



**LAWYER TO LAWYER MENTORING PROGRAM  
WORKSHEET Y  
INTRODUCTION TO PREVENTION OF THE UNAUTHORIZED PRACTICE OF LAW**

Worksheet Y is intended to facilitate a discussion about how to prevent the unauthorized practice of law with staff.

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- Discuss the types of behavior that constitute the unauthorized practice of law in Ohio and to the extent possible, define the “practice of law.” See the attached excerpt from *The Legal Assistant’s Practical Guide to Professional Responsibility*, ABA Center for Professional Responsibility (2<sup>nd</sup> Edition).
- Discuss the policy interests that are served by the prosecution of non-licensed persons engaging in the unauthorized practice of law.
- Discuss an attorney’s ethical obligation to prevent the unauthorized practice of law and provide specific tips on how to prevent non-lawyer personnel from inadvertently (or intentionally) engaging in it. See Prof. Cond. Rules 5.3 and 5.5.
- If mentoring in-house, discuss the office policies (if any) that are in place to prevent the unauthorized practice of law by non-lawyer staff.
- Share with the new lawyer appropriate ways to monitor the work product and activities of support staff for which the new lawyer is ultimately responsible as an attorney.
- Discuss what constitutes adequate supervision of non-lawyer employees and the types of non-lawyer employees that attorneys have the obligation to supervise.
- Discuss the types of business relationships in which a lawyer could become involved which might potentially cause him to aid the unauthorized practice of law. See Prof. Cond. Rule 5.4.

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**RESOURCES**

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**OHIO RULES OF PROFESSIONAL CONDUCT**

**V. LAW FIRMS AND ASSOCIATIONS**

Page Y1



### **RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

With respect to a nonlawyer employed by, retained by, or associated with a lawyer, all of the following apply:

- (a) a lawyer who individually or together with other lawyers possesses managerial authority in a law firm or government agency shall make reasonable efforts to ensure that the firm or government agency has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Ohio Rules of Professional Conduct if engaged in by a lawyer if either of the following applies:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved;
  - (2) the lawyer has managerial authority in the law firm or government agency in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

View comments at

[http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule5\\_3](http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule5_3)

### **RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER**

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except in any of the following circumstances:
  - (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
  - (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;



(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement;

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed or retained the lawyer in the matter;

(5) a lawyer may share legal fees with a nonprofit organization that recommended employment of the lawyer in the matter, if the nonprofit organization complies with Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio.

**(b)** A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

**(c)** A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

**(d)** A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if any of the following applies:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation;

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

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[http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule5\\_3](http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule5_3)

## **RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW**

**(a)** A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.



**(b)** A lawyer who is not admitted to practice in this jurisdiction shall not do either of the following:

- (1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law;
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

**(c)** A lawyer who is admitted in another United States jurisdiction, is in good standing in the jurisdiction in which the lawyer is admitted, and regularly practices law may provide legal services on a temporary basis in this jurisdiction if one or more of the following apply:

- (1) the services are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
- (2) the services are reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- (3) the services are reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;
- (4) the lawyer engages in negotiations, investigations, or other nonlitigation activities that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

**(d)** A lawyer admitted and in good standing in another United States jurisdiction may provide legal services in this jurisdiction in either of the following circumstances:

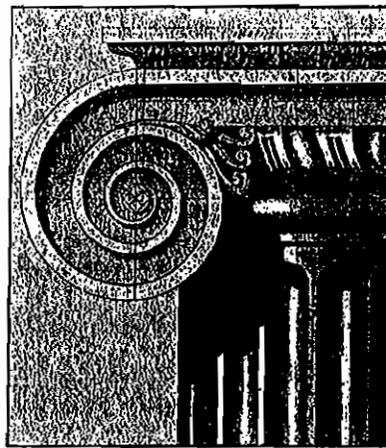
- (1) the lawyer is registered in compliance with Gov. Bar R. VI, Section 3 and is providing services to the employer or its organizational affiliates for which the permission of a tribunal to appear pro hac vice is not required;
- (2) the lawyer is providing services that the lawyer is authorized to provide by federal or Ohio law.

View comments at

[http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule5\\_3](http://www.supremecourtofohio.gov/rules/profConduct/profConductRules.pdf#Rule5_3)

The Legal Assistant's  
Practical Guide to  
**Professional  
Responsibility**

**Second Edition**



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# Chapter

# FOUR

## *Unauthorized Practice of Law*

### ▶ DEFINING THE UNAUTHORIZED PRACTICE OF LAW

Simply because a lawyer often performs a certain function does not necessarily make it the practice of law. Both lawyers and legal assistants often fill in blanks on standardized forms, handle routine telephone calls from clients, and maintain legal files. But legal assistants are rapidly becoming skilled at providing an ever-increasing range of law-related services, and therefore identifying which services require a lawyer's expertise is important.

Simply put, legal assistants may conduct any law-related services at which they are competent, provided they do not engage in the "unauthorized practice of law." The unauthorized practice of law (UPL) is the practice of law by someone who does not hold a current law license.

While this standard is easy to articulate, it is difficult to apply. One reason is that the definition of the practice of law varies from jurisdiction to jurisdiction and can be quite vague. Another reason is that the line between legal

services properly conducted by legal assistants and the unauthorized practice of law often has been a matter of contention between various groups in the legal community.

It is important to keep in mind that the ability to practice law legally is not a right, but rather a license granted by a government entity. Each jurisdiction sets its own requirements for a license. A license to practice law is, with limited exceptions, restricted to persons who have satisfied certain requirements established by the highest court of a jurisdiction, usually a degree from an accredited law school, a passing score on the jurisdiction's bar examination, and good moral character.

State regulations protect consumers by requiring a threshold level of skill and placing ethical constraints on lawyers in their delivery of services. Until recently, no parallel state regulations applied to nonlawyers; consumers who obtain legal services from nonlawyers do so without the benefit of state-imposed safeguards. In 2001, however, a new California law regulating paralegals became effective.<sup>1</sup> It remains to be seen whether other jurisdictions will follow suit.

### ◆ UNAUTHORIZED PRACTICE OF LAW RULES

ABA Model Rule 5.5 forbids a lawyer from assisting another, including a nonlawyer, in the unauthorized practice of law.<sup>2</sup> It does not define the practice of law, leaving that to the individual jurisdictions.<sup>3</sup> As noted earlier, every jurisdiction has one or more laws prohibiting the unauthorized practice of law; in most places it is a misdemeanor punishable by fine or imprisonment.

According to Canon 3 of the *NALA Code of Ethics and Professional Responsibility*, a legal assistant shall not engage in the unauthorized practice of law. EC-1.8(a) of the *NFPA Model Code of Ethics and Professional Responsibility* provides that a legal assistant shall comply with the applicable legal authority governing the unauthorized practice of law. All of these rules allow a lawyer to delegate certain work to qualified legal assistants as long as the lawyer supervises the work and retains responsibility for the work product.

Because the legal assistant's work is dependent upon the lawyer's supervision, the lawyer must be in a position to assume responsibility for the work. Thus, for example, if the lawyer's license has been suspended, the legal assistant may not continue to perform duties on behalf of the lawyer that are part of the business management of a law practice, such as producing and communicating about pleadings, informing clients of upcoming hearing dates, or apprising clients of the status of their legal matters.<sup>4</sup> A suspended lawyer should make plans for another lawyer to assume responsibility for the work of the legal assistant. Otherwise, the legal assistant could be guilty of the unauthorized practice of law.

### ◆ THE PRACTICE OF LAW

Activity that constitutes the practice of law is established by each jurisdiction, and the definition varies from jurisdiction to jurisdiction.<sup>5</sup> While some jurisdictions have created precise definitions, with specific exceptions, many of the current definitions are open-ended, with courts deciding on a case-by-case basis whether a new form of delivery of legal services does or does not constitute the practice of law.

In either event, there are three types of activities that are most commonly cited as being the practice of law. They are: giving legal advice, representing a party in court, and preparing legal documents.<sup>6</sup> Almost all activities that can be considered the practice of law are encompassed within these three categories, which are discussed below. This list, however, is not all-inclusive, and courts have held that other activities also constitute the practice of law.

### ◆ GIVING LEGAL ADVICE

The temptation to give legal advice is a challenge that almost every legal assistant encounters daily. During the span of a career, legal assistants become quite familiar with certain practice areas. They learn the answers to many common client questions.

It can be very tempting to respond to a client's inquiry when one believes that he or she knows the answer. This is especially true when a client is

kept waiting until a lawyer is available to answer the question. However, the response may amount to giving legal advice, and the legal assistant should refer the question to the lawyer with a statement such as "That's a question you should discuss with the lawyer."

Courts have traditionally applied three tests to determine whether conduct constitutes the giving of legal advice. The first test is whether the advice given is generally understood to require legal skill or knowledge.<sup>7</sup> The second test is whether the conversation involves advising someone of their legal rights.<sup>8</sup> Most courts recognize a standard exception: a response to a client's inquiry does not constitute the rendition of legal advice when the legal assistant merely acts as a conduit of advice between a lawyer and a client.<sup>9</sup> If a legal assistant does not convey any thoughts or advice of his or her own, then he or she is not giving legal advice, and therefore, not practicing law. Thus, legal assistants delivering information pursuant to instruction and on behalf of a lawyer should always be certain to make it clear to the client that the lawyer is the source of the information.

The third test is whether the advice given is not normally given by a non-lawyer as part of another business or transaction.<sup>10</sup> If someone who is not a lawyer dispenses law-related advice in furtherance of the ordinary course of his or her regular job, it may not amount to the practice of law.

For example, many bankers and financial planners regularly dispense advice that involves legal aspects of investment and tax situations. Likewise, real estate brokers routinely fill out preprinted real estate contracts on behalf of their customers as part of the sales transaction. Because all of these activities are part of the regular services provided by these professionals, they fall outside the boundaries of the legal advice test.

◆ REPRESENTATION IN COURT

The right to appear before a court and act on behalf of another is customarily restricted to licensed lawyers. There are many reasons offered for this restriction. First among them is that the rights and interests of the parties being represented may not be fully safeguarded when left in the hands of an untrained person.<sup>11</sup> It is also often suggested that the administration of



justice is more efficient when conducted by lawyers since they are skilled in the rules of evidence and substantive law.

The prohibition against nonlawyers acting on another's behalf is not restricted to trial or appellate arenas. In some jurisdictions activities such as answering docket calls and requesting continuances are also prohibited.<sup>12</sup> There is a split of authority as to whether a nonlawyer may represent a creditor at a creditors' meeting in bankruptcy proceedings.<sup>13</sup>

Legal assistants should determine what actions are permissible in their jurisdiction. If the legal assistant's supervising lawyer asks the assistant to make an appearance that is prohibited to nonlawyers in the jurisdiction, the legal assistant should insist that a lawyer appear instead.

There are some exceptions to the rule that nonlawyers may not appear in court. The most notable exception is the right of self-representation, which exists by statute in federal courts<sup>14</sup> and has been held by the U.S. Supreme Court to apply in state criminal courts.<sup>15</sup>

The right of self-representation in state civil proceedings, though, is less concrete. Some jurisdictions allow individuals to represent themselves while others do not.<sup>16</sup> The U.S. Supreme Court has not decided this issue.

Another exception is the permission that nonlawyers are granted to represent individuals before certain administrative agencies. Some jurisdictions permit lay representation before specified state agencies, though the courts and legislatures of many of these jurisdictions are divided on the issue.<sup>17</sup> Nonlawyer representation before administrative or quasi-judicial bodies is generally not permitted when it would require the application of legal principles affecting the rights and obligations of the client.<sup>18</sup>

Although they have on occasion attempted to do so, states may not interfere with a lay person's right of representation before federal agencies located within their jurisdiction if such practice is permitted by federal law. For instance, a state may not prohibit nonlawyers who are registered to practice before the U.S. Patent Office from performing tasks associated with preparing and prosecuting patent applications, even though such activities constitute the practice of law in that state.<sup>19</sup> Legal assistants

should examine each agency's policy on nonlawyer representation and consult with their supervisory lawyer before filing an appearance.

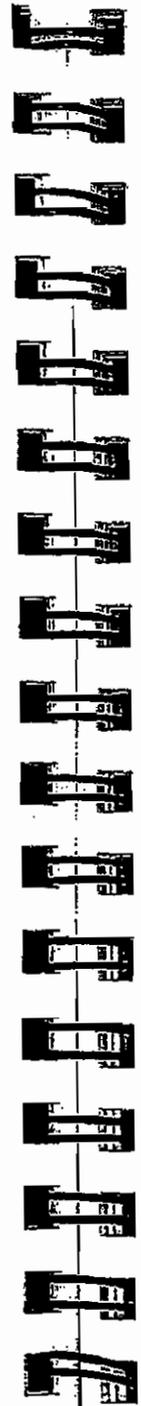
A final exception involves nonlawyer representation of corporations. This exception can seem puzzling because corporations are not individuals. Corporations are creatures of statute and are separate legal entities from the persons who form them. As such, they have no inherent right of self-representation.

Jurisdictions that permit corporations to represent themselves require them to appear through an officer or employee (lawyer or nonlawyer) and usually only when representing the corporation on a matter involving its own business.<sup>20</sup> Other jurisdictions forbid corporations to appear through nonlawyers, requiring them to be represented by a licensed lawyer.<sup>21</sup> Each jurisdiction has its own UPL rules and exceptions. Legal assistants must therefore be fully familiar with the restrictions in their jurisdiction.<sup>22</sup>

➤ PREPARATION OF LEGAL DOCUMENTS

Preparation of legal documents that affect the legal rights and responsibilities of others is an activity often restricted to lawyers.<sup>23</sup> Yet when legal assistants working in a law firm prepare promissory notes, deeds, wills, contracts, and other documents it is not considered the unauthorized practice of law. The reason lies in the supervisory role played by the lawyer, who must review the document and is ultimately accountable for its accuracy and effectiveness.<sup>24</sup> This requirement for supervision was created by ABA Model Rule 5.3 regarding a lawyer's responsibility to supervise non-lawyer employees. A legal assistant working for a lawyer in compliance with this rule can prepare documents without fear of UPL violations. It is the obligation of the legal assistant and the lawyer to make sure the work product is reviewed by the lawyer before it is filed with a court or agency or shown to a client or third party.

The negotiation that leads to the preparation of a legal document, is, however, a different matter. Thus, it has been held that it is the unauthorized practice of law when a nonlawyer employee of a law firm negotiates, on behalf of a creditor, the reaffirmation of a debt that may otherwise be dis-



chargeable in a bankruptcy case, even though a lawyer for the creditor later reviewed the document.<sup>25</sup>

➤ OTHER ACTIVITIES

The practice of law includes a host of other activities, some of which, by statute or custom, may be performed by legal assistants in certain jurisdictions. For example, in Wisconsin and Kentucky, legal assistants may attend real estate closings on behalf of their employing lawyers,<sup>26</sup> while in South Carolina it is impermissible for a nonlawyer to handle a closing.<sup>27</sup> And while in some states a legal assistant may attend a deposition in place of a lawyer, New York, Oregon, and Pennsylvania forbid this practice.<sup>28</sup>

Unfortunately, there are few bright lines to guide legal assistants through the maze of various jurisdictions' rules, case law, and ethics opinions. Before a legal assistant undertakes a new task, he or she should check the rules of the jurisdiction to confirm that the activity is not the practice of law.

➤ MISREPRESENTATION OF STATUS

Misrepresentation of one's status is a form of UPL. The ultimate purpose of all rules of professional conduct is the protection of the public. If a client is misled to believe that a legal assistant is a lawyer, the client will expect the legal assistant to be able to take certain actions to advance his or her case that the legal assistant may either be insufficiently knowledgeable to undertake or expressly prohibited from taking. Such misunderstandings, whether occurring innocently or as the result of deliberate deception, may result in harm to the client and damage to the reputation of the legal profession.

In order to prevent such misunderstandings from occurring, the legal assistant should always disclose the fact that he or she is not a lawyer during initial contact with clients or potential clients.

In addition, because persons who receive a letter on law firm stationery may assume that the person signing the letter is a lawyer with the firm, a legal assistant should always sign correspondence by indicating his or her

position with the firm. Failure to do so constitutes misrepresentation of one's status, which is the unauthorized practice of law.<sup>29</sup> Such misrepresentation also may lead to severe economic results for the law firm, as in the case of a class action settlement related to alleged violations of the Fair Debt Collection Practices Act.<sup>30</sup>

## ◆ NONLAWYER CONTRIBUTIONS ENCOURAGED

Although unauthorized practice of law prohibitions do set limits on a legal assistant's activities, the role of legal assistants in the delivery of legal services is constantly expanding. There are many situations in which a legal assistant's efforts can help lower legal costs and increase public access to legal services.

The ABA Commission on Nonlawyer Practice undertook a nationwide study of the evolving role of legal assistants.<sup>31</sup> After extensive research, numerous public hearings, and careful deliberations, the ABA Commission came to the following conclusions relating directly to nonlawyer practice:

1. *Increasing access to affordable assistance in law-related situations is an urgent goal of the legal profession and the states;*
2. *Protecting the public from harm from persons providing assistance in law-related situations is also an urgent goal;*
3. *When adequate protections for the public are in place, nonlawyers have important roles to perform in providing affordable access to justice.<sup>32</sup>*

Though the report and its conclusions have not been adopted as ABA policy, the Commission issued recommendations regarding nonlawyer involvement in the delivery of legal services. (See the sidebar on Recommendations of the ABA Commission on Nonlawyer Practice on page 33.)

In offering these recommendations, the Commission noted the extent of nonlawyer practice today and the expanding forms of nonlawyer activity in the legal field.<sup>33</sup> The Commission expressed hope that these recommendations would help jurisdictions address questions of increased nonlawyer practice and demands for access to legal services.<sup>34</sup>

## Recommendations of the ABA Commission on Nonlawyer Practice

- ▶ The Commission developed the following recommendations:
  - ▶ The American Bar Association, state, local, and specialty bar associations, the practicing bar, courts, law schools, and the federal and state governments should continue to develop and finance new and improved ways to provide access to justice to help the public meet its legal and law-related needs.
  - ▶ The range of activities of traditional paralegals should be expanded, with lawyers remaining accountable for the paralegal's activities.
  - ▶ States should consider allowing nonlawyer representation of individuals in state administrative agency proceedings. Nonlawyer representatives should be subject to the agency's standards for practice and discipline.
  - ▶ The American Bar Association should examine its ethics rules, policies, and standards to ensure that they promote the delivery of affordable, competent services and access to justice.
  - ▶ The activities of nonlawyers who provide assistance, advice, and representation authorized by statute, court rule, or agency regulation should be continued, subject to review by the entity under whose authority the services are performed.
  - ▶ With regard to the activities of all other nonlawyers, states should adopt an analytical approach in assessing whether and how to regulate varied forms of nonlawyer activity that exist or are emerging in their respective jurisdictions.
    - ▶ Criteria for this analysis should include the risk of harm these activities present, whether consumers can evaluate providers' qualifications, and whether the net effect of regulating the activities will be a benefit to the public. The highest court in a jurisdiction should take the lead in examining specific nonlawyer activities within the jurisdiction, with the active support and participation of the bar and the public.

## CHAPTER SUMMARY

- ☑ Legal assistants may conduct any law-related services at which they are competent, provided they do not engage in the unauthorized practice of law (UPL).
- ☑ Every jurisdiction has one or more laws prohibiting the unauthorized practice of law; in most places it is a misdemeanor punishable by fine or imprisonment.
- ☑ The most commonly cited types of activities involved in the definition of the practice of law are giving legal advice, representing a party in court, and preparing legal documents.
- ☑ A lawyer may delegate certain work to qualified legal assistants as long as the lawyer supervises the work and retains responsibility for the work product.
- ☑ Legal assistants delivering information pursuant to instruction and on behalf of a lawyer should always be certain to make it clear to the client that the lawyer is the source of the information.
- ☑ If the legal assistant's supervising lawyer asks the assistant to make an appearance that is prohibited to nonlawyers in the jurisdiction, the assistant should insist that a lawyer appear instead.
- ☑ A legal assistant working for a lawyer can prepare documents without fear of UPL violations. It is the obligation of the legal assistant and the lawyer to make sure the work product is reviewed by the lawyer.
- ☑ The legal assistant should disclose the fact that he or she is not a lawyer during initial contact with clients or potential clients.

## NOTES

1. See CALIFORNIA BUSINESS AND PROFESSIONS CODE Sections 6450 through 6456, available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=06001-07000&file=6450-6456>.

2. ABA MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.5(a) (2004).

3. In August 2003, the ABA House of Delegates adopted the Recommendation of the Task Force on the Model Definition of the Practice of Law, the first Resolution of which stated that "the American Bar Association recommends that every state and territory adopt a definition of the practice of law." See [http://www.abanet.org/cpr/model-def/taskforce\\_rpt\\_429.pdf](http://www.abanet.org/cpr/model-def/taskforce_rpt_429.pdf).

4. See *Matter of Thonert*, 693 N.E.2d 559 (Ind. 1998).

5. ABA MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.5 cmt [2] (2004). Also see [http://www.abanet.org/cpr/model-def/model\\_def\\_statutes.pdf](http://www.abanet.org/cpr/model-def/model_def_statutes.pdf) for a compilation of state definitions of the practice of law.

6. ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8001, 8004 (12-22-1999).

7. *Baron v. City of Los Angeles*, 469 P.2d 353 (Cal. 1970); ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8004-05, 8021 (12-22-1999).

8. *Kennedy v. Bar Ass'n of Montgomery County, Inc.*, 561 A.2d 200 (Md.App. 1989).

9. See generally CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS*, 836-37 (1986).

10. ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8001, 8004, 8007-09 (12-22-1999); see *State Bar of N.M. v. Guardian Abstract and Title Co.*, 575 P.2d 943 (N.M. 1978); *in re Bercu*, 78 N.Y.S.2d 209 (N.Y.App.Div. 1948).

11. WOLFRAM, *supra* n.9, at 829.

12. *Advisory Committee, Mo. State Bar Admin.*, Informal Op. 1 (1982).

13. See *Lawyers' Manual on Professional Conduct*, 21:8016 (12-22-1999).

14. See 28 U.S.C. 1654 (1994).

15. *Faretta v. California*, 422 U.S. 806 (1975).

16. The following cases discuss the right of self-representation in civil matters heard in state courts: *Colorado v. Dunlap*, 623 P.2d 408, 410 (Colo. 1981) (court may impose restrictions on right in order to maintain control in courtroom); *Dobbins v. Dobbins*, 216 S.E.2d 102, 103 (Ga. 1975) (right of self-representation guaranteed by Georgia Constitution); *Ann Arbor Bank v. Weber*, 61 N.W.2d 84, 86 (Mich. 1953) (right of self-representation guaranteed under Michigan Constitution); *Blair v. Maynard*, 324 S.E.2d 391 (W.Va. 1984) (right of self-representation in civil proceedings is fundamental right under West Virginia Constitution).

17. ABA/BNA *Lawyer's Manual on Professional Conduct* 21:8009 (12-22-1999). See *Bd. of Education v. New York State Public Employment Relations Bd.*, 649 N.Y.S.2d 523 (N.Y.App. Div. 1996); *In re Burson*, 909 S.W.2d 768 (Tenn. 1995).

18. ABA/BNA *Lawyer's Manual on Professional Conduct* 21:8009 (12-22-1999).

19. *Sperry v. Florida*, 373 U.S. 379 (1963).

20. ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8020 (12-22-1999).

21. See, e.g., *Greer v. Ludwick*, 241 N.E.2d 4 (Ill.App. 1968).

22. The ABA Center for Professional Responsibility, in conjunction with the ABA Standing Committee on Lawyers' Responsibility for Client Protection has published a

compilation of state-by-state rules on the unauthorized practice of law. The 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE includes a brief history of UPL, the ABA Model Rules for Advisory Opinions on UPL and state-by-state survey results concerning UPL definition, enforcement, remedies, and guidelines.

23. See, e.g., R.I. Sup. Ct., GUIDELINES FOR USE OF LEGAL ASSISTANTS, Provisional Order No. 18 (1983). But see, Arizona Code of Judicial Administration, Part 7, Ch.2, § 7-208: Legal Document Preparer (effective April 1, 2003), which permits individuals certified pursuant to that section "to prepare or provide legal documents, without the supervision of an attorney, for an entity or member of the public who is engaging in self-representation in any legal matter."

24. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 316 (1967). At least one court has referred to this process as the lawyer adopting the nonlawyer's work as the lawyer's own. Oregon ex. rel. Oregon State Bar v. Lenske, 584 P.2d 759,765 (Or. 1978).

25. *In re Carlos*, 227 B.R. 535 (Bkrtcy.C.D. Cal. 1998).

26. See Wisconsin Ethics Opinion E-95-3 (1995) (the paralegal must be properly trained, instructed, and supervised, and the particular closing must be unlikely to involve issues requiring the presence of a lawyer) and *Countrywide Home Loans Inc. v. Kentucky Bar Ass'n*, 113 S.W.3d 105 (Ky. 2003) ("Laypersons may conduct real estate closings on behalf of other parties, but they may not answer legal questions that arise at the closing or offer any legal advice to the parties.").

27. *South Carolina v. Buyers Service Company*, 357 S.E.2d 15 (S.C. 1987).

28. Comm. on Professional Ethics of the Bar Ass'n of Nassau County, Op. 88-53 (1988); Legal Ethics Comm. of the Or. State Bar, Op. 449 (1980); Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. 87-127 (1987).

29. See, e.g., *The Florida Bar v. Pascual*, 424 So.2d 757 (Fla. 1982).

30. See *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461 (E.D.Pa. 2000).

31. NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, A REPORT WITH RECOMMENDATIONS. American Bar Association Commission on Nonlawyer Practice, August 1995.

32. *Id.* at p. 207.

33. See 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE at 33 for a state by state table of permitted activities and guidelines.

34. NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, A REPORT WITH RECOMMENDATIONS. American Bar Association Commission on Nonlawyer Practice, August 1995 at 205.

35. *Id.*