorsement of its Representative Assembly, respectfully requests the Court's consideration of the adoption in court rule of a definition of the practice of law. The basis for this request is protection of the public.

Like most states, Michigan's definition of the practice of law has been defined solely by the common law. As the forms of legal practice have grown more diverse and complex and as the Internet has become a popular source of information about the law, our diffuse and inchoate common law definition is increasingly more a source of confusion than a source of guidance.

Michigan is not alone in experiencing this problem. Over the last decade, several states have adopted a court-rule based definition of the practice of law. We believe it is time for Michigan to join them.

The state's constitution¹ and the legislature² explicitly give the Supreme Court authority to take this action. At the Supreme Court's direction, the State Bar of Michigan bears the sole responsibility for enforcing the unauthorized practice of law.³ Our effectiveness in carrying out that mandate would be greatly assisted by the adoption of the definition we propose.

The rule was developed by a special committee that represented a broad constituency. It is not designed to break new ground; it is intended as a codification of Michigan's common law.

To assist your deliberations, we provide not only the recommended definition, but also the report of the special committee and the transcript of the April 2012 Representative Assembly meeting at which the rule was endorsed.

As always, we stand ready to assist the Court in any way with your deliberation of this issue.

Sincerely,



Janet K. Welch
Executive Director

¹ Art. 6, section

² MCL 600.901, 904

³ Rule 16, Supreme Court Rules Concerning the State Bar of Michigan

REPORT OF THE SPECIAL COMMITTEE ON DEFINING THE PRACTICE OF LAW TO THE STATE BAR OF MICHIGAN BOARD OF COMMISSIONERS

Introduction

Michigan statutes outlaw the unauthorized practice of law, but do not make it a crime. The sole enforcement officer is the State Bar of Michigan; the only remedy is that of an injunction. What is, and is not, the practice of law is presently entrusted to the common law, but the common law of the State of Michigan is not an efficient mechanism to communicate to the layperson what the “practice of law” is or is not. A uniform definition of the practice of law may reduce litigation and enhance compliance and will assist with the enforcement by the State Bar of Michigan.

Michigan and her citizens continue to suffer economic hardship, and while the demand for non-lawyer help with legal problems grows, so does the supply of unqualified persons, economically motivated and willing to prey. This increases the threat both to the integrity of the legal profession and to the well-being of Michigan citizens. It also makes it more important than ever to provide guidance to non-lawyers in nonprofit programs providing appropriate assistance and information to the public.

Attached hereto under Appendix I is the Special Committee on Defining the Practice of Law’s (Committee)¹ proposed definition of the practice of law. To emphasize the intent of the proposed definition, the Committee has included a preamble describing its purpose.

The proposed definition of the practice of law codifies and highlights existing common law. The definitive rulings of the Michigan Supreme Court and other appellate cases are re-affirmed. The proposed definition achieves two salutary purposes:

1. It provides clear and accessible guidance to those persons who might venture in to proscribed territory about what they may and may not do; and

¹ The Committee consists of distinguished practitioners across a broad constituency:

Stephen Gobbo (Chair), Representative Assembly
Danny Inquilla, Justice Initiatives Committee
Jerome Pesick, Real Property Law Section
Amy Tripp, Probate and Estate Planning Section (also represented Elder Law and Disability Rights)
James Harrington III, Family Law Council, Family Law Section
Judge Elwood Brown, Judicial Conference Section
Anthony Bellanca, Macomb County Bar Association
Hon. Susan Dobrich, State Bar of Michigan Judicial Crossroads Task Force
Linda Rexer, Michigan State Bar Foundation, Solutions on Self-Help Task Force
Christopher Hastings, Standing Committee on the Unauthorized Practice of Law

Committee members were charged with soliciting input from their constituencies, which was considered by the Committee in doing its work. Biographical summaries for Committee members are attached hereto under Appendix II.

2. It establishes parameters for the various and growing number of public service organizations, such as Kent County's Legal Assistance Center, working to assist the growing number of persons who cannot afford lawyers access to legal information and resources in an appropriate manner, by expressly permitting their good work to continue.

Overview

The State Bar Standing Committee on the Unauthorized Practice of Law ("Standing Committee") first drafted a proposed definition of the practice of law after Washington adopted the first modern rule-based definition in 2001, but the effort was tabled for lack of interest. Since then, Arizona, the District of Columbia, Utah, and Hawaii have each adopted similar rules. These rules are each, to some extent, a model for the proposed definition submitted with this Report.

Interest in codifying the definition of the practice of law in Michigan grew in the wake of the Michigan Supreme Court's decision in *Dressel v Ameribank*, 468 Mich 557, 664 NW2d 151 (2002), a decision which included the following holding:

"We hold that a person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion and profound legal knowledge." *Dressel*, 468 Mich at 569.

The Standing Committee understood these words to articulate a position that the exercise of legal discretion and profound legal knowledge was a sufficient condition for an actor to be practicing law. Unlicensed persons, however, would argue that the Michigan Supreme Court's holding describes a necessary condition, thus making the performance of many tasks that have for centuries been in the sole domain of licensed practitioners now within the public domain. Lawyers perform many tasks which could be accomplished without the exercise of profound legal knowledge. The key is that lawyers have the training and experience to recognize those situations where a form document, or boilerplate language, will not work. When non-lawyers can hold themselves out as qualified to perform these tasks, the public is at risk, not necessarily because the lawyer would have used profound legal knowledge, but because the lawyer has it available, and can recognize when it is needed.²

In 2009, the Standing Committee resumed its efforts to draft and promote a definition of the practice of law, with the specific goal of clarifying the language discussed above as a sufficient, but not a necessary component of the practice of law. Since then, the economic collapse and the growth in unauthorized legal practices have lent additional urgency to the effort as the State Bar struggles to marshal scant resources to cover a growing problem.

² For example, trust mills sell expensive standard form "living trusts" as a part of a standard estate plan, not understanding that placing the family home and other assets into a living trust will cause them to lose their exemption in the calculus for Medicaid benefits, depriving otherwise eligible Michigan citizens of this critical benefit at a time of their lives when they are least able to address the issue.

In March of 2011, State Bar President Tony Jenkins appointed this Committee, with the following mandate:

- Examine a proposed rule-based definition of the practice of law prepared by the Unauthorized Practice of Law Committee and to provide constructive guidance regarding enhancements, potential benefits to the public and the legal community and potential areas of concern;
- Examine alternative approaches to address the unauthorized practice of law and to consider mechanisms to protect persons needing legal assistance from unauthorized legal practices; and
- Provide a report of conclusions reached by the Ad Hoc Committee and its recommendations to the Board of Commissioners.

This document is that report.

Findings and Conclusions

The Michigan Supreme Court's opinion in *Dressel* revises its prior conclusion that defining the practice of law is "impossible," to find the task merely "formidable." *Dressel*, 468 Mich at 562. The Committee agrees, and commends the Standing Committee for undertaking this challenge, which has involved scores of hours of legislative and judicial analysis, including exhaustive analysis of the practices of all 50 United States, as well as Puerto Rico and Washington D.C.

The Committee unanimously endorses the proposed definition, and recommends it for inclusion into the Rules Concerning the State Bar of Michigan as Rule 16.1, Definition of the Practice of Law. We believe the proposed definition codifies and clarifies Michigan common law, provides *transparency* into issues arising out of the "practice of law," furnishes necessary guidance to lawyers and others, and will enhance the enforcement efforts of the Standing Committee.

There is no magic bullet. Problems arise out of enforcement imperatives. The resources of the State Bar of Michigan are limited.³ Additional enforcement is within the purview of the Legislature; however, these are separate and distinct issues from "defining" the practice of law. Advancing and marshalling support for relevant legislative opportunities are within the purview of the capable hands of the Standing Committee.

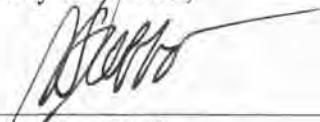
Funding issues and resources for protecting the citizens of the State of Michigan from predatory unauthorized legal practice attacks are properly deferred to future strategic planning or other appropriate State Bar committees, as they are not within the scope of this Committee's jurisdictional mandate.

³ Related issues abound. For example, title companies, who have long been at odds with the Standing Committee, routinely prepare deeds without the benefit of legal counsel, and, presumably in an effort to immunize themselves from fault in the event the deed is defectively drafted, "comply" with the recording requirement of MCL 565.201a by falsely identifying the buyer or the seller of the property as the drafter of the deed.

This Committee urges the Board of Commissioners and the Representative Assembly to recognize the *consensus* efforts of the participants on this Committee and the Standing Committee, and consider the proposed definition in *whole cloth fashion*. The proposed definition is the product of a wide range of perspectives, bringing experience from multiple parts of the legal profession, and incredible effort has been exerted to assure that no language in any particular section of the proposed definition is inconsistent with existing case law or other sections.

This Committee is aware that there is among our membership disappointment, sometimes profound or even anger, with the current status of the common law on unauthorized legal practices, particularly in light of *Dressel*, but has resisted suggestions to remake the law into what we wish it were, as that is the province of the Michigan Supreme Court. Instead, the proposed definition acknowledges the Michigan Supreme Court's authority in this regard, including its authority to further interpret the law. The Committee believes that this approach is necessary to gain serious consideration of the Michigan Supreme Court of the proposed rule-based definition of the practice of law.

Respectfully submitted,



Stephen Gobbo, Chair

Anthony Bellanca
Hon. Elwood Brown
Hon. Susan Dobrich
Christopher Hastings
James Harrington III
Danny Inquilla
Jerome Pesick
Amy Tripp
Linda Rexer

APPENDIX I

[PROPOSED]
DEFINITION OF THE PRACTICE OF LAW

PREAMBLE

This preamble is part of the comment to this Rule, and provides a general introduction regarding its purpose. Every jurisdiction in the United States recognizes the inherent right of individuals to represent themselves in legal matters. In contrast, the privilege of representing others in our system is regulated by law for the protection of the public, to ensure that those who provide legal services to others are qualified to do so by education, training, and experience and that they are held accountable for errors, misrepresentations, and unethical practices. The following rule defining what constitutes the practice of law in Michigan is promulgated by the Michigan Supreme Court pursuant to its inherent authority to define and regulate the practice of law in this state. The purpose of the rule is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.

RULE 16.1 DEFINITION OF THE PRACTICE OF LAW

(A) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge and skill of a person trained in the law. This includes, but is not limited to:

(1) Counseling or assisting another in matters that require the use of legal discretion and profound legal knowledge.

(2) Selection and/or preparation of any legal document in written or electronic form, including but not limited to deeds, mortgages, assignments, discharges, leases, contracts, releases, trust instruments, wills, codicils, agreements, pleadings, papers, proposed court orders, and other documents purporting to affect or secure legal rights. This does not include preparation of routine forms incidental to a regular course of business.

(3) Representation of another entity or person, including but not limited to representation of entities by officers, directors or agents thereof:¹

(a) in a court;

(b) in a formal administrative adjudicative proceeding or other formal dispute resolution process; or

¹ See MCL 450.681

(c) in any proceeding in which a record is established as the basis for appellate, judicial or administrative review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person.

(5) Holding oneself out as authorized or competent to practice law in the State of Michigan, including the use of designations or characterizations such as “esquire,” “esq.,” “attorney at law,” “counselor at law,” “legal representative,” “legal advocate,” or “judge.”

(6) Giving advice or counsel to others about their legal rights or responsibilities, or the legal rights or responsibilities of others.

(B) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to admissions to practice rules, including but not limited to MCR 8.120, MCR 8.126, W.D. Mich. L.R. Civ. 83.1(h), W.D. Mich. L.R. Crim. 57.1 and E.D. Mich. L.R. 83.21.

(2) Acting as a lay representative in an administrative agency or tribunal, when specifically authorized by statute.

(3) Serving in a neutral capacity, for example as a mediator, arbitrator, conciliator, or facilitator in a proceeding that is not subject to judicial review, or, in a proceeding that is subject to judicial review, as provided by statute or court rule.

(4) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(5) Providing assistance to another to complete a form provided by a court for protection under MCL 600.2950; MSA 27A.2950 or MCL 600.2950a; MSA 27A.2950(1) (domestic violence prevention) when no fee is charged to do so.

(6) Acting as a legislative lobbyist.

(7) Providing through a government or tax-exempt legal self help center or program, neutral information and assistance to the public (including making available legal forms or general legal information about procedural or substantive legal topics) without giving legal advice or legal counsel and without other than a nominal charge.

(8) Activities which are preempted by Federal law.

(9) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law.

(C) Nonlawyer Assistance: Nothing in this Rule shall affect the ability of nonlawyers to act under the supervision of a lawyer in compliance with Rule 5.3 of the Michigan Rules of Professional Conduct.

(D) Definitions: The term “pleading” refers to documents as defined by MCR 2.110(A). The term “paper” refers to all other legal documents submitted in court and administrative proceedings.

(E) General Information: Nothing in this Rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public. Nothing in this Rule shall be taken to define or affect standards for civil liability or professional responsibility.

APPENDIX II

BIOGRAPHIES
Special Committee on Defining the Practice of law

Anthony J. Bellanca, Esq.

Bellanca, Beattie & DeLisle, P.C., Harper Woods, MI

Anthony J. Bellanca was admitted to SBM in 1964. His practice has concentrated on real estate, business organizations, transactional law, and related fields. Mr. Bellanca served as the 81st President of the Macomb County Bar Association (MCBA), the second largest volunteer bar association in Michigan. He has been an active committee chair, director, and officer of the MCBA for more than 30 years and represents the interests of the general practice lawyer in Southeast Michigan.

Hon. Elwood L. Brown

St. Clair County Probate Court, Port Huron, MI

Judge Elwood L. Brown was admitted to the SBM in 1979. He has served as a St. Clair County Probate Judge since 1999 focusing on Juvenile and Family law. He previously held the position of County Prosecuting Attorney from 1993 to 1999 and Assistant Prosecuting Attorney from 1981 to 1991. Judge Brown has served as chair of the Judicial Ethics Committee since 2009 and will serve as the President-Elect of the Michigan Probate Judges Association (MPJA) for the 2011-2012 bar year. Other leadership positions include past president of the Prosecuting Attorney's Association of Michigan and past co-chair of the Professional and Judicial Ethics Committee.

Hon. Susan L. Dobrich

Cass County Circuit Court Family Division, Cassopolis, MI

Judge Dobrich has served as the Chief Probate Judge of Cass County since 1995 and is also assigned to the Family Division of the Cass County Circuit Court. Her service includes: the MPJA Executive Board, the MPJA past President, the Governor's Task Force for Juvenile Justice, the Court Improvement Project, the MPJA representative on the Judicial Crossroads Task Force, the Solutions on Self-Help (SOS) Task Force, and the MPJA representative on the Judicial Conference Section. She has been a member of the SBM since November 1980.

Stephen J. Gobbo, Esq.

State of Michigan, Lansing, MI

Stephen Gobbo is chair-elect of the Representative Assembly and is in his second term as a member of the Standing Committee on the Unauthorized Practice of Law (UPL Committee). He is the Legal Affairs Division Director, Bureau of Commercial Services, Michigan Department of Licensing and Regulatory Affairs. He has been involved with civil, criminal, quasi-judicial, administrative law proceedings, and regulatory matters of public bodies for over 30 years. He is a graduate of the Thomas M. Cooley Law School and was admitted to the SBM in 1997.

James J. Harrington, III, Esq.

Law Offices of James J. Harrington III, PLC, Novi, MI

James J. Harrington, III was admitted to the SBM in 1973 and has focused his practice on Family law matters. He has established appellate records in Family law, including the landmark *Kowalesky v Kowalesky* case, regularly cited by many appellate Courts deciding a business valuation claim. He has presented at Family Law Section seminars about appeals and discovery in divorce cases, authored several published articles in his area of practice, lectured at the University of Detroit Mercy Law School, and served as a ICLE faculty member, including the Family Law Institute.

Christopher G. Hastings, Esq.

Thomas M. Cooley Law School. Grand Rapids, MI

Christopher G. Hastings has served as chair of the UPL Committee since 2008 and been a member since 2000. He practiced complex civil litigation from 1987 through 2006 at Miller Canfield and Drew Cooper and Anding, before leaving private practice to teach civil procedure at the Grand Rapids campus of Thomas M. Cooley Law School. Mr. Hastings serves on the board of trustees of the Kent County Legal Assistance Center and served on the Local Rules Committee of the U.S. District Court (WD Mich). His most recent publication is “Judging in West Michigan: Celebrating the Community Impact of Effective Judges and Courts,” (2011) with Nelson Miller, Kara Zech Thelen, and Devin Schindler. Mr. Hastings is a graduate of the University of Michigan Law School and was admitted to the SBM in 1987.

B. Daniel Inquilla, Esq.

Farmworker Legal Services of Michigan, Kalamazoo, MI

B. Daniel Inquilla is co-managing attorney of Farmworker Legal Services, a statewide division of Legal Services of South Central Michigan that serves migrant and seasonal farmworkers. He represents clients in matters involving immigration law, employment disputes, and access to government benefits. Mr. Inquilla also serves as a Commissioner on the Hispanic/Latino Commission of Michigan. He is a graduate of the University of Notre Dame Law School and Michigan State University, and was admitted to the SBM in 2000.

Jerome P. Pesick, Esq.

Steinhardt Pesick & Cohen PC, Birmingham, MI

Jerome P. Pesick is the managing shareholder of Steinhardt Pesick & Cohen, P.C. where he practices in the areas of eminent domain, condemnation, and property tax appeals. During his 33 years in practice, he has represented clients in major condemnation projects and in property tax appeal cases involving business properties. Mr. Pesick is a member of the Litigation Section and immediate past chair of the Real Property Law Section. As a member of the Oakland County Bar Association, he served as Chair of the Circuit Court Committee. Mr. Pesick is the author of several articles on eminent domain, and is also a frequent speaker, instructor, and lecturer at state and national eminent domain conferences.

Linda K. Rexer, Esq.

Michigan State Bar Foundation, Lansing, MI

Linda K. Rexer has been the Executive Director of the Michigan State Bar Foundation (MSBF) since 1987 and has provided leadership to improve access to justice, especially for civil legal aid for the poor. The MSBF awards about \$10 million annually in grants. Ms. Rexer was a founding member of the Access to Justice Task Force in 1997 and serves on its successor entity, the Justice Initiatives Committee and is a member of its Pro Bono Initiative. She has also provided expertise to other state and national workgroups and task forces working to advance civil and criminal legal aid for the poor. Ms. Rexer received the State Bar’s Michael Franck Award in 2005. She served on the Judicial Crossroads Task Force Access to Justice Subcommittee and co-chairs the statewide Solutions on Self-Help Task Force. She is a graduate of the University of Notre Dame Law School and was admitted to the SBM in 1978.

Amy R. Tripp, Esq.

Chalgian & Tripp Law Offices PLLC, Jackson, MI

Amy R. Tripp was admitted to the SBM in 1998 and is the former Chair of the Elder Law and Disability Rights Section. She is the author of the Chapter on Special Needs Planning, which appears in the ICLE publication: Advising the Older Client or Client with a Disability. She is a frequent speaker on issues of Elder Law and Special Needs, a member of the prestigious Special Needs Alliance and the Academy of Special Needs Planners as well as an active member of the Probate and Estate Planning Section and the National Academy of Elder Law Attorneys. Ms. Tripp received the Nadene Mitcham Courage and Heart Award (2009) from the Michigan Campaign for Quality Care.

[PROPOSED – *INCLUDES ANNOTATIONS*]
DEFINITION OF THE PRACTICE OF LAW

PREAMBLE

This preamble is part of the comment to this Rule, and provides a general introduction regarding its purpose. Every jurisdiction in the United States recognizes the inherent right of individuals to represent themselves in legal matters. In contrast, the privilege of representing others in our system is regulated by law for the protection of the public, to ensure that those who provide legal services to others are qualified to do so by education, training, and experience and that they are held accountable for errors, misrepresentations, and unethical practices. The following rule defining what constitutes the practice of law in Michigan is promulgated by the Michigan Supreme Court pursuant to its inherent authority to define and regulate the practice of law in this state. The purpose of the rule is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.

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(1) Counseling or assisting another in matters that require the use of legal discretion and profound legal knowledge.

"Hence, our courts have consistently rejected the assertion that the Legislature thought that a person practiced law when simply drafting a document that affected legal rights and responsibilities. *Walter Neller*, 342 Mich. at 228-229, 69 N.W.2d 713; *Cramer*, 399 Mich. at 133, 249 N.W.2d 1. Instead, our courts have found a violation of the unauthorized practice of law statutes when a person counseled another in matters that required the use of legal knowledge and discretion. We agree and reiterate that a person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion and profound legal knowledge." *Dressel v Ameribank*, 468 Mich 557, 566; 664 N.W.2d (2003).

(2) Selection and/or preparation of any legal document in written or electronic form, including but not limited to deeds, mortgages, assignments, discharges, leases, contracts, releases, trust instruments, wills, codicils, agreements, pleadings, papers, proposed court orders, and other documents purporting to affect or secure legal rights. *Dressel*, 468 Mich at 567-68; *Detroit Bar Ass'n v Union Guardian Trust Co.*, 282 Mich 216, 276 NW 365 (1937); *State Bar of Michigan v Cramer*, 399 Mich. 116, 249 NW2d 1 (1976); *Grand Rapids Bar Ass'n v Denkema*, 290 Mich 56, 287 NW 377 (1939). This does not include preparation of routine forms incidental to a regular course of business. *Ingham County Bar Ass'n v Neller*, 342 Mich 214; 69 NW2d 713 (1955); *Dressel*, *supra*.

"When composing a document requires the 'determination of the legal effect of special facts and conditions' that activity constitutes the practice of law." *Dressel*, 468 Mich at 565. "[P]rofound legal

knowledge [is] necessary" to properly draft such documents." Id. Serving as a scrivener in the completion of standard legal forms, when there is no legal knowledge or discretion involved in the document's completion, and there is no counseling or advice as to the legal validity of the document or the prudence of entering into the transaction does not constitute the practice of law. *Dressel, 468 Mich at 567-68.*

Some activities are plainly the practice of law. " 'It is too obvious for discussion' " that " 'the conduct of cases in courts' " is the practice of law, as is " 'the preparation of pleadings and other papers incident to actions ... and the management of such actions and proceedings on behalf of clients before judges and courts ... [.]' " *Detroit Bar Ass'n v. Union Guardian Trust Co.*, 282 Mich. 216, 222 [276 N.W. 365] (1937), quoting *In re Duncan*, 83 S.C. 186, 65 S.E. 210 (1909); and *Denkema*, [*supra*] at 63, 287 N.W. 377. Doing those things, at least doing them well, demands the unique training and skills of an attorney. It is likewise obvious that, for the same reason, the practice of law includes "the giving of legal advice in any action taken for others in any matter connected with the law," [*id.*] at 63, 287 N.W. 377, even though unrelated to any action in court. Much of what lawyers do is " 'performed outside of any court and [has] no immediate relation to proceedings in court,' " [*id.*] at 64, 287 N.W. 377, quoting *Opinion of the Justices*, 289 Mass. 607, 613, 194 N.E. 313 (1935), and giving competent legal advice requires a lawyer's training and skill. *Dressel, 468 Mich at 565.*

The rendering of legal advice peculiar to a particular person on a specific legal problem constitutes the practice of law. *Cramer, 399 Mich at 137-38.*

"The Court did not consider the advertisement and sale of do-it-yourself divorce kits containing the necessary forms together with an explanatory manual as constituting the unauthorized practice of law. However, the Court specifically distinguished this course of conduct from personal contact between defendants and their 'customers' in the nature of 'consultation, explanation, recommendation or advice or other assistance in selecting particular forms, in filling out any part of the forms or suggesting or advising how the forms should be used in solving the particular customer's marital problems'. The latter was enjoined because the relationship which developed between the parties was tantamount to that of attorney and client.

We also believe this to be a significant distinction. The advertisement and distribution to the general public of forms and documents utilized to obtain a divorce together with any related textual instructions does not constitute the practice of law. There can be no serious challenge raised to this or any enterprise which is otherwise in compliance with those regulations applicable to products placed in the stream of commerce.

The interests involved in divorce matters are considerable. Those persons offering advice on legal matters regarding child custody, contract and property rights, inheritance, separate property, and support, to name the more significant, must possess a measure of competency and judgment to insure proper representation. Because defendant offers counsel in the form of professional guidance to persons seeking to extricate themselves from a legal relationship, the party represented, as well as the public in general, has a right to be assured that these interests are properly represented by members of the bar. To the extent that defendant provides personal advice peculiar to the dissolution of a specific marriage, she is engaged in the 'unauthorized practice of law' contrary to M.C.L.A. s 600.916." *Cramer, supra at 136-138.*

The preparation of wills for others is the practice of law. *Union Guardian Trust Co., 282 Mich at*

Examining legal documents and giving legal opinions about them; a non-realtor engaging in the business of preparing leases, land contracts, deeds, and mortgages for third parties; giving advice about probate matters, including appearing in probate court, preparing petitions and orders (except when acting as recognized fiduciary), and giving legal advice regarding the proper proceeding to sell or mortgage estate property constitutes the practice of law. *Denkema*, 290 Mich at 61-69.

"The trial court enjoined defendant from drafting any proposed will, outline or suggestion thereof for another; preparing and filing papers in connection with the probating and appearing in probate court for the purpose of obtaining orders and decrees, except in cases in which he acts as guardian, administrator, executor or trustee; advising persons in connection with the probating of estates; examining and giving opinions on abstracts of title of real property; preparing for others legal instruments incidental to the sale, leasing or mortgaging of real property, except in cases in which he is one of the parties in interest; practicing law and performing legal services for and giving legal advice to others, in Michigan. Defendant appeals from portions of the decree of the trial court, urging that he should be allowed to do some of the things which the trial court enjoined him from doing. *Denkema*, 290 Mich at 61-62. The activities of the defendant in connection with the probate of estates in which he was not personally interested come within the prohibition of the Michigan statute. Defendant was properly enjoined from practicing law, or engaging in the law business, in violation of 3 Comp.Laws 1929, § 13587. The decree of the trial court will be modified in accordance herewith, and affirmed. *Id.* at 69.

Note, *Denkema* was not overruled by *Dressel* regarding real estate transactions because "[d]efendant [wa]s not personally a licensed real estate broker and ha[d] never sold real estate." *Id.* at 59. Defendant was a loan broker and thus was not completing and executing form documents incidental to his business. Rather, he was **in the business** of preparing the particularized forms for a fee. "The difference between the *Denkema* case and the one at bar is that in the former the defendant appeared to be in the business of executing these instruments rather than doing so without extra compensation and as incidental to another lawful business. *Neller*, 342 Mich at 222.

'In *Walter Neller*, we remarked that a realtor who charged a separate fee for a real estate closing might be engaged in the practice of law. However, the holding in the case was that the defendant was not practicing law by completing and executing form documents that were incidental to his business." *Dressel*, 468 Mich at 568, fn 8.; *Inghan County Bar Ass'n v Neller*, 342 Mich 214, 218; 69 NW2d 713 (1955).

Completing and filling "out printed forms of offers to purchase real estate, warranty deeds, quit claim deeds, land contracts, land contract assignments, leases, and notices to terminate tenancy incidental to their handling and consummation of real estate transactions in which respondents were acting as real estate brokers, no separate charge" is not the practice of law. *Neller*, 342 at 210. "Accordingly we conclude that while the statutes do not define the practice of law, they do reveal, at the very least, the right of licensed real estate brokers to engage in conveyancing in the manner complained of when it is incidental to the items of business they are transacting." *Id.*

(3) Representation of another entity or person, including but not limited to representation of entities by officers, directors or agents thereof:¹

(a) in a court;

(b) in a formal administrative adjudicative proceeding or other formal dispute resolution process; or

(c) in any proceeding in which a record is established as the basis for appellate, judicial or administrative review.

"In case in court, determination of the steps to be taken and control of the procedure and proceedings to enforce the remedy are exclusive functions of an attorney-at-law, where a party does not appear in his own." *Detroit Bar Ass'n v Union Guardian Trust Co.*, 282 Mich 216, 221, 276 NW 365 (1937). In accord with the foregoing authorities, we hold that, as indicated by the quoted opinions, the practice of law in certain aspects is solely a matter within judicial control. But there are also other activities commonly considered and sometimes judicially held to be the practice of law which are subject to legislative control. In the instant case there is no need nor do we attempt to definitely define a line of demarcation which separates the one phase of activity from the other. But we do hold the statute (3 Comp.Laws 1929, § 12018, as amended) is not invalid on the ground that the Legislature by investing trust companies with certain powers specified in the statute has invaded the judicial powers lodged in the courts by the Constitution." *Id.* at 228.

MCR 2.410 provides that:

(1) All civil cases are subject to alternative dispute resolution processes unless otherwise provided by statute or court rule.

(2) For the purposes of this rule, alternative dispute resolution (ADR) means any process designed to resolve a legal dispute in the place of court adjudication, and includes settlement conferences ordered under MCR 2.401; case evaluation under MCR 2.403; mediation under MCR 2.411; domestic relations mediation under MCR 3.216; and other procedures provided by local court rule or ordered on stipulation of the parties.

MCR 3.602(G) provides that:

A party has the right to be represented by an attorney at a proceeding or hearing under this rule. A waiver of the right before the proceeding or hearing is ineffective.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person.

The practice of law is engaging in the law business, which includes "the giving of legal advice in any action taken for others in any matter connected with the law." *Dressel*, 468 Mich at 565.

"To the extent that defendant provides personal advice peculiar to the dissolution of a specific marriage, she is engaged in the 'unauthorized practice of law' contrary to M.C.L.A. s 600.916; M.S.A. s 27A.916." *Cramer*, 399 Mich at 138.

¹ See MCL 450.681

Giving personal advice to a particular person on a specific legal problem constitutes the practice of law. *Michigan Hosp. Ass'n v Michigan Employment Sec. Com'n*, 123 Mich App 667, 671, 333 NW2d 319 (1983) *rev'd on other grounds* 422 Mich 188, 369 NW2d 839.

An attorney at law need not be in court or preparing to go into court to be engaged in the work as an attorney. *Fletcher v Board of Ed*, 323 Mich 343, 348, 35 NW2d 177 (1948).

(5) Holding oneself out as authorized or competent to practice law in the State of Michigan, including the use of designations or characterizations such as "esquire," "esq.," "attorney at law," "counselor at law," "legal representative," "legal advocate," or "judge."

"The state bar of Michigan is a public body corporate, the membership of which consists of all persons who are now and hereafter licensed to practice law in this state. **The members of the state bar of Michigan are officers of the courts of this state, and have the exclusive right to designate themselves as "attorneys and counselors," or "attorneys at law," or "lawyers."** No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto." MCL 600.901. (Emphasis added.)

"**A person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state.** A person who violates this section is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter." MCL 600.916. (Emphasis added.)

(6) Giving advice or counsel to others about their legal rights or responsibilities, or the legal rights or responsibilities of others.

The practice of law is engaging in the law business, which includes "the giving of legal advice in any action taken for others in any matter connected with the law." *Dressel*, 468 Mich at 565.

"To the extent that defendant provides personal advice peculiar to the dissolution of a specific marriage, she is engaged in the 'unauthorized practice of law' contrary to M.C.L.A. s 600.916; M.S.A. s 27A.916." *Cramer*, 399 Mich at 138.

Giving personal advice to a particular person on a specific legal problem constitutes the practice of law. *Michigan Hosp. Ass'n v Michigan Employment Sec. Com'n*, 123 Mich App 667, 671, 333 NW2d 319 (1983) *rev'd on other grounds* 422 Mich 188, 369 NW2d 839.

An attorney at law need not be in court or preparing to go into court to be engaged in the work as an attorney. *Fletcher v Board of Ed*, 323 Mich 343, 348, 35 NW2d 177 (1948).

(B) Exceptions and Exclusions: Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to admissions to practice rules, including but not limited to MCR 8.120, MCR 8.126, W.D. Mich. L.R. Civ. 83.1(h), W.D. Mich. L.R. Crim. 57.1 and E.D. Mich. L.R. 83.21.

(2) Acting as a lay representative in an administrative agency or tribunal, when specifically authorized by statute.

"Administrative agencies such as the MESC are created by the Legislature pursuant to its power to delegate nonlegislative functions to such agencies. Const.1963, art. 4, § 1. We do not believe the judiciary has the inherent power to assert ultimate authority over the practice of law in proceedings before the MESC. An attempted exercise of such authority would violate the separation of powers doctrine. Const.1963, art. 3, § 2. However wise or unwise the Legislature's decision to allow employers to be represented by nonattorney agents before the MESC, the Court may not disturb that decision." *State Bar of Michigan v Galloway*, 124 Mich App 271, 282-83, 285 (1983); *affirmed by State Bar of Michigan v Galloway*, 422 Mich 188, 191; 369 NW2d 839 (1985).

(3) Serving in a neutral capacity, for example as a mediator, arbitrator, conciliator, or facilitator in a proceeding that is not subject to judicial review, or, in a proceeding that is subject to judicial review, as provided by statute or court rule.

[Illustrative example - court rule; other statutory provisions and rule also applicable.]

MCR 2.411(F) provides that:

Small Claims Mediation. District courts may develop individual plans to establish qualifications for persons serving as mediators in small claims cases.

(2) *General Civil Mediation.* To be eligible to serve as a general civil mediator, a person must meet the following minimum qualifications:

(a) Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills;

(b) Have one or more of the following:

(i) Juris doctor degree or graduate degree in conflict resolution; or

(ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation.

(c) Observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator.

(3) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (F)(2), may apply to the ADR clerk for special approval. The ADR clerk shall make the determination on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator under this section.

(4) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is ground for removal from the list under subrule(E)(4).

(5) Additional qualifications may not be imposed upon mediators.

(4) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

[Illustrative example - statutory provides; others applicable.]

MCL 423.201(1)(a) provides that:

(a) "Bargaining representative" means a labor organization recognized by an employer or certified by the commission as the sole and exclusive bargaining representative of certain employees of the employer.

MCL 423.211 provides that:

Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bargaining representative has been given opportunity to be present at such adjustment.

(5) Providing assistance to another to complete a form provided by a court for protection under MCL 600.2950; MSA 27A.2950 or MCL 600.2950a; MSA 27A.2950(1) (domestic violence prevention) when no fee is charged to do so.

(6) Acting as a legislative lobbyist.

MCL 4.415(2) provides that:

"Lobbying" means communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action. Lobbying does not include the providing of technical information by a person other than a person as defined in subsection (5) or an employee of a person as defined in subsection (5) when appearing before an officially convened legislative committee or executive department hearing panel. As used in this subsection, "technical information" means empirically verifiable data provided by a person recognized as an expert in the subject area to which the information provided is related.

M.C.L.A. 4.415(4) provides that:

"Lobbyist" means any of the following:

(a) A person whose expenditures for lobbying are more than \$1,000.00 in value in any 12-month period.

(b) A person whose expenditures for lobbying are more than \$250.00 in value in any 12-month period, if the amount is expended on lobbying a single public official.

(7) Providing through a government or tax-exempt legal self help center or program, neutral information and assistance to the public (including making available legal forms or general legal information about procedural or substantive legal topics) without giving legal advice or legal counsel and without other than a nominal charge.

(8) Activities which are preempted by Federal law.

"[W]hen a state licensing law excludes a lawyer from the practice that federal rules expressly allow, the two rules *do* conflict, and the state law must give way." *In re Desilets*, 291 F.3d 925, 928 (6CA 2002) citing *Sperry v Florida ex rel the Florida Bar*, 373 US 379 (1963). See e.g., 42 USC § 406(a)(1), *Social Security Administration permits non-attorneys to serve as representatives for social security*; Code of Federal Regulations, 8 C.F.R. § 292.2 and § 1292.2., "Accredited representatives may assist aliens in immigration proceedings before the Executive Office for Immigration Review's immigration courts and Board of Immigration Appeals (Board), or before the Department of Homeland Security (DHS), or both."

(9) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law.

"In our opinion there is inherent power in the supreme court to regulate the qualifications of persons who may be permitted to practice law in this State. That the legislature has seen fit to adopt legislation to this end does not make the act unconstitutional. We do not think that the payment of a small annual fee for the purpose of carrying on the regulating of the profession detracts from the right to make rules and regulations for the benefit of the profession. We, therefore, hold that a lawyer on the inactive list of the State Bar of Michigan has no right to engage in the practice of law." Ayres v Hadaway, 303 Mich 589, 6 NW2d 905 (1942).

(C) Nonlawyer Assistance: Nothing in this Rule shall affect the ability of nonlawyers to act under the supervision of a lawyer in compliance with Rule 5.3 of the Michigan Rules of Professional Conduct.

(D) Definitions: The term "pleading" refers to documents as defined by MCR 2.110(A). The term "paper" refers to all other legal documents submitted in court and administrative proceedings.

(E) General Information: Nothing in this Rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public. Nothing in this Rule shall be taken to define or affect standards for civil liability or professional responsibility.

C

West's Alaska Statutes Annotated [Currentness](#)

Alaska Court Rules

▣ Rules of the Alaska Bar Association ([Refs & Annos](#))

▣ [Part VI](#). Miscellaneous [Suggested Title Added by Publisher]

→→ **Rule 63. Unauthorized Practice of Law--AS 08.08.230**

For purposes of [AS 08.08.230](#) (making unauthorized **practice of law** a misdemeanor), “**practice of law**” is **defined** as:

(a) representing oneself by words or conduct to be an attorney, and, if the person is authorized to practice law in another jurisdiction but is not a member of the Alaska Bar Association, representing oneself to be a member of the Alaska Bar Association; and

(b) either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which effect legal rights or duties.

CREDIT(S)

[Adopted effective January 15, 1989.]

State Bar Rule 63, AK R BAR Rule 63

Current with amendments received through 8/1/2012

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END OF DOCUMENT

Rule 31. Regulation of the Practice of Law.

Arizona Rules

Rules of the Supreme Court

V. REGULATION OF THE PRACTICE OF LAW

A. SUPREME COURT JURISDICTION OVER THE PRACTICE OF LAW

As amended through September 1, 2012

Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. "Legal assistant/paralegal" means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

D. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, signed by all disputants, to mediate a dispute.

(b) Authority to Practice. Except as hereinafter provided in section (c), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended or on disability inactive and no former member who has been disbarred status shall practice law in this state or represent in any way that he or she may practice law in this state.

(d) Exemptions. Notwithstanding the provisions of subsection (b), but subject to the provisions of subsection (c) unless otherwise stated:.

1. In any proceeding before the Department of Economic Security, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.
2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.
3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.
4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.
5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.
6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.
7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.
8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.
9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation or association before the superior court

(including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or

employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. In any administrative proceeding pursuant to 20 U.S.C. §1415(f) or (k) regarding any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education for any child with a disability or suspected disability, a party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging a party for the representation. The hearing officer shall have discretion to remove the individual, if continued representation impairs the administrative process or causes harm to the parties represented.

16. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.

17. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).

18. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to subsection (c).

19. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

20. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

21. Nothing in these rules shall prohibit the preparation of tax returns.

22. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

23. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

24. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration. Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney

or member has been certified as provided in §7-208 of the Arizona Code of Judicial Administration.

25. Nothing in these rules shall prohibit a mediator as defined in these rules from facilitating a mediation between parties, preparing a written mediation agreement, or filing such agreement with the appropriate court, provided that:

(A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or

(B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.

In all other cases, a mediator who is not a member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of judicial Administration, Part 7, Chapter 2, Section 7- 208.

26. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

(A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

(B) such representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization, and

(C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require counsel in lieu of lay representation whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

29. In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, an individual may be represented by a duly authorized agent who is not charging a fee for the representation, other than reimbursement for actual costs.

30. A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona code of judicial administration, Part 7, Chapter 2, Section 7-202.

Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties.

History. Amended June 6, 2005, eff. December 1, 2005; amended January 27, 2006, eff. June 1, 2006; amended September --, 2009, effective January 1, 2010; amended December 13, 2011, effective September 1, 2012.

C

Connecticut General Statutes Annotated [Currentness](#)

Rules for the Superior Court ([Refs & Annos](#))

☰ General Provisions

☰ Chapter 2. Attorneys

→→ § 2-44A. Power of Superior Court to Discipline Attorneys and to Restrain Unauthorized Practice--Definition of the Practice of Law

(a) **General Definition:** The **practice of law** is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:

- (1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the **practice of law** as herein **defined**.
- (2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.
- (3) Drafting any legal document or agreement involving or affecting the legal rights of a person.
- (4) Representing any person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
- (5) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is transferred where the advice or counsel, or the representation or purported representation, involves (a) the preparation, evaluation, or interpretation of documents related to such transaction or to implement such transaction or (b) the evaluation or interpretation of procedures to implement such transaction, where such transaction, documents, or procedures affect the legal rights, obligations, liabilities or interests of such person, and
- (6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Connecticut as established by case law, statute, ruling or other authority.

“Documents” includes, but is not limited to, contracts, deeds, easements, mortgages, notes, releases, satisfactions, leases, options, articles of incorporation and other corporate documents, articles of organization and other limited liability company documents, partnership agreements, affidavits, prenuptial agreements, wills, trusts, family settlement agreements, powers of attorney, notes and like or similar instruments; and pleadings and any other papers incident to legal actions and special proceedings.

The term “person” includes a natural person, corporation, company, partnership, firm, association, organization, society, labor union, business trust, trust, financial institution, governmental unit and any other group, organization or entity of any nature, unless the context otherwise dictates.

The term “Connecticut lawyer” means a natural person who has been duly admitted to practice law in this state and whose privilege to do so is then current and in good standing as an active member of the bar of this state.

(b) Exceptions. Whether or not it constitutes the practice of law, the following activities by any person are permitted:

- (1) Selling legal document forms previously approved by a Connecticut lawyer in any format.
 - (2) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where:
 - (A) Such services are confined to representation before such forum or other conduct reasonably ancillary to such representation; and
 - (B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice.
 - (3) Serving in a neutral capacity as a mediator, arbitrator, conciliator or facilitator.
 - (4) Participating in labor negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements.
 - (5) Providing clerical assistance to another to complete a form provided by a court for the protection from abuse, harassment and violence when no fee is charged to do so.
 - (6) Acting as a legislative lobbyist.
 - (7) Serving in a neutral capacity as a clerk or a court employee providing information to the public.
 - (8) Performing activities which are preempted by federal law.
 - (9) Performing statutorily authorized services as real estate agent or broker licensed by the state of Connecticut.
 - (10) Preparing tax returns and performing any other statutorily authorized services as a certified public accountant, enrolled IRS agent, public accountant, public bookkeeper, or tax preparer.
 - (11) Performing such other activities as the courts of Connecticut have determined do not constitute the unlicensed or unauthorized practice of law.
 - (12) Undertaking self-represented representation, or practicing law authorized by a limited license to practice.
- (c) Nonlawyer Assistance:** Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with [Rule 5.3 of the Rules of Professional Conduct](#).
- (d) General Information:** Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.
- (e) Governmental Agencies:** Nothing in this rule shall affect the ability of a governmental agency to carry out its responsibilities as provided by law.

(f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

(g) Unauthorized Practice: If a person who is not authorized to practice law is engaged in the practice of law, that person shall be subject to the civil and criminal penalties of this jurisdiction.

CREDIT(S)

[Adopted June 29, 2007, effective January 1, 2008.]

NOTES OF DECISIONS

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[1.](#) In general

Nonlawyers are forbidden from rendering any oral or written opinions as to validity or invalidity of titles to real estate. [Lunn v. Cummings and Lockwood \(2000\) 743 A.2d 653, 56 Conn.App. 363, Attorney And Client ☞12\(11\)](#)

No one is entitled to recover compensation for services as an attorney at law unless he has been duly admitted to practice before the court, and the same rule applies to a claim based on quantum meruit. [Biller Associates v. Rte. 156 Realty Co. \(1999\) 725 A.2d 398, 52 Conn.App. 18, certification granted in part 734 A.2d 566, 248 Conn. 916, affirmed 746 A.2d 785, 252 Conn. 400, Attorney And Client ☞12\(25\)](#)

Attempts to **define practice of law**, in determining whether individual is engaging in unauthorized **practice of law**, have not been particularly successful, and the more practical approach is to consider each state of facts and determine whether it falls within the fair intendment of the term. [C.G.S.A. § 51-88, Statewide Grievance Committee v. Patton \(1996\) 683 A.2d 1359, 239 Conn. 251, Attorney And Client ☞12\(4\)](#)

“Practice of law,” for purposes of determining whether individual is engaging in unauthorized practice of law, consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court; it embraces the giving of legal advice on a variety of subjects and the preparation of legal instruments covering an extensive field. [C.G.S.A. § 51-88, Statewide Grievance Committee v. Patton \(1996\) 683 A.2d 1359, 239 Conn. 251, Attorney And Client ☞12\(4\); Attorney And Client ☞12\(7\)](#)

[2.](#) Constitutional rights

While activity on outer boundaries of the practice of law might be impermissibly vague, such that prohibition against such activity by nonattorney would violate nonattorney's First Amendment rights, preparation of legal documents falls squarely within the boundaries. [U.S.C.A. Const.Amend. 1; C.G.S.A. § 51-88, Statewide Grievance Committee v.](#)

[Patton \(1996\) 683 A.2d 1359, 239 Conn. 251. Attorney And Client 12\(7\); Constitutional Law 1170](#)

3. Paralegals

Prohibiting unsupervised paralegal from advertising offer to prepare court documents in uncontested divorce actions, in violation of Connecticut statute prohibiting unauthorized practice of law, did not violate paralegal's First Amendment freedom of expression or Fourteenth Amendment rights to due process and equal protection. [U.S.C.A. Const.Amends. 1, 14; C.G.S.A. § 51-88. Monroe v. Horwitch, D.Conn.1993, 820 F.Supp. 682, affirmed 19 F.3d 9. Attorney And Client 12\(24\); Constitutional Law 1646; Constitutional Law 3684\(1\); Constitutional Law 4273\(2\)](#)

4. Advertising

Principle that advertising alone is sufficient to constitute the unauthorized practice of law if advertisement is for activity that amounts to legal services may apply despite the presence of disclaimers of being an attorney or providing legal advice. [Statewide Grievance Committee v. Zadora \(2001\) 772 A.2d 681, 62 Conn.App. 828. Attorney And Client 12\(4\)](#)

Advertising alone is sufficient to constitute the unauthorized practice of law if advertisement is for activity that amounts to legal services. [Statewide Grievance Committee v. Zadora \(2001\) 772 A.2d 681, 62 Conn.App. 828. Attorney And Client 12\(4\)](#)

Attorney's advertisement in Massachusetts telephone book constituted the practice of law in another state, within meaning of professional conduct rules. Rules of [Prof.Conduct, Rule 8.5. Haymond v. Statewide Grievance Committee \(1997\) 723 A.2d 821, 45 Conn.Supp. 481, affirmed 723 A.2d 808, 247 Conn. 436. Attorney And Client 12\(22\)](#)

For purposes of professional conduct rules, advertising legal services is expressly included within the practice of law. [C.G.S.A. § 51-88\(a\); Rules of Prof.Conduct, Rule 8.5. Haymond v. Statewide Grievance Committee \(1997\) 723 A.2d 821, 45 Conn.Supp. 481, affirmed 723 A.2d 808, 247 Conn. 436. Attorney And Client 12\(4\)](#)

5. Pro se parties


A pro se party may not appear on behalf of another pro se party; to do so would be to engage in the unauthorized practice of law. [C.G.S.A. § 51-88. Ackerly and Brown, LLP v. Smithies \(2008\) 952 A.2d 110, 109 Conn.App. 584. Attorney And Client 12\(5\)](#)


A pro se party may not appear on behalf of another pro se party; to do so would be to engage in the unauthorized practice of law. [C.G.S.A. § 51-88. Collard and Roe, P.C. v. Klein \(2005\) 865 A.2d 500, 87 Conn.App. 337, certification denied 876 A.2d 13, 274 Conn. 904. Attorney And Client 12\(5\)](#)


Because "pro se" means to appear for one's self, a person who is not an attorney may not appear on another person's behalf in the other's cause. [Lowe v. City of Shelton \(2004\) 851 A.2d 1183, 83 Conn.App. 750, certification denied 859 A.2d 568, 271 Conn. 915. Attorney And Client 12\(5\)](#)

6. Preparation of documents


Drafting, signing and filing of termination petitions by nonlawyer representatives of the Commissioner of the Department of Children and Families is expressly permitted by statute and rule of practice, and, therefore, such activities do not constitute the unauthorized practice of law. [C.G.S.A. §§ 17a-6\(n\), 17a-112, 51-88; Practice Book 1998, §](#)


[26-1\(l\)](#); Practice Book 1978, § 29. [In re Darlene C. \(1998\) 717 A.2d 1242, 247 Conn. 1](#), on remand [1998 WL 867330](#). [Attorney And Client](#)  [12\(21\)](#)

Operator of legal document preparation business engaged in unauthorized practice of law when he gave customers questionnaires regarding type of services they needed, sent completed questionnaires to office which prepared legal documents pursuant to franchise agreement, and then delivered completed documents to customers. [C.G.S.A. § 51-88](#). [Statewide Grievance Committee v. Patton \(1996\) 683 A.2d 1359, 239 Conn. 251](#). [Attorney And Client](#)  [12\(7\)](#)


Preparation of legal documents involves difficult or doubtful legal questions which, to safeguard public, reasonably demand application of trained legal mind, for purposes of determining whether individual is engaging in unauthorized practice of law. [C.G.S.A. § 51-88](#). [Statewide Grievance Committee v. Patton \(1996\) 683 A.2d 1359, 239 Conn. 251](#). [Attorney And Client](#)  [12\(7\)](#)

[7](#). Corporate or municipal officers


President and sole stockholder of subchapter S corporation would not be practicing law if she represented corporate plaintiff, and it would be contrary to [C.G.S.A. § 51-88\(d\)\(2\)](#), which provides that no person shall be prohibited under that section from practicing that law or pleading at bar of any court in state in his own cause, to deny her right to pursue her cause of action after case was transferred from the small claims division to regular docket. [Margaret Maunder Associates, Inc. v. A-Copy, Inc. \(1985\) 499 A.2d 1172, 40 Conn.Supp. 361](#). [Attorney And Client](#)  [12\(6\)](#)

A town clerk, who was not admitted as an attorney, but who searched records and issued certificates of title to savings banks, building and loan associations and commercial banks and received fees therefor and rendered opinions with respect to validity of titles to realty was practicing law without statutory authorization. Gen.St.Supp.1939, § 1231e (repealed); § 1381e (Rev.1949, § 7641). [Grievance Committee v. Payne \(1941\) 9 Conn.Supp. 253, 1941 WL 1071](#), Unreported, affirmed [22 A.2d 623, 128 Conn. 325](#). [Attorney And Client](#)  [12\(24\)](#)

[8](#). Banks and trust companies

Bank and trust company in giving general information to customers and prospective customers on such matters as federal and state tax laws, inter vivos and testamentary trusts, wills, etc., but giving no specific advice, charging no fee, and urging customers to consult their own attorneys for advice on their specific situations and have them draw any necessary instruments, was not engaged in illegal practice of law but performing acts as incident to its authorized fiduciary business. [Gen.St.1958, §§ 51-80, 51-88](#). [State Bar Ass'n of Conn. v. Connecticut Bank & Trust Co. \(1959\) 153 A.2d 453, 146 Conn. 556](#). [Attorney And Client](#)  [12\(12\)](#)

[9](#). Estate planning

An estate planner and salesman of shares in mutual funds engaged in illegal “practice of law” when he prepared wills and trusts for his customers and advised, as to the desirability in their circumstances, of the specific wills or trusts so prepared for them. [C.G.S.A. § 51-88](#). [Grievance Committee of Bar of Fairfield County v. Dacey \(1966\) 222 A.2d 339, 154 Conn. 129, 22 A.L.R.3d 1092](#), appeal dismissed [87 S.Ct. 1325, 386 U.S. 683, 18 L.Ed.2d 404](#), rehearing denied [87 S.Ct. 2048, 387 U.S. 938, 18 L.Ed.2d 1006](#). [Attorney And Client](#)  [12\(12\)](#)

Practice Book 1998, § 2-44A, CT R SUPER CT GEN § 2-44A

Current with amendments received through 5/15/2012

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C**District of Columbia State Rules** [Currentness](#)Rules of the **District of Columbia** Court of Appeals ([Refs & Annos](#))[Title VI](#). General Provisions**→→ Rule 49. Unauthorized Practice of Law**

(a) **General Rule.** No person shall engage in the practice of law in the **District of Columbia** or in any manner hold out as authorized or competent to practice law in the **District of Columbia** unless enrolled as an active member of the **District of Columbia** Bar, except as otherwise permitted by these Rules.

(b) **Definitions.** The following definitions apply to the interpretation and application of this rule:

(1) “Person” means any individual, group of individuals, firm, unincorporated association, partnership, corporation, mutual company, joint stock company, trust, trustee, receiver, legal or business entity.

(2) “Practice of Law” means the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

(A) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, will, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

(B) Preparing or expressing legal opinions;

(C) Appearing or acting as an attorney in any tribunal;

(D) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;

(E) Providing advice or counsel as to how any of the activities described in subparagraph (A) through (D) might be done, or whether they were done, in accordance with applicable law;

(F) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

(3) “In the **District of Columbia**” means conduct in, or conduct from an office or location within, the **District of Columbia**.

(4) “Hold out as authorized or competent to practice law in the **District of Columbia**” means to indicate in any manner to any other person that one is competent, authorized, or available to practice law from an office or location in the **District of Columbia**. Among the characterizations which give such an indication are “Esq.,” “lawyer,” “attorney at

law,” “counselor at law,” “contract lawyer,” “trial or legal advocate,” “legal representative,” “legal advocate,” and “judge.”

(5) “Committee” means the **District of Columbia** Court of Appeals Committee on **Unauthorized Practice of Law**, as constituted under this rule.

(c) Exceptions. The following activity in the **District of Columbia** is excepted from the prohibitions of section (a) of this Rule, provided the person is not otherwise engaged in the practice of law or holding out as authorized or competent to practice law in the **District of Columbia**:

(1) *United States Government Employee.* Providing authorized legal services to the United States as an employee thereof;

(2) *United States Government Practitioner.* Providing legal services to members of the public solely before a special court, department or agency of the United States, where:

(A) Such legal services are confined to representation before such fora and other conduct reasonably ancillary to such representation;

(B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice; and

(C) If the practitioner has an office in the **District of Columbia**, the practitioner expressly gives prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

(3) *Practice Before a Court of the United States.* Providing legal services in or reasonably related to a pending or potential proceeding in any court of the United States if the person has been or reasonably expects to be admitted to practice in that court, provided that if the practitioner has an office in the **District of Columbia**, the practitioner expressly gives prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

(4) *District of Columbia Employee.* Providing legal services for his or her employer during the first 360 days of employment as a lawyer by the government of the **District of Columbia**, where the person is an enrolled Bar member in good standing of a state or territory, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and has been authorized by her or his government agency to provide such services;

(5) *District of Columbia Practitioner.* Providing legal services to members of the public solely before a department or agency of the **District of Columbia** government, where:

(A) Such representation is confined to appearances in proceedings before tribunals of that department or agency and other conduct reasonably ancillary to such proceedings;

(B) Such representation is authorized by statute, or the department or agency has authorized it by rule and undertaken to regulate it;

(C) If the practitioner has an office in the **District of Columbia**, the practitioner expressly gives prominent notice in all business documents of the practitioner's bar status and that his or her practice is limited consistent with this

section (c); and

(D) If the practitioner does not have an office in the **District of Columbia**, the practitioner expressly gives written notice to clients and other parties with respect to any proceeding before tribunals of that department or agency and any conduct reasonably ancillary to such proceedings of the practitioner's bar status and that his or her practice is limited consistent with this section (c).

(6) *Internal Counsel*. Providing legal advice only to one's regular employer, where the employer does not reasonably expect that it is receiving advice from a person authorized to practice law in the **District of Columbia**;

(7) *Pro Hac Vice in the Courts of the District of Columbia*. Providing legal services in or reasonably related to a pending or potential proceeding in a court of the **District of Columbia**, if the person has been or reasonably expects to be admitted pro hac vice, provided:

(i) *Limitation to 5 Applications Per Year*. No person may apply for admission pro hac vice in more than five (5) cases pending in the courts of the **District of Columbia** per calendar year, except for exceptional cause shown to the court.

(ii) *Applicant Declaration*. Each application for admission pro hac vice shall be accompanied by a declaration under penalty of perjury: (1) certifying that the applicant has not applied for admission pro hac vice in more than five cases in courts of the **District of Columbia** in this calendar year, (2) identifying all jurisdictions and courts where the applicant is a member of the bar in good standing, (3) certifying that there are no disciplinary complaints pending against the applicant for violation of the rules of any jurisdiction or court, or describing all pending complaints, (4) certifying that the applicant has not been suspended or disbarred for disciplinary reasons or resigned with charges pending in any jurisdiction or court, or describing the circumstances of all suspensions, disbarments, or resignations, (5) certifying that the person has not had an application for admission to the D.C. Bar denied, or describing the circumstances of all such denials; (6) agreeing promptly to notify the Court if, during the course of the proceeding, the person is suspended or disbarred for disciplinary reasons or resigns with charges pending in any jurisdiction or court; (7) identifying by name, address, and D.C. Bar number the D.C. Bar member with whom the applicant is associated under [Super. Ct. Civ. R. 101](#), (8) certifying that the applicant does not practice or hold out to practice law in the **District of Columbia** or that the applicant qualifies under an identified exception in **Rule 49(c)**, (9) certifying that the applicant has read the rules of the relevant division of the Superior Court of the **District of Columbia** and the **District of Columbia** Court of Appeals, and has complied fully with **District of Columbia** Court of Appeals **Rule 49** and, as applicable, [Super. Ct. Civ. R. 101](#), (10) explaining the reasons for the application, (11) acknowledging the power and jurisdiction of the courts of the **District of Columbia** over the applicant's professional conduct in or related to the proceeding, and (12) agreeing to be bound by the **District of Columbia** Court of Appeals Rules of Professional Conduct in the matter, if the applicant is admitted pro hac vice.

(iii) *Office Outside of D.C.* No person who maintains or operates from an office or location for the practice of law within the **District of Columbia** may be admitted to practice before a court of the **District of Columbia** pro hac vice, unless that person qualifies under another express exception provided in section (c) hereof.

(iv) *Supervision*. Any person admitted pro hac vice must comply with [Super. Ct. Civ. R. 101](#) and other applicable rules of the **District of Columbia** courts.

(v) *Application Fee*. Application to participate pro hac vice shall be accompanied by a fee of \$100.00 to be paid to the Clerk of Court. Proof of payment of the fee shall accompany the application for admission pro hac vice. The application fee shall be waived for a person whose conduct is covered by section (c)(9) hereof, or whose client's application to proceed in forma pauperis has been granted.

(vi) Filing. The applicant first shall submit a copy of the application to the office of the Committee, pay the application fee, and there receive a receipt for payment of the fee; whereupon the applicant shall file the application with the receipt in the appropriate office of the Clerk of Court. Only certified checks, cashiers checks, or money orders will be accepted in payment of the fee, made payable to "Clerk, D.C. Court of Appeals." The application will not be accepted for filing without the required receipt.

(vii) Power of the Court. The court to which the relevant litigation matter is assigned may grant or deny applications, and withdraw admissions to participate pro hac vice in its discretion.

(8) *Limited Duration Supervision by D.C. Bar Member.* Practicing law from a principal office located in the **District of Columbia**, while an active member in good standing of the highest court of a state or territory, and while not disbarred or suspended for disciplinary reasons or after resignation with charges pending in any jurisdiction or court, under the direct supervision of an enrolled, active member of the **District of Columbia Bar**, for one period not to exceed 360 days from the commencement of such practice, during pendency of a person's first application for admission to the **District of Columbia Bar**; *provided* that the practitioner has submitted the application for admission within ninety (90) days of commencing practice in the **District of Columbia**, that the **District of Columbia Bar** member takes responsibility for the quality of the work and complaints concerning the services, that the practitioner or the **District of Columbia Bar** member gives notice to the public of the member's supervision and the practitioner's bar status, and that the practitioner is admitted pro hac vice to the extent he or she provides legal services in the courts of the **District of Columbia**.

(9) *Pro Bono Legal Services.* Providing legal services pro bono publico in the following circumstances:

(A) Where the person is an enrolled, inactive member of the **District of Columbia Bar** who is employed by or affiliated with a legal services or referral program in any matter that is handled without fee and who is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court; provided that, if the matter requires the attorney to appear in court, the attorney shall file with the court having jurisdiction over the matter, and with the Committee, a certificate that the attorney is providing representation in that particular case without compensation.

(B) Where the person is a member in good standing of the highest court of any state, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and is employed by the Public Defender Service, or is employed by or affiliated with a non-profit organization located in the **District of Columbia** that provides legal services for indigent clients without fee or for a nominal processing fee; provided that the person has submitted an application for admission to the **District of Columbia Bar** within ninety (90) days after commencing the practice of law in the **District of Columbia**, and that such attorney is supervised by an enrolled, active member of the Bar who is employed by or affiliated with the Public Defender Service or the non-profit organization.

(C) Where the person is an officer or employee of the United States, is a member in good standing of the highest court of a state or territory, is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court, and is assigned or referred by an organization that provides legal services to the public without fee; provided that the person is supervised by an enrolled, active member of the **District of Columbia Bar**.

An attorney practicing under this section (c)(9) shall give notice of his or her bar status, and shall be subject to the **District of Columbia** Rules of Professional Conduct and the enforcement procedures applicable thereto to the same extent as if he or she were an enrolled, active member of the **District of Columbia Bar**.

An attorney may practice under Part (B) of this section (c)(9) for no longer than 360 days from the date of employment

by or affiliation with the Public Defender Service or the non-profit organization, or until admitted to the Bar, whichever first shall occur.

(10) *Specifically Authorized Court Programs.* Providing legal services to members of the public as part of a special program for representation or assistance that has been expressly authorized by the **District of Columbia** Court of Appeals or the Superior Court of the **District of Columbia**, provided that the person gives notice of his or her bar status and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.

(11) *Limited Practice for Corporations.* Appearing in defense of a corporation or partnership in a small claims action, or in settlement of a landlord-tenant matter, through an authorized officer, director, or employee of the organization; provided:

(A) the organization must be represented by an attorney if it files a cross-claim or counterclaim, or if the matter is certified to the Civil Action Branch; and

(B) the person so appearing shall file at the time of appearance an affidavit vesting in the person the requisite authority to bind the organization.

(12) *Practice in ADR Proceedings.* Providing legal services in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution (“ADR”) proceeding, provided:

(i) The person is authorized to practice law by the highest court of a state or territory or by a foreign country, and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.

(ii) The person may begin to provide such services in no more than five (5) ADR proceedings in the **District of Columbia** per calendar year.

(iii) The person does not maintain or operate from an office or location for the practice of law within the **District of Columbia** or otherwise practice or hold out to practice law in the **District of Columbia**, unless that person qualifies under another express exception provided in section (c) hereof.

(13) *Incidental and Temporary Practice.* Providing legal services in the **District of Columbia** on an incidental and temporary basis, provided that the person is authorized to practice law by the highest court of a state or territory or by a foreign country, and is not disbarred or suspended for disciplinary reasons and has not resigned with charges pending in any jurisdiction or court.

(d) The Committee on Unauthorized Practice of Law.

(1) The court shall appoint a standing committee known as the Committee on **Unauthorized Practice of Law** consisting of at least six, and not more than twelve, members of the Bar of this court and of one resident of the **District of Columbia** who is not a member of the Bar. The Chair and Vice Chair shall be designated by the court. Each member shall serve for the term of three years and until their successors have been appointed. In case of vacancy caused by death, resignation or otherwise, a successor appointed shall serve the unexpired term of the predecessor member. When a member holds over after the expiration of the term for which appointed, the term the member serves after the expiration of the term for which the member was appointed shall be part of a new term. No member shall be appointed to serve longer than two consecutive regular three year terms, unless special exception is made by the court.

(2) Subject to the approval of the court, the Committee shall adopt such rules and regulations as it deems necessary to carry out the provisions of this rule. The Committee may subpoena the respondent, witnesses and documents upon application to the court by the Chair or the Chair's designee. The Committee may appear in its own name in legal proceedings addressing issues relating to the performance of its functions and compliance with this Rule. The members of the Committee shall receive such compensation and necessary expenses as the court may approve.

(3) *Rules of Procedure.*

(A) Officers, Members, and Duties.

(i) The Chair shall preside at all meetings of the Committee; and in the Chair's absence, the Vice Chair shall preside.

(ii) The Chair, Vice Chair, and members shall investigate matters of alleged **unauthorized practice of law** and alleged violations of court rules governing same, and if warranted, the Committee shall take such actions as are provided in these rules.

(iii) In addition to the duties described herein, the Committee shall determine whether to approve the legal programs identified in [Rule 48](#).

(iv) A deputy Clerk of this court shall be designated by the court to serve as Executive Secretary to the Committee and shall provide such staff and secretarial services as may be needed.

(B) Meetings.

(i) Any matter under investigation by the Committee shall remain confidential until initiation of formal proceedings under section (3)(D) hereof. So as to ensure this confidentiality, the Committee shall meet in executive session. At least eight meetings shall be called each year.

(ii) The Committee shall meet at the call of the Chair. A special meeting of the Committee shall be held if a majority of its members request such a meeting by notifying the Executive Secretary.

(iii) Members who are unable to attend a meeting shall so notify the Chair or the Executive Secretary at least two days in advance of the meeting.

(iv) The Chair shall determine the order of business.

(v) A quorum shall consist of four members, and all decisions shall be made by a majority of those members present and voting.

(vi) In appropriate circumstances, as may be determined by the Chair, a telephone or electronic vote of a majority of members polled, numbering no less than four Committee members concurring in a decision, shall constitute a Committee decision. Any such decision shall be recorded in the minutes of the next Committee meeting.

(vii) Minutes of all Committee meetings shall be prepared under the direction of the Executive Secretary, with copies of same furnished to all members of the Committee and to the chief judge or a judge designated by the chief judge.

(C) Investigation.

(i) Whenever a complaint is filed with the Committee or upon its own volition, the matter shall be assigned by the Chair, on a random basis or as the Chair otherwise determines may be appropriate, to a Committee member for preliminary investigation. This investigation shall consist of an analysis of the complaint, a survey of the applicable law, and discussions with witnesses and/or the respondent. It shall not be deemed a breach of the confidentiality required of an assigned matter for the Committee or one of its members to reveal facts and identities in pursuit of the investigation of the matter.

(ii) At the next regular meeting of the Committee, the Committee shall hear a report of the investigating member for the purpose of determining what action, if any, shall be taken by the Committee. Complaints shall be investigated and reported upon within six weeks. Delays shall be brought to the Chair's attention by the Executive Secretary.

(iii) If the Committee concludes that formal proceedings are necessary to assist its determination, such may be held as specified in section (3)(D) below.

(D) Formal Proceedings.

(i) To assist the Committee in performing its functions it may take sworn testimony of witnesses and/or the respondent.

(ii) Formal proceedings before the Committee shall be commenced by written notice to the respondent informing the respondent of the nature of the respondent's conduct which the Committee believes may constitute the **unauthorized practice of law**. The respondent shall be given 15 days to respond. Upon receipt of this response (or if no response is submitted), the matter shall be scheduled for a hearing. A copy of **Rule 49** shall also be transmitted to the respondent with the written notice.

(iii) The respondent may request permission to present evidence and witnesses in addition to the respondent's own testimony, but such proffers shall be allowed only in the discretion of the Committee. The respondent may be accompanied by counsel. To avoid harassment, the Committee may in its discretion limit the participation of the respondent and counsel in presentation of evidence by persons complaining of violations of this **Rule 49**. Formal rules of evidence shall not apply. The Chair may apply to the court for issuance of a subpoena to any witness or to the respondent.

(iv) When appropriate, a post-hearing conference may be held between respondent and the investigation Committee member (or another Committee member designated by the Chair) for the purpose of informing the respondent of the findings of the Committee and action it proposes.

(E) Actions by the Committee.

(i) During any stage of the investigation or formal proceedings the Committee may dispose of any matter pending before it by any of the following methods:

(ii) If no evidence of unauthorized practice is found, the matter shall be closed and the complainant notified.

(iii) If the respondent agrees to cease and desist from actions which appear to constitute the **unauthorized practice of law**, the matter may be closed by formal agreement, consent order, or both, with notification of such action given to the complainant. Such formal agreement or consent order may require restitution to the clients of fees obtained by the respondent.

(iv) If warranted, the Committee may initiate proceedings to enforce this Rule under section (e), provided, however, that action pursuant to this subsection is preceded by the formal proceedings specified in section (d)(3)(D) above.

(v) The Committee may also refer cases to the Office of the United States Attorney for investigation and possible prosecution or to other appropriate authorities.

(F) Closed Files. Upon the closing of a file by the Committee, the file shall be retained in the records of the court.

(G) Opinions.

(i) The Committee may by approval of a majority of its members present in quorum provide opinions, upon the request of a person or organization, as to what constitutes the **unauthorized practice of law**. Such opinions shall be published in the same manner as opinions rendered under the Rules of Professional Conduct.

(ii) Conduct of a person which was undertaken in good faith, in conformity with, and in reliance upon a written interpretation or opinion of the Committee requested by that person shall constitute a prima facie showing of compliance with **Rule 49** in any investigation or proceeding before the Committee or the Court of Appeals.

(e) Proceedings Before the Court of Appeals.

(1)(A) The Committee may initiate an original proceeding before the Court of Appeals for violation of this **Rule 49**. The proceeding shall be initiated by a petition served on the respondent or his designated counsel.

(B) The Court may, on motion of the Committee or sua sponte, appoint a special counsel to represent the Committee and to present the Committee's proof and argument in such proceeding.

(2) Violations of the provisions of this **Rule 49** shall be punishable by the Court of Appeals as contempt and/or subject to injunctive relief. The Court of Appeals holds the power to include within its remedy compensation to persons harmed by violation of this Rule or of an injunction entered under it.

(3) Such proceedings shall be conducted before a judge of the **District of Columbia** designated by the Chief Judge of the Court of Appeals under the D.C. Code, and shall be governed by the Rules of the Superior Court of the **District of Columbia**.

(4) Decisions of the designated judge are final and effective determinations which are subject to review in the normal course, by the filing of a notice of appeal by any party with the Clerk of the Court of Appeals within 30 days from the entry of the judgment by the designated judge.

Commentary

The following Commentary provides guidance for interpreting the Rule and acting in compliance with it, but in proceedings before the court or the Committee on Unauthorized Practice the text of the Rule shall govern.

Commentary to § 49(a):

Section (a) states the general prohibition of the rule, formerly set forth in **Rule 49(b)(1)**. It is intended to retain the essential meaning of the original text as adopted by the Court of Appeals. It adds for clarification that the Rule applies

unless an exception is provided.

The Rule is applied first by determining whether the conduct in question falls within the definitions of practicing law or holding out to practice law in the **District of Columbia**. If the conduct falls within those definitions, such conduct by a person not admitted to the Bar is a violation of the Rule, unless there is an express exception covering the conduct.

While one has a right to represent oneself, there is no right to represent or advise another as a lawyer. Authority to provide legal advice and services to others is a privilege granted only to those who have the education, competence and fitness to practice law. When one is formally recognized to possess those qualifications by admission to the Bar, he or she is authorized to practice law.

The rule prohibits both the implicit representation of authority or competence by engaging in the practice of law, and the express holding out of oneself as authorized or qualified to practice law in the **District of Columbia**.

This rule against **unauthorized practice of law** has four general purposes:

- (1) To protect members of the public from persons who are not qualified by competence or fitness to provide professional legal advice or services;
- (2) To ensure that any person who purports or holds out to perform the services of a lawyer is subject to the disciplinary system of the **District of Columbia Bar**;
- (3) To maintain the efficacy and integrity of the administration of justice and the system of regulation of practicing lawyers; and
- (4) To ensure that that system and other activities of the Bar are appropriately supported financially by those exercising the privilege of membership in the **District of Columbia Bar**.

See also the commentary to section (b)(2), below, concerning the activities of persons relating to legal matters where a license to practice law is not required.

Competence and fitness to practice law are safeguarded by the examination and character screening requirements of the admissions process, and by the disciplinary system. The Bar further protects the interests of members of the public by maintaining a clients' security fund through membership dues.

Commentary to § 49(b):

Although section (b) of the original rule included definitions, not all of the essential terms were defined. The new section (b) follows the conventional approach of rules and statutes in defining such terms.

Commentary to § 49(b)(2):

As originally stated in sections (b)(2) and (3) of the prior Rule, the “practice of law” was broadly defined, embracing every activity in which a person provides services to another relating to legal rights. This approach has been refined, in recognition that there are some legitimate activities of non-Bar members that may fall within an unqualifiedly broad definition of “practice of law.”

The definition set forth in section (b)(2) is designed to focus first on the two essential elements of the practice of law: The provision of legal advice or services, and a client relationship of trust or reliance. Where one provides such advice

or services within such a relationship, there is an implicit representation that the provider is authorized or competent to provide them; just as one who provides any services requiring special skill gives an implied warranty that they are provided in a good and workmanlike manner. *See, e.g., Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1200 (D.C.1984); *Carey v. Crane Service Co., Inc.*, 457 A.2d 1102, 1107 (D.C.1983).

Recognizing that the definition of “practice of law” may not anticipate every relevant circumstance, the Rule adopts four methods of definition: (1) the more refined definition focusing on the provision of legal advice or services and a client relationship of trust or reliance; (2) an enumerated list of the most common activities which are rebuttably presumed to be the practice of law; (3) this commentary; and (4) opinions of the Committee on **Unauthorized Practice of Law** where further questions of interpretation may arise. See section (d)(3)(G) below.

The definition of “practice of law,” the list of activities, this commentary and opinions of the Committee on **Unauthorized Practice of Law** are to be considered and applied in light of the purposes of the Rule, as set forth in the commentary to sections (a) and (b).

The presumption that one's engagement in one of the enumerated activities is the “practice of law” may be rebutted by showing that there is no client relationship of trust or reliance, or that there is no explicit or implicit representation of authority or competence to practice law, or that both are absent.

While the Rule is meant to embrace every client relationship where legal advice or services are rendered, or one holds oneself out as authorized or competent to provide such services, the Rule is not intended to cover conduct which lacks the essential features of an attorney-client relationship.

For example, a law professor instructing a class in the application of law to a particular, real situation is not engaged in the practice of law because she is not undertaking to provide advice or services for one or more clients as to their legal interests. An experienced industrial relations supervisor is not engaged in the practice of law when he advises his employer what he thinks the firm must do to comply with state or federal labor laws, because the employer does not reasonably expect it is receiving a professional legal opinion. See also the exception for Internal Counsel set forth in section (c)(6). Law clerks, paralegals and summer associates are not practicing law where they do not engage in providing advice to clients or otherwise hold themselves out to the public as having authority or competence to practice law. Tax accountants, real estate agents, title company attorneys, securities advisors, pension consultants, and the like, who do not indicate they are providing legal advice or services based on competence and standing in the law are not engaged in the practice of law, because their relationship with the customer is not based on the reasonable expectation that learned and authorized professional legal advice is being given. Nor is it the practice of law under the Rule for a person to draft an agreement or resolve a controversy in a business context, where there is no reasonable expectation that she is acting as a qualified or authorized attorney.

The Rule is not intended to cover the provision of mediation or alternative dispute resolution (“ADR”) services. This intent is expressed in the first sentence of the definition of the “practice of law” which requires the presence of two essential factors: The provision of legal advice or services and a client relationship of trust or reliance. ADR services are not given in circumstances where there is a client relationship of trust or reliance; and it is common practice for providers of ADR services explicitly to advise participants that they are not providing the services of legal counsel.

While payment of a fee is often a strong indication of an attorney-client relationship, it is not essential.

Ordinarily, one who provides or offers to provide legal advice or services to clients in the **District of Columbia** implies to the consumer that he or she is authorized and competent to practice law in the **District of Columbia**. It is not sufficient for a person who is not an enrolled, active member of the **District of Columbia** Bar merely to give notice that he is not a lawyer while engaging in conduct that is likely to mislead consumers into believing he is a licensed attorney at law. Where consumers continue to seek services after such notice, the provider must take special

care to assure that they understand that the person they are consulting does not have the authority and competence to render professional legal services in the **District of Columbia**. See *In re: Banks*, 561 A.2d 158 (D.C. 1987).

The Rule also confines the practice of law to provision of legal services under engagement for another. One who represents himself or herself is not required to be admitted to the **District of Columbia** Bar.

The conduct described in section (b)(2)(F) concerning the furnishing of attorneys is not intended to include legitimate or official referral services, such as those offered by the **District of Columbia** Bar, bar associations, labor organizations, non-fee pro bono organizations, and other court-authorized organizations.

Commentary to § 49(b)(3):

Section (b)(3) clarifies by explicit definition the geographic extent of the Rule.

The Rule is intended to regulate all practice of law within the boundaries of the **District of Columbia**. The fact that an attorney is associated with a law firm that maintains an office in the **District of Columbia** does not, of itself, establish that that attorney is maintaining an office in the **District of Columbia**.

The practice of law subject to this Rule is not confined to the matters subject to the law of the **District of Columbia**. The Rule applies to the practice of all substantive areas of the law and requires admission to the **District of Columbia** Bar where the practice is carried on in the **District of Columbia** and does not fall within one of the exceptions enumerated in section (c).

A lawyer is engaged in the practice of law in the **District of Columbia** when the lawyer provides legal advice from an office or location within the District. That is true if the lawyer practices in a residence or in a commercial building, if all of the lawyer's clients are located in other jurisdictions, if the lawyer provides legal advice only by telephone, letter, email, or other means, if the lawyer provides legal advice only concerning the laws of jurisdictions other than the **District of Columbia**, or if the lawyer informs the client that the lawyer is not authorized to practice law in the **District of Columbia** and does not provide advice about **District of Columbia** law. A lawyer in the **District of Columbia** who advises clients or otherwise provides legal services in another jurisdiction may be subject to the rules of that jurisdiction concerning **unauthorized practice of law**.

Rule 49 applies only if a lawyer is physically present in the **District of Columbia** at least once during the course of a matter. Even if a matter involves a client, and a dispute or transaction, in the District, the Rule does not apply if a lawyer located outside the District advises a client in-person only when the client visits the lawyer in the lawyer's office, or if the lawyer advises the client only by telephone, regular mail, or electronic mail. However, if a lawyer is physically present in the District even once during the course of a matter, the lawyer may be engaged in the **District of Columbia** in the practice of law with respect to the entire matter, even if the lawyer otherwise operates only from a location outside the District.

The definition of “in the **District of Columbia**” is intended to cover the practice of law within the District under the supervision of, or in association with, a member of the **District of Columbia** Bar. Persons who provide legal services as lawyers with law firms and other legal organizations in the **District of Columbia**, with or without bar memberships elsewhere, are practicing law in the District and are in violation of the Rule, unless they fall within one of the express exceptions set forth in section (c).

Commentary to § 49(b)(4):

As a regulation with a purpose to protect the public, the rule requires that representation of non-Bar members must avoid giving the impression to persons not learned in the law that a person is a qualified legal professional subject to

the high ethical standards and discipline of the **District of Columbia** Bar.

The listing of terms, which normally indicate one is holding oneself out as authorized or qualified to practice law, is not intended to be exhaustive. The definition of “hold out” is intended to cover any conduct which gives the impression that one is qualified or authorized to practice. See [In Re: Banks, 561 A.2d 158 \(D.C. 1987\)](#).

A person or a law firm may hold out that person as authorized or competent to practice law in the **District of Columbia** by describing that person as a “contract lawyer.” See Opinion [16-05](#) of the **District of Columbia** Court of Appeals Committee on **Unauthorized Practice of Law**. In general, **Rule 49** applies to contract lawyers to the same extent that it applies to other lawyers.

Where a member of the public correctly understands that a person is not admitted to the **District of Columbia** Bar but is nonetheless offering to perform services functionally equivalent to those performed by a lawyer, that person is subject to sanction under the consumer protection statutes of the **District of Columbia**. See [Banks v. D.C. Dept. of Consumer and Regulatory Affairs, 634 A.2d 433 \(D.C. 1993\)](#).

Commentary to § 49(c)(1):

Section (c)(1) is new. It is designed to state expressly what has been implicit in prior interpretations and application of the Rule; and it removes the implication of former section (c)(2) that representatives of the federal government must become members of the **District of Columbia** Bar or appear pro hac vice. Attorneys employed by departments, agencies and courts of the federal government are entitled to advise and represent their employers as part of their official duties. Such advice and representation includes both internal consultation and external representation in contact with the public and the courts. Permission for employees of the government of the **District of Columbia** to practice in the District is more limited. See section (c)(4).

Commentary to § 49(c)(2):

Section (c)(2) substantially refines former section (c)(4). It is intended to provide only a limited exception to the requirement for admission to the **District of Columbia** Bar for persons who practice before federal fora in circumstances where all three conditions are met.

The United States Supreme Court has held that states may not limit practice before a federal agency, or conduct incidental to that practice, where the agency maintains a registry of practitioners and regulates standards of practice with sanctions of suspension or disbarment. [Sperry v. State of Florida, 373 U.S. 379 \(1963\)](#). By contrast, a person advertising patent advice and search services who is not on the Patent Office registries of attorneys and agents is subject to the jurisdiction of the **District of Columbia** Court of Appeals through its Committee on the **Unauthorized Practice of Law**. [In re Amalgamated Development Co., Inc., 375 A.2d 494 \(D.C. 1977\)](#). See also [Kennedy v. Bar Assoc. of Montgomery County, 316 Md. 646, 561 A.2d 200 \(1989\)](#); [In re Jones, 163 Bankr. 665, 1994 Bankr. LEXIS 150 \(D. Conn.1994\)](#); and [Spanos v. Skouras Theatres Corp., 364 F.2d 161, 171 \(2nd Cir. 1966\)](#).

As the seat of the national government, the **District of Columbia** is naturally the place where people locate to provide representation of persons or entities petitioning federal departments or agencies for relief. Inasmuch as such activity would often constitute the practice of law, the Supremacy Clause of the United States Constitution, case law, and comity between the District and federal governments counsel a deference to federal departments and agencies that determine to allow persons not admitted to the Bar to practice before them. At the same time, experience under this Rule has shown that some persons have abused the deference set forth in the original rule by engaging in misleading holding out or practicing law in proceedings other than those of the authorizing federal fora.

With respect to persons who hold out and purport to provide legal representation before federal fora from locations

outside the **District of Columbia**, the Rule does not apply because the activity, even if the practice law, is not carried on within the **District of Columbia**. See section (b)(3) and the commentary thereto.

Section (c)(2) is designed to permit persons to practice before a federal department or agency without becoming members of the Bar, where the agency has a system in place to regulate practitioners not admitted to the Bar, and where the public is adequately informed of the limited nature of the person's authority to practice.

Where there is doubt whether a federal agency undertakes to regulate the quality or integrity of practitioners before it, there is necessarily doubt under section (c)(2)(B) whether this exception would apply to allow persons practicing before the agency who are not admitted to the Bar to engage in any practice of law in the **District of Columbia**. In order to resolve such doubt, the Committee will refer to an agency any complaints it should receive concerning practitioners before the agency who are not admitted to the Bar. If the agency does not take any action, or advises that it will not take any action, on the referred complaint in 90 days following the referral, the Committee will inform the agency that it presumes the agency does not undertake to regulate the conduct of practitioners before it; and the Committee will then proceed to consider the complaint under the provisions of **Rule 49**.

Under the third condition, (C), a person seeking to practice under the (c)(2) exception must include the indicated notice on all letterhead, business cards, formal papers of all kinds, promotions, advertisements and any other document submitted or expression made to any third party, the public or any official entity.

Experience under the Rule has indicated that, in many instances, persons seeking representation involving jurisdiction of federal departments and agencies also have rights to plead their claims before the courts. Advising persons whether they have rights to pursue their claims beyond federal agencies into the courts, or representing entities in challenges to or review of federal agency action in federal courts, would, without more, not require that the advisor be a member of the **District of Columbia** Bar, as such advice is reasonably ancillary to representation before the agency and is subject to the jurisdiction of the federal courts. See § 49(c)(3). The exception set forth in (c)(2) does not, however, otherwise authorize active advice to, or representation of persons in the courts.

Commentary to § 49(c)(3):

Practice before the courts of the United States is a matter committed to the jurisdiction and discretion of those entities. If a practitioner has an office in the **District of Columbia** and is admitted to practice before a federal court in the **District of Columbia** but is not an active member of the D.C. Bar, the practitioner may use the D.C. office to engage in the practice of law before that federal court, but only if the practitioner provides clear notice in all business documents that the practitioner is not a member of the D.C. Bar and that the practice is limited to matters before that federal court (or to other matters within the scope of other exceptions in section (c)). This exception applies only if a person's entire practice falls within section (c); if any part of the person's practice is not covered by an exception, **Rule 49** requires a practitioner with an office in the **District of Columbia** to be an active member of the D.C. Bar. The rules of federal courts in the **District of Columbia** may or may not authorize admission on a regular or pro hac vice basis of an attorney with an office in the **District of Columbia** if the attorney is not a member of the D.C. Bar.

Commentary to § 49(c)(4):

Section (c)(4) is new. It addresses the persistent question whether a person employed by the **District of Columbia** and admitted in another jurisdiction may perform the services of a lawyer for the District government without being admitted to the **District of Columbia** Bar. The section gives the person 360 days to be admitted, which is ample time if application is made promptly. Like the exception for lawyers employed by the United States, the section also requires that the person be authorized by her or his agency to perform such services.

Commentary to § 49(c)(5):

Section (c)(5) is new. The former rule did not contain an exception for private practice before **District of Columbia** fora similar to the exception set forth for practice before departments and agencies of the United States. In recognition, however, that the same considerations may exist for allowing persons not authorized as lawyers to represent members of the public before some **District of Columbia** fora, as exist before some federal agencies, this provision has been added. Like the federal-agency provision, this exception requires satisfaction of all three enumerated conditions.

Commentary to § 49(c)(6):

Section (c)(6) is new. It is intended to state explicitly and clearly an accepted interpretation of the original rule.

The provision of advice, and only advice, to one's regular employer, where the employer does not reasonably expect that it is receiving advice from an authorized member of the **District of Columbia** Bar, and no third party is involved as client or otherwise, is considered to be the employer's provision of advice to itself; and, accordingly, it is not considered practicing law.

For example, an internal personnel manager advising her employer on the requirements of equal employment opportunity law, or a purchasing manager who drafts contracts, fall within this exception, as they do not give the employer a reasonable expectation that it is being served by an authorized member of the **District of Columbia** Bar. Similarly, a lawyer on the staff of a trade association who gives only advice concerning leases, personnel and contractual matters, would be covered by the exception if, in fact, the lawyer does not give the employer reason to believe she is an authorized member of the Bar.

This exception is a limited one arising from the position of the lawyer, the confinement of the lawyer's professional services to activities internal to the employer, and the absence of conduct creating a reasonable expectation that the employer is receiving the services of an authorized member of the Bar.

Commentary to § 49(c)(7):

The **District of Columbia** courts are open to attorneys from other jurisdictions who have an incidental need to appear in proceedings before them.

As the Court of Appeals has observed, however:

... appearance pro hac vice is meant to be an exception to the general prohibition against practicing law in the District without benefit of membership in the **District of Columbia** Bar. As an exception, it is equally clear, that it is designed as a privilege for an out-of-state attorney who may, from time to time, be involved in a particular case that requires appearance before a court in the District.

[*Brookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1124 \(D.C.1988\).](#)

[Super. Ct. Civ. R. 101](#) requires that persons seeking admission pro hac vice in the Superior Court must associate with an enrolled, active member of the **District of Columbia** Bar who has continuing responsibilities as associated counsel.

The fact that an attorney is associated with a law firm that maintains an office in the **District of Columbia** does not, of itself, establish that that attorney is maintaining an office in the **District of Columbia**.

Experience under the Rule has indicated that the pro hac vice exception has occasionally been abused to allow persons who regularly operate from a location within the **District of Columbia** or its surrounding jurisdictions to engage

regularly in litigation practice before the courts of the District. Additionally, the original provision has been erroneously interpreted by some practitioners to permit regular practice of law in the **District of Columbia** by an attorney admitted only in another jurisdiction upon the assertion that the person is a practicing litigator who appears no more than five times per calendar year in the courts.

The original provision has been modified in order to avoid abuse while continuing to serve the original purpose of the provision, viz., to permit attorneys to appear in the **District of Columbia** courts incidentally or during their initial application for admission after moving into the District.

The original frequency limitation has been retained and applied to applications. A specific sworn declaration has been added for applicants for pro hac vice admission to assure full compliance with this **Rule 49** and [Super. Ct. Civ. R. 101](#) at the application stage.

The fee for admission has been increased in order more closely to approximate the value of the privilege to practice before the **District of Columbia** courts. The power of the courts to deny or withdraw admission is expressly set forth.

Commentary to § 49(c)(8):

Section (c)(8) is new. It is designed to provide a one-time grace period within which attorneys admitted in other jurisdictions who come to practice law in the **District of Columbia** as their principal office may continue to practice law under the active supervision of a member of the **District of Columbia** Bar, while they promptly pursue admission to the Bar. This section is intended, conversely, to make it clear that a person admitted to the bar of another jurisdiction may not come to the **District of Columbia** and practice law under the supervision of a member of the Bar indefinitely while waiting for the period for admission on waiver to be satisfied.

This section does not affect the limitation of pro hac vice applications to five per calendar year, as provided in section (c)(7) above. A person practicing under this provision may not apply to appear pro hac vice in **District of Columbia** courts more than five times in any calendar year.

Neither this section, nor other sections of the Rule are intended to prohibit lawyers admitted and in good standing to the bars of other jurisdictions from providing professional services to their clients in the **District of Columbia**, where the principal offices of those lawyers are located elsewhere and their presence in the District is occasional and incidental to a practice located elsewhere.

With respect to Rules 5.1 through 5.3 of the Rules of Professional Conduct, the provisions of this rule are controlling over the conduct of a person performing the services of a lawyer where the elements of the practice of law are present, i.e., where there is a client relationship of trust or reliance, or an indication of authority or competence to practice law in the **District of Columbia**. This means that, where either of those elements is present, a person may not participate indefinitely in the delivery of legal services as a lawyer under the supervision of a member of the **District of Columbia** Bar; he or she must become a member of the Bar within the period specified in this section.

Commentary to § 49(c)(9):

Section (c)(9) consolidates the provisions of former sections (c)(5) and (c)(7) relating to practice by attorneys for legal services organizations and the Public Defender Service. It adds a provision, on request of the United States Department of Justice, allowing government lawyers to participate in providing legal services pro bono publico. Where persons practice under this exception, they should give formal notice to the court and the parties of doing so.

A form of certificate for such notice is appended to the Rule, addressing the three alternatives under (c)(9) and adding a certificate for pro bono representation under the limited duration supervision exception of (c)(8).

In all circumstances the conduct and practice privileges of counsel are subject to the full authority of the courts in which they practice.

Commentary to § 49(c)(10):

Section (c)(10) is new. It is intended to give express authorization to the number of individual- and group-assistance programs, services and projects that are operated under the direct approval of the courts of the **District of Columbia**.

Commentary to § 49(c)(11):

Section (c)(11) consolidates the provisions of former sections (c)(6) and (c)(8) relating to practice by attorneys for corporations.

Commentary to § 49(c)(12):

Section (c)(12) is new. This exception allows lawyers to represent clients in up to five new ADR proceedings annually. This provision furthers the strong public policy favoring the efficient and expeditious resolution of disputes outside the judicial process, to the extent consistent with the broader public interest. This provision gives clients who agree to resolve their disputes through ADR proceedings an option to retain attorneys not admitted in the **District of Columbia** that is generally equivalent to the option provided through the pro hac vice exception in section (c)(7) to clients who resolve their disputes in judicial proceedings.

This new exception (c)(12) contains three important provisos, each of which is based on provisos for the pro hac vice exception in section (c)(7). First, the lawyer must be authorized to practice law by the highest court of a state or territory or by a foreign country, and must not be disbarred or suspended for disciplinary reasons, or have resigned with charges pending, in any jurisdiction or court. Second, the lawyer may begin to provide such services in no more than five ADR proceedings in the **District of Columbia** in each calendar year. An ADR proceeding would not count as a new ADR proceeding for purposes of this limit if it is ancillary to a judicial proceeding in which a lawyer is admitted pro hac vice (for example, when the court orders or encourages the parties to try to resolve the matter through ADR). Similarly, this limit of five new ADR proceedings annually would not apply so long as the lawyer's participation in an ADR proceeding in the **District of Columbia** is temporary and incidental to his or her practice in another jurisdiction. Third, the lawyer may not maintain a base of operations in the **District of Columbia** or otherwise practice here, unless the lawyer qualifies under another exception in **Rule 49(c)**.

This provision allows lawyers to represent clients in ADR proceedings that require more than incidental or temporary presence in the District. Separate from the authority granted by this exception, a lawyer may represent parties in ADR proceedings (or other matters) under section (c)(13) if the lawyer's presence in the District is incidental and temporary.

This exception relates only to lawyers who represent clients in ADR proceedings. As explained in the Commentary to **Rule 49(b)(2)**, lawyers who serve as arbitrators, mediators, or other kinds of neutrals in ADR proceedings are not engaged in the practice of law.

Commentary to § 49(c)(13):

Section (c)(13) is new. **Rule 49** is not intended to require admission to the **District of Columbia** Bar where an attorney with a principal office outside the **District of Columbia** is incidentally and temporarily required to come into the city to provide legal services to a client.

The exception requires that the lawyer's presence in the District be both incidental and temporary. Whether the lawyer's presence in the District is "incidental" to the **District of Columbia** and to the lawyer's authorized practice in another jurisdiction depends on a variety of factors. For example, there is no intent to prohibit a lawyer based outside the District from taking a deposition in an action pending in another forum, or closing a transaction relating to another jurisdiction, at a location in the **District of Columbia**, where the person performing the legal services is duly authorized to practice law in another jurisdiction and the person does not suggest to any client or other persons involved in the matter that the lawyer is licensed in the District.

Where, however, an attorney provides legal services concerning a transaction related to the District from a location within the **District of Columbia**, the attorney may be engaged in the practice of law in the **District of Columbia** because the attorney's presence is not incidental. Whether a transaction is related to the **District of Columbia** depends on the location of the parties, the location of the property and interests at issue, and the law to be applied. Another relevant factor is whether the lawyer not admitted to the D.C. Bar is the only lawyer for a party, or whether the lawyer is co-counsel or the lawyer's role is limited to one aspect of a transaction with respect to which a D.C. Bar member is lead counsel. For example, where a transaction concerns real estate located in the **District of Columbia**, a lawyer based outside the District who comes to the city to provide legal services to a client located inside or outside the District relating only to the federal tax aspects of the transaction may qualify for this exception. However, a lawyer based outside the District who comes to the city to be primary counsel to a District-based client with respect to all aspects of the real estate transaction may not qualify for this exception. Whether the lawyer who is not admitted to the D.C. Bar and whose principal office is outside the District is associated with or supervised by a member of the D.C. Bar is a relevant, but not controlling, factor in determining whether the lawyer's practice in the District is "incidental."

Section (c)(13) also requires that the lawyer's presence in the District be "temporary." There is no absolute limit on the number or length of a lawyer's visits to the District that makes the lawyer's presence "temporary." For example, a lawyer who spends several weeks or even months in the District in connection with a case that does not involve the District and that is pending in a court outside the District may be only temporarily, and incidentally, in the District for purposes of section (c)(13). If a lawyer's principal place of business is in the District, the lawyer is not practicing law in the District on a temporary basis and must be a member of the D.C. Bar unless another exception in section (c) applies.

This exception permits a person authorized to practice law in another country to practice law in the District on an incidental and temporary basis, subject to the specified conditions. Those conditions, including the requirements that a foreign lawyer be authorized to practice law in a foreign country and not be disbarred or suspended in any jurisdiction, are consistent with the requirements in [Rule 46\(c\)\(4\)](#) concerning special legal consultants that the foreign lawyer be in good standing as an attorney or counselor at law (or the equivalent of either) in the country where he or she is authorized to practice law.

The exception in section (c)(13) is separate from other exceptions in **Rule 49(c)**, and the specific exception controls the general exception. For example, whether or not regular appearances before federal agencies located in the **District of Columbia** by attorneys with their principal offices in other jurisdictions fit within this exception for temporary practice, they may qualify under the federal practice exception in section (c)(2). A lawyer with a principal office outside the District who comes to the District in connection with a pending or potential case in the **District of Columbia** courts must qualify for the pro hac vice exception in section (c)(7) regardless of whether the lawyer's practice in the District is otherwise temporary and incidental.

A lawyer whose principal office is outside the **District of Columbia** and who provides pro bono services in the **District of Columbia** on an incidental and temporary basis under **Rule 49(c)(13)** is not required to comply with the application, supervision, and notice requirements of the exception in **Rule 49(c)(9)(B)** for provision of pro bono services. The (c)(9)(B) exception facilitates the provision of pro bono services by lawyers whose principal office is in the **District of Columbia** and who qualify for another exception to **Rule 49**, such as the exception in **Rule 49(c)(2)** for certain U.S. government practitioners. Consistent with its purpose to encourage the provision of pro bono services, the exception in **Rule 49(c)(9)** does not impose additional obligations on lawyers who are permitted under another ex-

ception to provide pro bono services in the **District of Columbia**. In particular, unlike lawyers who are authorized to provide pro bono services only under the (c)(9) exception, lawyers who provide pro bono services under the (c)(13) exception are not required to apply for admission to the D.C. Bar, to be supervised by a D.C. Bar member, or to provide notice of their bar status. Clients who obtain services on a pro bono basis from lawyers practicing under the (c)(13) exception are protected to the same extent as clients who pay lawyers a fee to provide services under the (c)(13) exception.

Commentary to § 49(d):

Section (d) sets forth the mandate, powers and procedures of the Committee on **Unauthorized Practice of Law**. The United States Court of Appeals for the **District of Columbia** Circuit has observed:

The Committee members' work is functionally comparable to the work of judges ... They serve as an arm of the court and perform a function which traditionally belongs to the judiciary.

... the Committee acts as a surrogate for those who sit on the bench. Indeed, were it not for the Committee, judges themselves might be forced to engage in the sort of inquiries [authorized by **Rule 49**].

[*Simons v. Bellinger*, 643 F.2d 774, 780-81 \(D.C. Cir. 1980\).](#)

The provisions of section (d) retain virtually all of the language of the original rule concerning establishment of the Committee and its rules of procedure. Section (d)(3)(G) adds specific authority for the Committee to issue opinions to facilitate understanding and enforcement of the rule.

It is expected that most matters considered by the Committee will be resolved within its informal and formal proceedings.

Commentary to § 49(e):

Section (e) is new. It clarifies the procedures and effect of proceedings commenced by the Committee, and sets forth expressly the relief available in the Court of Appeals in formal proceedings initiated by the Committee, and the method for appealing a decision of the designated hearing judge.

The powers and procedures provided in sections (d) and (e) are not the exclusive means for enforcing the provisions of this Rule. Bar Counsel may initiate an original proceeding before the Court of Appeals for contempt where it alleges that the respondent has violated **Rule 49** by practicing law while disbarred; [*In re Burton*, 614 A.2d 46 \(D.C. 1992\)](#); and it may rely on unauthorized law practice in opposing reinstatement of an attorney suspended from the Bar; [*Matter of Stanton*, 532 A.2d 95 \(D.C. 1987\)](#). The courts of the **District of Columbia** have subject matter jurisdiction to consider original complaints of **unauthorized practice of law** initiated by private parties, and to issue relief if such practice is found. [*J.H. Marshall & Assoc., Inc. v. Burlison*, 313 A.2d 587 \(D.C. 1973\)](#).

CREDIT(S)

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Court of Appeals **Rule 49**, DC R A CT **Rule 49**

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Rules of the Supreme Court

 III Practice of Law ([Refs & Annos](#))

➔➔ **SCR 3.020 Practice of law defined**

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor. An appearance in the small claims division of the district court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law.

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HISTORY: Amended eff. 11-1-78; prior amendment eff. 7-2-71

Note: Former Rules of Appellate Procedure (RAP) were amended and redesignated as Rules of the Supreme Court (SCR) by Order of the Supreme Court effective January 1, 1978. Prior Rules of the Court of Appeals (RCA) had been redesignated as Rules of Appellate Procedure effective March 12, 1976.

LIBRARY REFERENCES

[Attorney and Client](#)  11(2).

Westlaw Topic No. [45](#).

[C.J.S. Attorney and Client §§ 26 to 28, 30 to 33](#).

RESEARCH REFERENCES

ALR Library

[32 ALR 6th 531](#), Matters Constituting Unauthorized Practice of Law in Bankruptcy Proceedings.

[94 ALR 359](#), Injunction as Proper Remedy to Prevent Unlicensed Practice of Law.

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[Abramson, West's Kentucky Practice, Substantive Criminal Law § 8:48](#), Unauthorized Practice of Law.

LAW REVIEW AND JOURNAL COMMENTARIES

[The Kentucky Ban on Insurers' In-House Attorneys Representing Insureds, Grace M. Giesel, 25 N Ky L Rev 365](#)

[\(1998\)](#).

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[1](#). Constitutional issues

Supreme Court would not exercise its constitutionally granted general supervisory authority in order to review 14-year-old Unauthorized Practice of Law Opinion that prohibited liability insurers from using salaried attorneys to defend claims against insureds, especially since no compelling reason appeared to overrule precedent recognizing principles outlined in opinion. [American Ins. Ass'n v. Kentucky Bar Ass'n \(Ky. 1996\) 917 S.W.2d 568. Courts !\[\]\(5a132f13505a6571904d622757b7a8f0_img.jpg\)204](#)

[2](#). In general

Only persons who meet educational and character requirements of Supreme Court and who, by virtue of admission to Bar, are officers of Court and subject to discipline thereby, may practice law; sole exception is person acting in his own behalf. [May v. Coleman \(Ky. 1997\) 945 S.W.2d 426. Attorney And Client !\[\]\(e1d6102fe77919492c04879c8450f1f5_img.jpg\)4; Attorney And Client !\[\]\(f18214e08965a1644d0b2b0878fd365f_img.jpg\)62](#)

State law is to be considered in determining whether unauthorized practice of law has occurred. [In re Lyvers \(Bkrtcy.W.D.Ky. 1995\) 179 B.R. 837. Federal Courts !\[\]\(73002692dd5e7a64e60946be3158e719_img.jpg\)433](#)

Under local rules of the United States District Court for the Eastern and Western Districts of Kentucky, standards of professional responsibility adopted by the Supreme Court of Kentucky are implicitly deemed to be persuasive authority, if not governing standards, for practice before those district courts. [Carlsen v. Thomas \(E.D.Ky. 1994\) 159 F.R.D. 661. Attorney And Client !\[\]\(d5d7044e5caf6907399af2dced8d6ff8_img.jpg\)32\(2\)](#)

Ethical standards by which federal courts measure attorney's professional conduct are standards defined by federal law. [Carlsen v. Thomas \(E.D.Ky. 1994\) 159 F.R.D. 661. Federal Courts !\[\]\(35dc653d59570f8f891c312eeece91a2_img.jpg\)433](#)

3. Legal knowledge or advice

Under Kentucky law, in the context of the practice of law, only a lawyer licensed to practice law by the Kentucky Supreme Court is considered skilled and trained. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client !\[\]\(feabb98897b440bc8695a03336a6e2df_img.jpg\)12\(1\)](#)

“Practice of law” under Kentucky law is not limited to conduct of cases or litigation in court, but, rather, also embraces all advice to clients and preparation and drafting of all kinds of legal instruments, where work involves determination by trained legal mind of legal effect of facts and conditions. [In re Lyvers \(Bkrcty.W.D.Ky. 1995\) 179 B.R. 837. Attorney And Client !\[\]\(9dfdaff1d86ba3c1f8353b4d1b61b8c5_img.jpg\)12\(4\); Attorney And Client !\[\]\(bcef2083a617d3f771f1bcdf2f97158d_img.jpg\)12\(7\)](#)

Acquired right to practice law vests holder with property right that he or she may protect against intruder into profession who has not likewise acquired such similar right, under Kentucky law. [In re Lyvers \(Bkrcty.W.D.Ky. 1995\) 179 B.R. 837. Attorney And Client !\[\]\(83f22ed94ec5517769dd76d702c6bfd8_img.jpg\)14](#)

The person employed by the governor pursuant to [KRS 12.210](#) will be engaged in the practice of law and, therefore, must be an attorney. KBA U-18 (Nov 1977).

A collection agency may not demand payment of a debt by sending a letter threatening legal proceedings. KBA U-13 (Nov 1975).

A non-attorney may not distribute a professional card asserting that he is a “tax law consultant” because to do so implies that the individual will render a service “involving legal knowledge or legal advice.” KBA U-10 (May 1975).

4. Conflict of interest

An insurance company may not employ in-house counsel to represent the company's insured after a lawsuit has been filed. KBA U-36 (Nov 1981).

An employee of a workers' compensation insurer, although he is also an attorney, may not handle workers' compensation cases for his employer. KBA U-2 (Mar 1962).

5. Filing of documents

When probate or fiduciary documents are filed in probate court or other court of record by trust companies, they must be in the name and by the authority of licensed attorney; overruling [Hobson v. Kentucky Trust Co. of Louisville, 303 Ky. 493, 197 S.W.2d 454](#) to extent it may be inconsistent. [Frazee v. Citizens Fidelity Bank & Trust Co. \(Ky. 1964\) 393 S.W.2d 778. Attorney And Client !\[\]\(0d7ca0919e6c47bbd874bfa0189fe22e_img.jpg\)12\(12\)](#)

A county court clerk, who was not a lawyer, did not practice law, but served only as an amanuensis, in preparing and filing in his office petitions for probate of wills and appointment of administrators on advice or under directions of county attorney, county judge, or other duly licensed lawyers, but engaged in unauthorized practice of law in drawing probate papers, to be filed in such office, purely on his volition for others though such papers were to be signed by applicants therefor. [Carter v. Brien \(Ky. 1956\) 309 S.W.2d 748. Attorney And Client !\[\]\(274fd520e03b61c1b9ffc861754cacdc_img.jpg\)12\(24\)](#)

Pleadings filed by bankruptcy petition preparer were “unauthorized practice of law” under Kentucky law, and, pursuant to Bankruptcy Code section, bankruptcy court would require preparer to refund one Chapter 7 debtor's \$195 fee for preparation of petition, and in another case fine of \$500 would be assessed against preparer for improperly filing

motion to dismiss on behalf of debtor, with one half of fine paid to debtor and one half to clerk of court; in first case, debtors were seeking dismissal of their case, as preparer had “created a mess which their counsel is unable to eliminate,” and in second case, preparer filed motion to dismiss in case in which he helped prepare petition. [In re Lyvers \(Bkrcty.W.D.Ky. 1995\) 179 B.R. 837. Attorney And Client 12\(19\); Bankruptcy 3030.10; Bankruptcy 3165.5](#)

An individual who is not an attorney may not prepare and file petitions, orders, or other documents in district court on behalf of an estate, unless the individual is a natural person acting without consideration and having a beneficial interest in the estate. KBA U-37 (May 1983).

6. Wills and trusts

One who was not a licensed attorney and who prepared wills for individuals was guilty of unauthorized practice of law and would be permanently enjoined from practicing law. [Kentucky State Bar Ass'n v. Holland \(Ky. 1967\) 411 S.W.2d 674. Attorney And Client 12\(12\); Injunction 1370](#)

Trust companies that regularly engaged in drafting of wills, deeds, trust instruments, and other legal documents, as agents or fiduciaries for compensation, and that gave legal advice to the makers of such documents, were engaged in the unlawful “practice of law”. [Hobson v. Kentucky Trust Co. of Louisville \(Ky. 1946\) 303 Ky. 493, 197 S.W.2d 454. Attorney And Client 12\(12\)](#)

Banks may provide “living will” forms as a courtesy to their customers, but bank employees, even licensed counsel, may not assist customers in preparing such forms where the bank is not a party to the transaction, as this would be unauthorized practice of law by the bank; bank employees may, however, provide related notary services to customers. KBA U-44 (Sept 1990).

A bank may not use a form agreement creating a trust with its customers. KBA U-8 (May 1974).

7. Forms and legal instruments

Under Kentucky law, the “practice of law” includes advice given to clients and the preparation and drafting of all legal instruments, where the work requires a consideration of the legal effects of facts and conditions by a trained legal mind. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client 12\(4\); Attorney And Client 12\(7\)](#)

A legal services organization may prepare a handbook for distribution to lay persons which includes forms of pleading and practice for pro se use without such distribution being viewed as the practice of law or active limited representation. KBA E-343 (Jan 1991).

An officer of a lending institution may not draw legal instruments for and on behalf of the institution, even though the institution is a party to the instrument and the officer receives no remuneration for that service. KBA U-6 (July 1968).

Officers, agents, employees, and other servants of a bank may not prepare deeds in which liens are retained by the bank, or mortgages to secure loans made by the bank, or wills naming the bank a personal representative. KBA U-1 (Mar 1962).

8. Representation at court or administrative proceedings

Suspended attorney's conduct while assisting another attorney, preparing documents, conferring with one or more of

the owners of client company, not expressly informing the parties that he was unlicensed, and attending a court proceeding, was practice of law while suspended, not merely provision of non-lawyer support services, in violation of rules of professional conduct. [Troutman v. Kentucky Bar Ass'n \(Ky. 2011\) 329 S.W.3d 305](#), reinstatement granted [364 S.W.3d 189](#). [Attorney And Client](#) 37.1; [Attorney And Client](#) 44(1)

Members of the staff of the Nursing Home Ombudsman Agency of the Bluegrass, Inc. who are not lawyers admitted to the Kentucky bar association may not represent patients of nursing homes or the families of nursing home residents in transfer or discharge hearings for the following reasons (1) SCR 3.020 which **defines the practice of law** contains no exception for administrative hearings and the committee has consistently refused to invent an administrative agency exception that would permit a layman to represent a client in a hearing that would involve the giving of legal advice and the making of legal argument, the examination or cross-examination of witnesses and the like, (2) the Kentucky Supreme Court has ruled in [KBA v Henry Vogt Machine Co., 416 SW\(2d\) 727 \(1967\)](#) that lay persons cannot represent clients in adjudicative or quasi-adjudicative proceedings before state agencies, and (3) Kentucky law also forbids a corporation from providing legal services to third parties even through admitted house counsel; although the requestor, The Ombudsman Agency, Inc. has made allusions to the Older Americans Act it has not pointed to any specific federal authorization for lay practice in this area, and thus the committee is bound to apply SCR 3.020 as it is written since it is intended to insure that members of the public receive representation from a qualified and regulated professional. KBA U-46 (Nov 1994).

An attorney or layman may organize a court service to provide courier and filing services for practicing lawyers, but that service may not also obtain court dates and appear at motion dockets and calendar calls, since additional services involving court appearances, even if categorized as ministerial duties, would offend [SCR 3.030](#). KBA U-41 (Aug 1986).

Representation of a student before a student grievance committee constitutes the unauthorized practice of law if the committee is a quasi-judicial body or if the representative, during the course of the proceeding, performs acts normally performed by an attorney in court proceedings. KBA U-34 (July 1981).

Representation of an individual before a university faculty grievance committee by filing documents on behalf of, making appearances for, or otherwise participating in the matter, constitutes the practice of law. KBA U-34 (July 1981).

An individual who is neither an attorney nor a legal intern may not represent anyone before, or file any documents with, a quasi-judicial body. KBA U-19 (1977).

A layman may not represent a claimant at a hearing before a referee of the unemployment insurance commission. KBA U-15 (Mar 1976).

A non-attorney who is an employee of a city of the second-class and also a union member may not appear before the city civil service commission to represent other employees charged with misconduct. KBA U-12 (Sept 1975).

9. Drafting legislation

A non-profit corporation is not engaging in the unauthorized practice of law if it drafts and compiles ordinances, codes and regulations for cities and counties, where no fee is charged and no legal opinions are given concerning the validity or legal effect of the documents in question. KBA U-29 (Mar 1981).

10. Employee benefit plans

A non-lawyer may not advise an employer concerning the legal sufficiency of an employee benefit plan. KBA U-33

(Mar 1981).

A non-lawyer, including an “employee benefit consulting firm” or a “financial consulting firm” may not, either directly, or through its employees, provide services to the public relating to the establishment of pension and profit sharing plans and trusts. KBA U-32 (Mar 1981).

11. Bankruptcy

Lawyer cannot adequately represent a client consistent with the Kentucky Supreme Court rules governing professional conduct and appropriate bankruptcy practice standards without meeting with the client before the client's bankruptcy petition is prepared and readied for filing. [In re Caise \(Bkrcty.E.D.Ky. 2006\) 359 B.R. 152. Attorney And Client 109; Bankruptcy 3030](#)

Within a bankruptcy case, activities that fall within the **practice of law** include (1) determining when to file bankruptcy cases, (2) deciding whether to file a Chapter 7 or a Chapter 13 case, (3) advising debtors about exemptions or which exemptions apply to their property, (4) using a bankruptcy questionnaire to prepare a petition, and (5) **defining** and explaining concepts of bankruptcy and other legal terms of art. [In re Caise \(Bkrcty.E.D.Ky. 2006\) 359 B.R. 152. Attorney And Client 12\(19\)](#)

Under Kentucky law, even providing a list of exemption statutes to clients constituted the unauthorized practice of law by bankruptcy petition preparer. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client 12\(19\)](#)

Bankruptcy petition preparer engaged in the unauthorized practice of law under Kentucky law when she reviewed debtor's paperwork and determined that another individual should be listed as a co-debtor. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client 12\(19\)](#)

Under Kentucky law, bankruptcy petition preparer who provided legal advice and services independent of a supervising attorney engaged in the unauthorized practice of law, and so would be required to disgorge all fees received and enjoined from continuing to engage in the unauthorized practice of law. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client 12\(19\); Attorney And Client 12\(25\); Bankruptcy 3030.12; Bankruptcy 3165.5; Injunction 1370](#)


Bankruptcy petition preparer, who apparently decided how to list debtors' debt to creditor on the basis of her conversation about the nature of this debt with debtor, engaged in the unauthorized practice of law under Kentucky law. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client 12\(19\)](#)

Bankruptcy petition preparer's use of a bankruptcy questionnaire to prepare a petition constitutes the unauthorized practice of law under Kentucky law, as transferring information from the questionnaire to the official bankruptcy forms invariably will require some legal judgment. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client 12\(19\)](#)


In determining whether bankruptcy petition preparer engaged in the unauthorized practice of law under Kentucky law, bankruptcy court had no problem with petition preparer using a computer program, but she was only permitted to receive information from potential debtors on official bankruptcy forms. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263 B.R. 805. Attorney And Client 12\(19\); Bankruptcy 3030.8](#)




Bankruptcy petition preparer could provide clients with copies of official bankruptcy forms if necessary, since they were public documents, but, to avoid engaging in the unauthorized practice of law under Kentucky law, she could not provide any guidance as to how to fill out clients' bankruptcy schedules. [In re Moffett \(Bkrcty.W.D.Ky. 2001\) 263](#)


[B.R. 805. Attorney And Client](#)  12(19); [Bankruptcy](#)  3030.8



Bankruptcy petition preparer's preparing and filing petitions, motions, and other papers that constituted the "practice of law" in a number of cases warranted permanent injunction from filing or preparing for filing any papers in the Bankruptcy Court for the Western District of Kentucky. [In re Lyvers \(Bkrcty.W.D.Ky. 1995\) 179 B.R. 837. Bankruptcy](#)  3030.12

12. Real estate titles, deeds and mortgages

Preparation of real estate mortgages for corporate bank by one of its lay officers constituted practice of law and was unlawful even though no fee or compensation was charged to borrower; overruling contrary statement in [Carter v. Trevathan, 309 S.W.2d 746. Kentucky State Bar Ass'n v. Tussey \(Ky. 1972\) 476 S.W.2d 177. Attorney And Client](#)  12(11)

Layman's preparation of written contract which related to sale of property, to which he was not party, and for which he received \$2.00 from each party, constituted the "unauthorized practice of law," and warranted injunction from engaging in further practice of law, a \$50 fine, and payment of costs. [Kentucky State Bar Ass'n v. Kelly \(Ky. 1967\) 421 S.W.2d 829. Attorney And Client](#)  12(11); [Attorney And Client](#)  12(26); [Injunction](#)  1370

Where building and loan association retained, on salary, an attorney whose principal duties consisted of examining and passing judgment on the validity of title to properties which would be mortgaged to association as security for loans, and where statement rendered for the "service charge" collected from borrower included an item entitled "examination of title", association was furnishing to the public and charging for the legal service of examining and approving title to real estate and was thereby engaging in the unauthorized practice of law. [Kentucky State Bar Ass'n v. First Federal Sav. and Loan Ass'n of Covington \(Ky. 1960\) 342 S.W.2d 397. Attorney And Client](#)  12(11)

Where notary public had been engaged in preparing deeds to which he was not a party, and failed to respond to rule issued against him to show cause why he should not be held in contempt, he would be adjudged guilty of contempt, fined, and permanently enjoined from engaging in the practice of law. [Hargett v. Lake \(Ky. 1957\) 305 S.W.2d 523. Attorney And Client](#)  12(26); [Injunction](#)  1370

A title insurance company is not engaging in the unauthorized practice of law when it issues title insurance; however, it is engaging in the unauthorized practice of law where it has its employees, including its staff attorneys, examine titles and render title opinions for the general public. KBA U-21 (July 1978).

Licensed real estate brokers or licensed salespersons may complete brokerage contracts to which they are parties and other standard forms for simple real estate transactions rising in the usual course of the broker's or salesperson's business, in connection with transactions actually handled by them as such, without charge and unaccompanied by legal advice; however, such brokers and salespersons may not prepare deeds, mortgages, leases, and other complicated documents which involve substantial rights and liabilities of the parties, since such actions would constitute the unauthorized practice of law. KBA U-42 (Jan 1987).

A title insurance company is not engaging in the unauthorized practice of law when it has its employees prepare form mortgages, provided that no charge is collected from the borrower for this service, and provided that the final product is reviewed by legal counsel. KBA U-21 (July 1978).

The completion of a printed mortgage form by a lay employee of a lending institution, using information furnished by an attorney, constitutes the unauthorized practice of law. KBA U-11 (July 1975).

A real estate mortgage lender, or a title insurance company on behalf of a real estate mortgage lender, may perform the ministerial acts necessary to close a real estate loan. KBA U-31 (Mar 1981).

13. Mediation services



Mediation is not the practice of law and does not violate SCR 3.020, so an attorney may form a corporation to provide mediation services including domestic relations mediation to the general public, which will have a separate address and phone apart from the attorney's law firm, although mediation services will be provided by lawyers from the attorney's firm, and since the corporation is not engaged in the practice of law, it may use a trade name. KBA E-377 (March 1995).

A mediator is not prohibited from soliciting business for his or her mediation service, but an attorney who practices law and also engages in the delivery of mediation services including domestic relations mediation to the general public who wishes to advertise and solicit mediation business must avoid violating Ethics Rules 7.01 to 7.60; mediation is defined to exclude specifically the giving of any legal advice in the course of mediation, and advertisement of mediation services which identifies any participant as a lawyer shall mandate compliance with all advertising rules under [SCR 3.130](#), and where a corporation formed by an attorney offers mediation services provided by lawyers from the attorney's firm but the facilities and phone will be separate, compliance with the attorney advertising rules can be accomplished. KBA E-377 (March 1995).

An attorney may form a separate corporation to provide mediation services including domestic relations mediation to the general public, which will be provided by lawyers from the attorney's firm, but the attorney and the attorney's firm must take care to avoid conflicts of interest. (See KBA E-335 (1989) and the Standards of Practice for Divorce and Family Mediation of the ABA (1984).) KBA E-377 (March 1995).

14. Corporations and managers

An individual filing an action in his business name to enforce payment of account forwarded to him for collection is engaged in the unauthorized practice of law. [Kentucky Bar Ass'n v. Fox \(Ky. 1976\) 536 S.W.2d 469](#).

A nonlawyer who is officer of corporation or member of firm or partnership, not acting in fiduciary capacity, may draw a legal instrument for or on behalf of the corporation, firm or partnership if it is a party to the instrument and he receives no remuneration for that particular service, but cannot draw a will naming his institution as personal representative of testator, nor engage in probate work or other legal proceedings. [Carter v. Trevathan \(Ky. 1956\) 309 S.W.2d 746](#). [Attorney And Client](#) 12(7); [Attorney And Client](#) 12(12)

A non-lawyer may not represent a corporation in a court other than small claims court. KBA E-345 (March 1991).

A legal research corporation owned and operated by Kentucky attorneys, but which is not a professional service corporation, may not offer to Kentucky attorneys a service to cover routine depositions and hearings on a temporary basis, since such a service would violate the longstanding rule that corporations are prohibited from practicing law in the Commonwealth. KBA E-328 (April 1988).

When a bank employs an attorney who renders services for the bank but not for its customers, the bank is not engaging in the practice of law. KBA U-23 (July 1978).

A resident manager of a corporation may not prosecute a claim in small claims court against someone who owes the corporation money. KBA U-20 (July 1978).

A corporation may not advertise for contracts if part of the performance of the contract will involve the rendition of legal services, even if the legal services will be performed by an attorney; therefore, an engineering company may not contract with the state to provide the state with title opinions prepared by an attorney. KBA U-16 (Nov 1976).

A corporation may employ laymen to provide legal research and related services to attorneys. KBA U-14 (Mar 1976).

Articles of incorporation may be prepared and filed by a layman who is a sole incorporator or one of several lay incorporators. KBA U-7 (Mar 1974).

A corporation may not engage in the business of analyzing all claims for unemployment compensation filed against an employer, without engaging in the unauthorized practice of law. KBA U-4 (May 1962).

An officer of a corporation who is an expert in traffic and freight and a qualified practitioner before the interstate commerce commission may not represent his corporation before the state department of transportation. KBA U-3 (Mar 1962).

15. Suspended or disbarred attorneys

Attorney who served as corporate general counsel after he had been suspended for non-payment of bar dues was subject to suspension from practice of law for period of one year retroactive to the date he brought his conduct into compliance with bar association's request that he cease unauthorized practice of law, costs of \$139.80, and requirement that he notify all courts in which he had matters pending and all clients for whom he was actively involved in litigation and similar legal matters of his suspension; attorney had been aware that his license was suspended, but did not believe his performance of duties as general counsel constituted the practice of law that would require a license. [Hipwell v. Kentucky Bar Ass'n \(Ky. 2008\) 267 S.W.3d 682. Attorney And Client 59; Attorney And Client 59.13\(3\)](#)

Suspended attorney's activities as corporate general counsel were within the ambit of the "practice of law" and, therefore, required appropriate licensure: duties included supervising the work of in-house attorneys, working with outside counsel, reviewing and approving reports from in-house and outside counsel, signing corporate documents for government agencies, and providing strategic legal direction, compliance with Securities and Exchange Commission (SEC) and New York Stock Exchange (NYSE) requirements, and litigation management. [Hipwell v. Kentucky Bar Ass'n \(Ky. 2008\) 267 S.W.3d 682. Attorney And Client 12\(4\); Attorney And Client 60](#)

Attorney would be permitted to resign from bar association under terms of disbarment in response to charges, for which he had been temporarily suspended from practice of law, where attorney had acknowledged his conduct as charged by inquiry tribunal, upon condition that he not engage in practice of law until such time as Supreme Court entered order reinstating his license and that he not file application for reinstatement for period of five years. [Hayes v. Kentucky Bar Ass'n \(Ky. 1990\) 790 S.W.2d 237. Attorney And Client 59.12](#)

Neglecting legal matters, writing checks payable to cash on estate and making unsecured cash loans to another client, misrepresenting status of appeal, communicating directly with adverse party on subject of representation knowing that party is represented by counsel without counsel's consent, and representing criminal defendant while under temporary suspension from practice of law warrants permitting attorney to resign from state bar association under terms of disbarment. [Martin v. Kentucky Bar Ass'n \(Ky. 1989\) 775 S.W.2d 519. Attorney And Client 59.12](#)

Voluntary resignation from state bar association terminates pending disciplinary proceeding and precludes application for reinstatement for period of 30 days. [Combs v. Kentucky Bar Ass'n \(Ky. 1989\) 763 S.W.2d 125, reinstatement granted 770 S.W.2d 685. Attorney And Client 47.1; Attorney And Client 61](#)

In proceedings on motion filed by State Bar Association asking that disbarred attorney be held in contempt of court for engaging in practice of law in preparing nine deeds and one affidavit of descent, evidence failed to sustain contention of attorney that he was a partner in purchase of land described in deeds and that consequently it was not improper for him to prepare deeds. [Kentucky Bar Ass'n v. Tribell \(Ky. 1977\) 560 S.W.2d 803. Attorney And Client 60](#)

In light of SCR 3.020's **definition** of the **practice of law**, it is difficult to determine whether a disbarred attorney was serving as a "law clerk" for his former firm or practicing law vicariously; however, when the record is replete with testimony that the attorney received substantial sums as compensation for his services on several occasions during the period of his disbarment, and the payments for those services is more nearly commensurate with those received for legal services than with the token sums generally earned by law clerks, the attorney has violated the spirit of his order of disbarment and his application for re-entry is denied when the attorney does not show he has earned the right to re-enter the legal profession. [Lester v. Kentucky Bar Ass'n \(Ky. 1975\) 532 S.W.2d 435.](#)

A suspended lawyer may serve as a paralegal after the period of the suspension has expired, regardless of whether an application for reinstatement to the Bar is pending, has been denied, or was never sought. KBA E-336 (Sept 1989).

An attorney may employ a former attorney, who is presently disbarred or under suspension, to perform certain duties for him, provided precautions are taken to ensure that the disbarred attorney does not engage in the unauthorized practice of the law. KBA E-255 (Nov 1981).

16. Accountants

Nature of work performed by accountant for his clients, which included the filing of administrative tax review petitions which raised questions of statutory interpretation and constitutional law, constituted the unauthorized practice of law. [Kentucky State Bar Ass'n v. Bailey \(Ky. 1966\) 409 S.W.2d 530. Attorney And Client 12\(18\)](#)

An accountant's filing of petitions for review of adverse rulings by the department of revenue which raised questions of statutory interpretation and constitutional law, constitutes the unauthorized practice of law in violation of SCR 3.020. [Kentucky State Bar Ass'n v. Bailey \(Ky. 1966\) 409 S.W.2d 530. Attorney And Client 12\(18\)](#)

The filing of the final settlement of an estate by a certified public accountant constitutes the unauthorized practice of law. KBA U-39 (Sept 1984).

A non-lawyer who is a tax consultant or a certified public accountant may not represent a corporation or an individual before the Kentucky board of tax appeals. KBA U-17 (Nov 1977).

An accountant may not render advice on the manner or legal consequences of a corporate reorganization under federal law and may not prepare legal documents, articles of amendment, or amended by-laws in connection with such a reorganization without engaging in the practice of law. KBA U-9 (May 1974).



17. Ministerial acts and government clerks


A county clerk who complies with [KRS 304.20-210](#) and issues a statement indicating the amount of all liens on a piece of property is engaged in the unauthorized practice of law if he examines records pertaining to city taxes, current tax bills in the hands of the sheriff, or any tax bills other than those that have been certified to him as delinquent. KBA U-30 (Mar 1981).

18. Property manager

A manager of rental property, who is not an attorney and who does not own the real estate, may not prepare and file a writ of forcible detainer nor examine witnesses at a hearing upon a motion for forcible detainer without engaging in the unauthorized practice of law. KBA U-38 (May 1983).

19. Law students and paralegals

Attorney failed to adequately supervise paralegal who worked with client-debtors when debtors' only contact with attorney's office was via paralegal, from their initial appointment through execution of Chapter 7 petition that attorney ultimately determined debtors were ineligible to file, warranting order denying attorney additional fee requested and requiring her to refund all sums paid by debtors for fees, costs, and other expenses related to their dismissed Chapter 13 case, in that even if attorney set parameters for deciding whether to file under Chapter 7 or Chapter 13, she also, at a minimum, had to personally communicate those parameters and their application to clients before petition was prepared and executed, and could not delegate to non-lawyer task of communicating legal advice about exemptions and their application to debtors' property. [In re Caise \(Bkrcty.E.D.Ky. 2006\) 359 B.R. 152. Attorney And Client](#) 153; [Bankruptcy](#) 3193

Under Kentucky law governing unauthorized practice of law, paralegal must work under the supervision and direction of a licensed lawyer. [In re Caise \(Bkrcty.E.D.Ky. 2006\) 359 B.R. 152. Attorney And Client](#) 12(24)

A lawyer may not delegate the task of taking depositions to a law school graduate not admitted to the bar, as such practice offends the rule against the unauthorized practice of law, even though the deposition procedure takes place outside the courtroom. KBA E-341 (Nov 1990).


A paralegal may not appear in court and argue a motion on behalf of his employer's client. KBA E-227 (1981).

Kentucky does not recognize the concept of a “free-standing” paralegal service in which the paralegal provides legal services directly to members of the public, and in the past the committee has issued opinions making it clear that the lawyer may not send a paralegal to engage in unsupervised representation of the client in court or administrative proceedings or in depositions, and the ABA has issued opinions making it clear that a lay legal assistant or paralegal may conduct initial interviews with clients if the client subsequently confers with the supervising lawyer and may sign correspondence incident to his or her proper functions, so long as he or she is clearly identified as a nonlawyer; differences of opinion may have developed on these issues across the country but Kentucky has addressed this issue in its Paralegal Code, [SCR 3.700](#), Sub-rule 2; in light of the standards of the Kentucky Paralegal Code, a paralegal's rendering of advice is not the unauthorized practice of law if (1) it is made clear that the paralegal is not a lawyer, (2) the lawyer discusses the specific issues with the paralegal both before and after the client-paralegal discussions, and (3) the attorney accepts full responsibility for the paralegal's action and advice. Here the paralegal is acting as a conduit for the lawyer's legal advice, and the lawyer warrants that he or she will be providing adequate supervision, will be assuming full responsibility, and that the client will be fully informed of the paralegal's status. KBA U-47 (Nov 1994).

[SCR 3.700](#) clearly describes a paralegal as a person whose work is “under the supervision and direction of a licensed lawyer” whose conduct is not unauthorized practice only because his or her work is “supervised” by that lawyer; Kentucky law does not authorize the delivery of direct, “free-standing” or unsupervised paralegal services to members of the public. A paralegal may provide services to a lawyer or lawyers or through lawyers as an employee or independent contractor, but may not provide such services directly to the public without the supervision required by [SCR 3.700](#). Except in instances in which federal law or a state rule is to the contrary, the selection and filling out of forms for legal proceedings by a paralegal who is not supervised by a lawyer in the particular matter, or by a suspended lawyer or by any other unlicensed person, is the unauthorized practice of law and is prohibited. In addition, a disbarred or suspended lawyer, or a lawyer who has surrendered his or her license in lieu of discipline, is bound by the limitations of KBA E-255 and E-256 regarding unauthorized practice of law. KBA U-45 (1992).

A paralegal may not represent the department of justice in a hearing before the court of claims. KBA U-35 (July 1981).

20. Prisoner assistance

Consent decree by which Department of Justice (DOJ) and Attorney General of Commonwealth settled 1983 action brought by state prison inmates in federal court, in which DOJ and Commonwealth agreed to guarantee that inmate legal aide or assistant would not be disciplined for assisting other prisoners in their legal actions if aide or assistant had been appointed or was seeking appointment by court, did not entitle inmate to appointment of inmate legal aide to assist him in prosecution of civil action filed in Commonwealth court. [May v. Coleman \(Ky. 1997\) 945 S.W.2d 426.](#)
[Prisons](#)  [263](#)

Sup. Ct. Rules, Rule 3.020, KY ST S CT Rule 3.020

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Rule 14-802. Authorization to practice law.

Utah Rules

Supreme Court Rules of Professional Practice

Chapter 14. Rules Governing the Utah State Bar

Article 8. Special Practice Rules

As amended through July 1, 2012

Rule 14-802. Authorization to practice law

(a) Except as set forth in subsection (c) of this rule, only persons who are active, licensed members of the Bar in good standing may engage in the practice of law in Utah.

(b) For purposes of this rule:

(b)(1) The 'practice of law' is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person's facts and circumstances.

(b)(2) The 'law' is the collective body of declarations by governmental authorities that establish a person's rights, duties, constraints and freedoms and consists primarily of:

(b)(2)(A) constitutional provisions, treaties, statutes, ordinances, rules, regulations and similarly enacted declarations; and

(b)(2)(B) decisions, orders and deliberations of adjudicative, legislative and executive bodies of government that have authority to interpret, prescribe and determine a person's rights, duties, constraints and freedoms.

(b)(3) 'Person' includes the plural as well as the singular and legal entities as well as natural persons.

(c) Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

(c)(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(c)(2) Providing general legal information, opinions or recommendations about possible legal rights, remedies, defenses, procedures, options or strategies, but not specific advice related to another person's facts or circumstances.

(c)(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in the State of Utah when no fee is charged to do so.

(c)(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(c)(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.

(c)(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(c)(7) Representing a party in any mediation proceeding.

(c)(8) Acting as a representative before administrative tribunals or agencies as authorized by

tribunal or agency rule or practice.

(c)(9) Serving in a neutral capacity as a mediator, arbitrator or conciliator.

(c)(10) Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(c)(11) Lobbying governmental bodies as an agent or representative of others.

(c)(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(c)(12)(A) a real estate agent or broker licensed by the state of Utah may complete State-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(c)(12)(B) an abstractor or title insurance agent licensed by the state of Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(c)(12)(C) financial institutions and securities brokers and dealers licensed by Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments.

(c)(12)(D) insurance companies and agents licensed by the state of Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(c)(12)(E) health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(c)(12)(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

History. Amended effective November 12, 2010.

Note:

Advisory Committee Comment:

Subsection (a).

"Active" in this paragraph refers to the formal status of a lawyer, as determined by the Bar. Among other things, an active lawyer must comply with the Bar's requirements for continuing legal education.

Subsection (b).

The practice of law defined in Subparagraph (b)(1) includes: giving advice or counsel to another person as to that person's legal rights or responsibilities with respect to that person's facts and circumstances; selecting, drafting or completing legal documents that affect the legal rights or responsibilities of another person; representing another person before an adjudicative, legislative or executive body, including the preparation or filing of documents and conducting discovery; negotiating legal rights or responsibilities on behalf of another person.

Because representing oneself does not involve another person, it is not technically the "practice of law." Thus, any natural person may represent oneself as an individual in any legal context. To the same effect is Article 1, Rule 14-111 Integration and Management: "Nothing in this article shall prohibit a person who is unlicensed as an attorney at law or a foreign legal consultant from personally representing that person's own interests in a cause to which the person is a party in his or her own right and not as assignee."

Similarly, an employee of a business entity is not engaged in "the representation of the interest of another person" when activities involving the law are a part of the employee's duties solely in connection with the internal business operations of the entity and do not involve providing legal advice to another person. Further, a person acting in an official capacity as an employee of a government agency that has administrative authority to determine the rights of persons under the law is also not representing the interests of another person.

As defined in subparagraph (b)(2), "the law" is a comprehensive term that includes not only the black-letter law set forth in constitutions, treaties, statutes, ordinances, administrative and court rules and regulations, and similar enactments of governmental authorities, but the entire fabric of its development, enforcement, application and interpretation.

Laws duly enacted by the electorate by initiative and referendum under constitutional authority would be included under subparagraph (b)(2)(A).

Subparagraph (b)(2)(B) is intended to incorporate the breadth of decisional law, as well as the background, such as committee hearings, floor discussions and other legislative history, that often accompanies the written law of legislatures and other law- and rule-making bodies. Reference to adjudicative bodies in this subparagraph includes courts and similar tribunals, arbitrators, administrative agencies and other bodies that render judgments or opinions involving a person's interests.

Subsection (c).


To the extent not already addressed by the requirement that the practice of law involves the representation of others, subparagraph (c)(2) permits the direct and indirect dissemination of legal information in an educational context, such as legal teaching and lectures.


Subparagraph (c)(3) permits assistance provided by employees of the courts and legal-aid and similar organizations that do not charge for providing these services.

Subparagraph (c)(7) applies only to the procedures directly related to parties' involvement before a neutral third-party mediator; it does not extend to any related judicial proceedings unless otherwise provided for under this rule (e.g., under subparagraph (c)(5)).

West's Annotated Code of Virginia [Currentness](#)

Rules of the Supreme Court of Virginia

 [Part Six](#). Integration of the State Bar

 [Section I](#). Unauthorized Practice Rules and Considerations

→→ **PRACTICE OF LAW IN THE COMMONWEALTH OF VIRGINIA**

(A) No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia or in any manner hold himself out as authorized or qualified to practice law in the Commonwealth of Virginia except as may be authorized by rule or statute.

(B) Definition of the Practice of Law. The principles underlying a **definition** of the **practice of law** have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore, it is from the relation of attorney and client that any practice of law must be derived.

The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is nonetheless practicing law though such person may employ others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the necessity for protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to **define** the **practice of law**.

Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill.

Specifically, the relation of attorney and client exists, and one is deemed to be practicing law whenever--

(1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.

(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.

(3) One undertakes, with or without compensation, to represent the interest of another before any tribunal--judicial, administrative, or executive--otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.

(4) One holds himself or herself out to another as qualified or authorized to practice law in the Commonwealth of Virginia.

(C) Definition of “Non-lawyer.” The term “non-lawyer” means any person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia. However, any lawyer not licensed to practice law in Virginia, but licensed in any other state or territory of the United States or the District of Columbia, or a foreign nation, who provides legal advice or services to clients in Virginia, shall not be subject to these Unauthorized Practice rules but shall be subject to the laws, rules and regulations of the jurisdiction(s) in which he/she is licensed to practice, as well as otherwise applicable Virginia Law including the Virginia Rules of Professional Conduct.

(D) The Unauthorized Practice rules which follow represent a nonexclusive list of specific types of practice which would violate these rules.

CREDIT(S)

[Amended effective September 1, 1987; September 18, 1996; November 22, 1999; January 11, 2010.]

Integration of the State Bar, Pt. 6, § 1 Practice of Law, VA R S CT PT 6 § 1 Practice of Law

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Rule 24. DEFINITION OF THE PRACTICE OF LAW.

WASHINGTON RULES

WASHINGTON GENERAL RULES

Part 1. GENERAL RULES.

As amended through September 1, 2011

Rule 24. DEFINITION OF THE PRACTICE OF LAW

(a) General Definition. The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(b) Exceptions and Exclusions. Whether or not they constitute the practice of law, the following are permitted:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a lay representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.

(11) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

(c) Non-lawyer Assistants. Nothing in this rule shall affect the ability of non-lawyer assistants to

act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information. Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.


(e) Governmental agencies. Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

(f) Professional Standards. Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

History. Adopted effective September 1, 2001; amended effective April 30, 2002.

West's Annotated Code of West Virginia [Currentness](#)

State Court Rules

 **Definition of the Practice of Law**

It is essential to the administration of justice and the proper protection of society that only qualified persons duly licensed be permitted to engage in the practice of law. It is harmful to the public interest to permit anyone to represent falsely that he is qualified to perform legal services.

Unlicensed persons are excluded from the practice of law to protect the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the courts could exercise little, if any, control.

The principles underlying a **definition** of the **practice of law** have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore it is from the relation of attorney and client that any **definition** of the **practice of law** must be derived.

The relation of attorney and client is direct and personal and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney-at-law is none the less practicing law though such person may employ or select others to whom may be committed the actual performance of such duties.

The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others in matters connected with the law shall be properly trained and educated, and be subject to a peculiar discipline. The [That] fact, and the protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to **define** the **practice of law**.

In general, one is deemed to be practicing law whenever he or it furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill.

More specifically but without purporting to formulate a precise and completely comprehensive **definition** of the **practice of law** or to prescribe limits to the scope of that activity, one is deemed to be practicing law whenever (1) one undertakes, with or without compensation and whether or not in connection with another activity, to advise another in any matter involving the application of legal principles to facts, purposes or desires; (2) one undertakes, with or without compensation and whether or not in connection with another activity, to prepare for another legal instruments of any character; or (3) one undertakes, with or without compensation and whether or not in connection with another activity, to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures. Nothing in this paragraph shall be deemed to prohibit a lay person from appearing as agent before a justice of the peace or to prohibit a bona fide full-time lay employee from performing legal services for his regular employer (other than in connection with representation of his employer before any judicial, executive or administrative tribunal, agency or officer) in matters relating solely to the internal affairs of such employer, as distinguished from such services rendered to or for others.

CREDIT(S)

[Adopted March 28, 1947, effective May 1, 1947. Amended June 27, 1961, effective July 1, 1961.]

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[Attorney and Client](#) 11.

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[C.J.S. Attorney and Client § 30](#).

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Practice of Law Definition of the Practice of Law, WV R LAW PRAC Definition of the Practice of Law

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West's Wisconsin Statutes Annotated [Currentness](#)
Wisconsin Supreme Court Rules
☞ Supreme Court Rules
☞ [SCR Chapter 23](#). Regulation of Unauthorized Practice of Law
 →→ **SCR 23.01. Definition of practice of law**

The practice of law in Wisconsin is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) where there is a client relationship of trust or reliance and which require the knowledge, judgment, and skill of a person trained as a lawyer. The practice of law includes but is not limited to:

- (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
- (2) Selection, drafting, or completion for another entity or person of legal documents or agreements which affect the legal rights of the other entity or person(s).
- (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
- (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).
- (5) Any other activity determined to be the practice of law by the Wisconsin Supreme Court.

CREDIT(S)

Adopted by S.Ct. Order 07-09, eff. Jan. 1, 2011.

WI SCR 23.01, WI ST REG UNAUTH PRAC LAW SCR 23.01

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