

# Unauthorized Practice of Law

**Y**OU THINK YOU HAVE the knowledge to complete a legal document, and someone you know has a need. You sure could use \$100, so what's the problem with helping a friend? The problem is it's illegal and depending on the situation, harmful and punishable.



## Objective:



Define the unauthorized practice of law, and list examples of legal activities that a paralegal may and may not perform and the ramifications of a paralegal's unauthorized practice of law.

## Key Terms:



deposition  
discovery

pleading  
practice of law

ramifications  
unauthorized practice of law (UPL)

## Protection of the Public

Imagine you have been a paralegal for about six months when you get a call from a friend whose parents need some healthcare documents created. Your friend says that her parents found some great documents online, but they are not sure which documents are best for their situation. Your friend asks if you could just tell them what forms to use, and they would do the rest of the work. What should you do?

## UNAUTHORIZED PRACTICE OF LAW AND PROTECTION OF THE PUBLIC

You may wonder who can practice law. The courts and the legislature have prohibited people not trained as lawyers from practicing law. Only licensed lawyers may practice law in the state which granted the license. It is imperative to verify the local state definition.

In order to practice law in Illinois, a person must be a graduate of a law school accredited by the American Bar Association and pass the Illinois Bar Examination and examination by the Supreme Court's Committee on Character and Fitness.

Defining the practice of law is more complex. A perfectly thorough answer is not always possible. In Illinois, the Illinois State Bar Association website indicates that, “courts have explained the **practice of law** as giving advice or services “when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill.” *People ex rel, Illinois State Bar Association v. Schafer*, 404 Ill. 45, 50 (1949). In Illinois, the practice of law is not limited to appearing in court, but also the giving of advice or rendering of any service requiring the use of any legal skill or knowledge. This includes, for example, preparing documents.”

The American Bar Association has indicated that “Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client...”

So this then begs the question, what is the unauthorized practice of law (UPL)? Each state has general statutes that limit the practice of law to licensed attorneys. The way each state defines UPL, differs greatly, if it is defined at all. Each local state must be verified and studied, as no national definition exists.

The practice of law has been generally recognized to include accepting cases from a client, setting fees, giving legal advice or making legal judgment on behalf of a client, preparing or signing legal documents, or appearing in a representative capacity before a court or other adjudicatory body.

The **unauthorized practice of law (UPL)** is the actions of a nonlawyer in performance of the practice of law. Examples of UPL include the following a lawyer licensed in Illinois working in Virginia, a notary offering legal advice, a paralegal accepting a case and setting the fees, and a secretary offering to complete a legal form for you.

## LEGAL ACTIVITIES A PARALEGAL MAY PERFORM AND NOT PERFORM

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When you think of UPL, you may think that only a lawyer would need to be concerned about such a topic but this is not true. A paralegal must be aware of UPL, in order to avoid it as well.

It is imperative that you check your local state for definitions and regulations. Each state will define UPL differently and will further outline the duties of a paralegal or nonlawyer assistant.

In Illinois, paralegals and legal assistants must work under the direct supervision of a lawyer or lawyers. Paralegals may not work independently or alone without supervision. The legal activities that a paralegal may perform in Illinois may include the following but in no way should this list be considered a finite list. Rather, it is a general categorization of general duties taken from multiple sources:

- ◆ Interview clients
- ◆ Draft **pleadings** (legal documents filed in a lawsuit) and other documents including **discovery** (efforts to obtain information before trial through various demands for production of documents, depositions, etc.)

- ◆ Conduct legal research
- ◆ Prepare discovery requests and responses
- ◆ Scheduling and summarizing of **depositions** (the taking and recording of testimony of a witness under oath before a court reporter in a place away from the courtroom before trial)
- ◆ Locate and interview witnesses and other pertinent parties
- ◆ Organize documents and exhibits for trials
- ◆ Communicate decisions made by the attorney
- ◆ Other duties delegated by an attorney and supervised by an attorney
- ◆ Assist lawyers at trials

The legal activities that a paralegal may not perform in Illinois would include any activity that, by definition, a lawyer should be performing. This prohibition would also be extended to include the list of legal activities that a paralegal could perform if the paralegal is not competent to perform them. There are many specific examples of duties a paralegal may not perform.

A paralegal may not accept cases from a client. For example, a paralegal is completing a client interview and the client asks if the firm will take the case. The paralegal taking notes for the attorney cannot render a judgment as to whether or not the attorney will take the case. Instead, the paralegal should end the interview and tell the individual that the attorney will decide whether or not to take the case.

A paralegal may not set fees. For example, at no time can a paralegal answer questions from a client or prospective client as to what fees will be charged for certain services or representation as a whole. This legal decision is that of the attorney.

A paralegal may not give legal advice or make legal judgment on behalf of a client. For example, when a client calls with information or a question, the paralegal cannot decide what to do with that information, nor answer the question if it is a legal question. The paralegal is limited to sharing communication from the client with the attorney and vice versa.

A paralegal may not prepare or sign legal documents. For example, while a paralegal can prepare documents delegated to them by an attorney, the attorney must review and sign them. A paralegal can never sign for an attorney.

A paralegal may not appear in a representative capacity before a court or other adjudicatory body. For example, a paralegal and the supervising attorney may agree to meet in court on a certain matter for a client. At the specified time, the judge calls the case but the attorney is nowhere to be found. The paralegal gets a text from the attorney that says, "I'm less than two minutes away." The paralegal may have an idea of what the attorney had planned to do that day



**FIGURE 1.** A paralegal may interview clients.

since the paralegal prepared the documents to support the strategy. The paralegal cannot represent the client and can only try to explain that the attorney is on his way.

## RAMIFICATIONS OF A PARALEGAL'S UNAUTHORIZED PRACTICE OF LAW

“Some legal fields provide an especially fertile environment for those engaged in the unauthorized practice of law. These include residential real estate transactions, estate planning, bankruptcy, immigration, and the preparation and execution of healthcare documents,” says Daniel Leddy, a lawyer and columnist for silive.com (<http://www.silive.com/opinion/danielleddy/>). There are many examples to cite. A brief Internet search reveals many occurrences of UPL. The following examples have been provided for a more thorough discussion.

- ◆ Real estate transactions—Example: Review the “Unauthorized Practice Of Law During The Residential Real Estate Closing Process: An Update On REBA Vs. NREIS Lawsuit” article at <http://www.goldmanpease.com/unauthorized-practice-of-law-during-the-residential-real-estate-closing-process-an-update-on-reba-vs-nreis-lawsuit.html>.
- ◆ Estate planning—Example: Review the “Indiana Supreme Court deems sale of estate planning services an unauthorized practice of law: State ex rel. State Bar Ass’n v. United Fin. Sys. Corp., 926 N.E.2d 8 (Ind. 2010)” article at <http://www.lexisnexis.com/community/estate-elderlaw/blogs/topcases/archive/2010/07/14/indiana-supreme-court-deems-sale-of-estate-planning-services-an-unauthorized-practice-of-law-state-ex-rel-state-bar-ass-n-v-united-fin-sys-corp-926-n-e-2d-8-ind-2010.aspx>
- ◆ Bankruptcy—Example: Review 222 F.3d 618: In Re Mary Poole, Debtor, Russell A. Brown, Chapter 13 Trustee, Appellant, v. Michael T. Smith, Appellee at <http://law.justia.com/cases/federal/appellate-courts/F3/222/618/478406/>
- ◆ Immigration—Example: Review “The Unauthorized Practice of Law—Finally Getting Shot Down” at <http://www.immigration.net/Blog/?tag=unauthorized-practice-of-law>
- ◆ Preparation and execution of healthcare documents—Example: Review “1999 WL 47235 (N.D.Tex.) UNAUTHORIZED PRACTICE OF LAW COMMITTEE, Plaintiff,



**FIGURE 2.** Estate planning documents must be completed by an attorney as legal decisions and advice are offered.



## DIGGING DEEPER...

### UNCOVERING ADDITIONAL FACTS: American Bar Association (ABA)

Study and review the American Bar Association's website located at: <http://www.americanbar.org/aba.html>. Take careful notes of your findings. Once you are confident of the website and its contents, organize your notes to reflect the organization of the website. Then create a poster which outlines the mission, history, groups, publications, and resources of the ABA. You will have to study the website at length, as it provides many links and resources. Specifically indicate resources that paralegals would find helpful, including the Ethic Search service and many others. You may find it helpful to take notes on a large draft poster first. Use the large poster or paper to help you keep track of which links lead you to which resources. When you are finished, present your poster to the class.

PARSONS TECHNOLOGY, INC d/b/a Quicken Family Lawyer, Defendant. No. Civ.A. 3:97CV-2859H. United States District Court, N.D. Texas, Dallas Division. Jan. 22, 1999. MEMORANDUM OPINION AND ORDER” at [http://www.bc.edu/bc\\_org/avp/law/st\\_org/iptf/exhibits/1999031701\\_uplc\\_v\\_parsons.html](http://www.bc.edu/bc_org/avp/law/st_org/iptf/exhibits/1999031701_uplc_v_parsons.html).

It is important to note that a paralegal could have been involved in any or all of the above mentioned examples. The participation of the paralegal could have been with or without knowledge of the looming UPL situation but regardless there are implications. The paralegal could be punished, sued, or even imprisoned according to the laws in the local states.

Low income and uneducated consumers are most at risk. The New York State Bar Association—Special Committee on the Unlawful Practice of Law reported, “In June 2008, the committee submitted an Interim Report to the Executive Committee. The committee reviewed the results of its research over the course of the prior year and concluded that although unauthorized practice may not be a serious problem across the entire spectrum of the legal practice areas in New York State, low-income and unsophisticated consumers unfamiliar with the law and/or in precarious financial or legal situations are at risk of harm from incompetent or unscrupulous non-lawyers. The committee recommended that a series of forums be held to delve more deeply into concerns it uncovered in the areas of bankruptcy, immigration and residential real estate transactions. It is anticipated that these forums will be held early in calendar year 2009.”

The **ramifications** (consequences or implications) for UPL leave a wide scar. The client, attorney, paralegal, and others can all be losers in these situations. The competent paralegal must be constantly aware of the local state rules and codes for themselves and the attorneys for whom they work.

## Summary:



The courts and the legislature have prohibited people not trained as lawyers from practicing law. In Illinois, in order to practice law, a person must be a graduate of a law school accredited by the American Bar Association, must pass the Illinois Bar Examination, and must pass examination by the Supreme Court's Committee on Character and Fitness. The unauthorized practice of law (UPL) then, in the general sense, would be the actions of a nonlawyer in performance of the practice of law.

A paralegal must be aware of UPL in order to avoid it as well. It is imperative that you check your local state for definitions and regulations. In Illinois, paralegals and legal assistants must work under the direct supervision of a lawyer or lawyers. Paralegals may not work independently or alone without supervision.

There are generally only losers when UPL is involved. The client, attorney, paralegal, and others can all be losers in these situations. The competent paralegal must be constantly aware of the local state Rules and Codes for themselves and the attorneys for whom they work.

## Checking Your Knowledge:



1. What is the practice of law and who may perform it?
2. What is UPL and who needs to be concerned about it?
3. List six legal activities that a paralegal may perform on the job.
4. Which legal fields are most ripe for UPL?
5. Give two different examples of UPL and how a paralegal may knowingly and unknowingly participate.

## Expanding Your Knowledge:



With the help of your career resource center, interview an attorney about his or her experiences with UPL, both from a consumer and professional perspective.

## Web Links:



### American Bar Association

<http://www.americanbar.org/aba.html>

### The Association of Legal Assistants—Paralegals

<http://www.nala.org/code.aspx>

### Illinois State Bar Association

<http://www.isba.org/>