

The Unauthorized Practice of Law A Paralegal's Duty and Responsibility - Know the Limits

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by Bonnie Hamp

UPL, the "unauthorized practice of law", we've all heard the phrase, but do we really know what it means? Simply put, the unauthorized practice of law occurs when a person who is not a licensed attorney engages in the practice of law.

Which brings us to ask, what is the practice of law? This is not an easy question to answer and you will find very contrasting viewpoints and opinions on this. Nonetheless, activities which constitute the practice of law and rules prohibiting the unauthorized practice of law are defined by each jurisdiction. In Utah, rules prohibiting the unauthorized practice of law are Rule 6(a) of the Rules of Lawyer Discipline and Disability (RLDD); and the Supreme Court's Rules of Professional Practice (Code of Judicial Administration) Provision III T of the Rules for Integration and Management.

A new rule recently approved by the Utah Supreme Court in June 2005, defines the practice of law as follows:

...only persons who are active, licensed members of the Utah State 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.

Chapter 13A, Supreme Court Rules of Professional Practice, Rule 1.0 (Authorization to Practice Law).

There are numerous activities that constitute the practice of law, however, in general, the most common cited are giving legal advice; representing a party in court; and preparing legal documents; all of which a paralegal will inevitably become involved in one form or another. Here are just a few examples.

Giving Legal Advice

It happens to us all. As we become familiar in our practice areas, we gain the knowledge to answer many common questions a client may ask. It is tempting to simply respond to these inquiries, especially if the attorney is unavailable and the client is anxious for a response. This type of situation, however, could amount to providing legal advice and we should refrain from responding. Instead, we need to simply refer the client to discuss the matter with the attorney, which is often easier said than done. One solution would be to offer to relay the client's concerns to the attorney and get back to them with a response. Keep in mind that when a paralegal is merely acting as a medium between the lawyer and client, this does not constitute legal advice. Just be certain the client is completely aware that the lawyer is the source of the information. On the other hand, when a paralegal makes a legal conclusion based upon the facts and circumstances of a client's case and conveys that opinion, this now constitutes legal advice and unauthorized practice of law.

Preparing Legal Documents

The preparation of a legal document that ultimately affects a person's legal rights and responsibilities is an activity restricted solely for attorneys. However, in our role as paralegals, we are often given the assignment of preparing a number of legal documents. This is not considered the unauthorized practice of law. Why? The lawyer has a supervisory role to review and is ultimately accountable for its accuracy and effectiveness. It is the paralegal's duty to make certain that any work product he or she has prepared is reviewed and approved by the lawyer.

Canons of Ethics and Guidelines for the Utilization of Paralegals

Become familiar with the Canons of Ethics and Guidelines for the Utilization of Paralegals. These have been approved by the Paralegal Division and Board of Bar Commissioners of the Utah State Bar.

Canon 2 specifically sets forth what a paralegal *shall not* do:

A paralegal shall not:

- a) establish an attorney-client relationship;
- b) establish the amount of a fee to be charged for legal services;
- c) give legal opinions or advice;
- d) represent a client before a court or agency unless so authorized by that court or agency;

e) engage in, encourage, or contribute to any act which would constitute the unauthorized practice of law; and

f) engage in any conduct or take any action, which would assist or involve the attorney in a violation of professional ethics or give the appearance of professional impropriety.

The Guidelines for the Utilization of Paralegals also serve to provide a standard for paralegals and attorneys and contain another very important consideration:

Paralegals shall:

(1) Disclose their status as paralegals at the outset of any professional relationship with a client, other attorneys, a court or administrative agency or personnel thereof, or members of the general public.

This is crucial. A paralegal must always disclose the fact that he or she is not an attorney when dealing with clients, other attorneys, the court and general public. Misrepresentation of one's status is a form of unauthorized practice of law. If a client is misled to believe that the paralegal is an attorney, the client would expect certain actions by this person to advance their case. Such misunderstandings, whether intentional or not, could result in harm to the client and damage to the firm. Additionally, correspondence prepared by a paralegal on firm letterhead can easily be assumed by the recipient that the person signing is an attorney. All correspondence prepared by a paralegal should always display their title or position with the firm. Failure to do so can also constitute misrepresentation of status, which could result in unauthorized practice of law.

Paralegals will encounter many instances to provide services that could constitute the practice of law. Know the limits. Prevention is the key to avoiding the unauthorized practice of law. If you are uncertain whether a task you have undertaken may constitute the practice of law, check the rules, become familiar with them, and most importantly, communicate with your attorney. This is an essential element. A paralegal's work must always be directly supervised by his or her attorney. As a result, services or work product prepared by the paralegal, under the direct supervision of an attorney, does not constitute the practice of law.

The definitions of the practice and unauthorized practice of law are very complex and can be interpreted in many ways. However, one main principle holds true, they do not apply solely to paralegals. They apply to many professions. It is our duty, as paralegals, to be aware of the provisions in our state and to stay within the boundaries of accepted practice. Do your research. Review case law and bar opinions regarding

the unauthorized practice of law. Always keep the line of communication between you and your attorneys open. Get involved with local and national paralegal associations and take advantage of the opportunities these organizations can provide. It is through continued education and training that we can effectively and better assist the legal profession in the delivery of legal services.

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