

## Technology and Ethics Essentials for Paralegals (Without Pompadours)

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## I. General ABA Resources on Professional Responsibility

### **ABA Center for Professional Responsibility (CPR)**

<http://www.abanet.org/cpr/>

The CPR's mission is to provide national leadership and vision in developing and interpreting standards and scholarly resources in legal ethics, professional regulation, professionalism and client protection mechanisms. Not surprisingly, many of its recent activities have been the result of changes to the practice of law brought by technology and the Internet.

### **ABA publications on professional responsibility and ethics**

<http://www.abanet.org/cpr/publications.html>

### **Links to professional responsibility resources**

<http://www.abanet.org/cpr/links.html>

Annotated links to state professional responsibility resources, including rules and ethics opinions

### **Technology and ethics research**

<http://www.abanet.org/tech/ltrc/research/ethics/>

This section of the ABA Legal Technology Research Center's web site is concerned with the intersection of legal ethics and technology, such as the use of e-mail and web sites in conjunction with the practice of law. Major categories include advertising and solicitation, competence, confidentiality, multi-state jurisdiction and online referral services.

## II. Regulation of Lawyers

### **ABA Model Rules of Professional Conduct**

#### **State adoption of the ABA Model Rules**

[http://www.abanet.org/cpr/mrpc/alpha\\_states.html](http://www.abanet.org/cpr/mrpc/alpha_states.html)

List of states that have adopted the Model Rules, along with dates of adoption. Currently 45 jurisdictions have adopted the Model Rules.

#### **ABA Model Rules of Professional Conduct—2003 Edition**

[http://www.abanet.org/cpr/mrpc/mrpc\\_home.html](http://www.abanet.org/cpr/mrpc/mrpc_home.html)

Full-text version of the Model Rules includes the Ethics 2000 changes made in February 2002, as well as the Multijurisdictional Practice Commission and Ethics Committee changes from August 2002. Recent amendments include: Model Rule 7.2 (Advertising); Model Rule 7.5 (Firm Names and Letterheads); Model Rule 5.5 (Unauthorized Practice of Law, Multijurisdictional Practice of Law); and Model Rule 8.5 (Disciplinary Authority; Choice of Law).

#### **2002 revisions to ABA Model Rules**

[http://www.abanet.org/cpr/e2k-report\\_home.html](http://www.abanet.org/cpr/e2k-report_home.html)

The text of the Model Rules of Professional Conduct as amended by the House of Delegates in their debate of the Ethics 2000 Commission report, shown with the changes from the previous Model Rules.

### **ABA Ethics 2000 Commission**

<http://www.abanet.org/cpr/ethics2k.html>

The ABA Commission on the Evaluation of Professional Conduct (the "Ethics 2000" Commission) was established in the spring of 1997 to study and evaluate the ABA Model Rules of Professional Conduct in light of developments in the law and the legal profession since the Rule's adoption in 1983.

### ***The Revised ABA Model Rules of Professional Conduct: Survey of the Work of Ethics 2000***

[http://www.abanet.org/cpr/mo/rev\\_mclove.pdf](http://www.abanet.org/cpr/mo/rev_mclove.pdf)

Article by Margaret Colgate Love reviewing the recent changes to the Model Rules, reprinted from the *Georgetown Journal of Legal Ethics*, 2002.

### **ABA Joint Committee on Lawyer Regulation**

[http://www.abanet.org/cpr/jclr/jclr\\_home.html](http://www.abanet.org/cpr/jclr/jclr_home.html)

The ABA Joint Committee on Lawyer Regulation focuses on implementation of the recommendations of the Commission on Evaluation of the Rules of Professional Conduct (Ethics 2000), the Multijurisdictional Practice Commission, the Commission on Evaluation of Disciplinary Enforcement (McKay Commission) and the Conference of Chief Justices' National Action Plan on Lawyer Conduct and Professionalism. The Joint Committee is comprised of members from the ABA and outside entities who have expertise in all aspects of the regulation of the legal profession, such as rules of professional conduct, multijurisdictional practice, expanded disciplinary enforcement mechanisms, client protection, bar activities, dispute resolution, professional liability, professionalism, competence and impairment.

## **ABA Ethics Opinions**

### **Recent ABA ethics opinions—*abstracts only***

<http://www.abanet.org/cpr/ethicopinions.html>

Includes "headnote" summaries of Formal Opinions of the American Bar Association's Standing Committee on Ethics and Professional Responsibility.

### **Recent ABA ethics opinions—*full opinions (for purchase)***

<http://www.abanet.org/cpr/le-opinions.html>

Full text of ethics opinions available for purchase

## **State Ethics Rules and Opinions**

### **Links to state ethics resources**

<http://www.abanet.org/cpr/links.html>

Annotated links to other ethics and professional responsibility resources

### **Legalethics search engine for locating state ethics resources**

<http://www.legalethics.com/ethics.law>

## **Lawyer Discipline**

### **Directory of lawyer disciplinary agencies**

<http://www.abanet.org/cpr/disciplinary.html>

Links to state disciplinary agencies (last updated on February 13, 2003).

### **ABA Model Federal Rules of Disciplinary Enforcement**

<http://www.abanet.org/cpr/mfrde.pdf>

Model Federal Rules of Disciplinary Enforcement approved by the ABA House of Delegates on February 14, 1978.

### **ABA survey of lawyer discipline systems**

<http://www.abanet.org/cpr/discipline/sold/sold-home.html>

Survey of lawyer discipline systems last conducted in 2000, covering issues such as sanctions imposed; reinstatement and readmission statistics; disciplinary agency caseload statistics; case processing time guidelines; budget information and sources of funding; allocation of dues and fees in state disciplinary systems; and staffing of disciplinary agencies.

### **ABA report on *Lawyer Regulation for a New Century***

[http://www.abanet.org/cpr/mckay\\_report.html](http://www.abanet.org/cpr/mckay_report.html)

Report of the Commission on Evaluation of Disciplinary Enforcement adopted on February 4, 1992 by the ABA House of Delegates. The Commission was created in February 1989 to conduct a nationwide evaluation of lawyer disciplinary enforcement and to provide a model for responsible regulation of the legal profession into the twenty-first century.

## **III. Regulation of Paralegals**

### **Ethical Guidelines, Rules and Opinions**

#### **American Bar Association (ABA)**

*See generally: ABA Model Rules*

#### **ABA Model Rule 5.3: Responsibilities Regarding Nonlawyer Assistants**

[http://www.abanet.org/cpr/mrpc/rule\\_5\\_3.html](http://www.abanet.org/cpr/mrpc/rule_5_3.html)

*See text of Model Rule 5.3 under "Addendum"*

#### **ABA Model Rule 5.4: Professional Independence of a Lawyer**

[http://www.abanet.org/cpr/mrpc/rule\\_5\\_4.html](http://www.abanet.org/cpr/mrpc/rule_5_4.html)

*See text of Model Rule 5.3 under "Addendum"*

#### **ABA Model Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law**

[http://www.abanet.org/cpr/mrpc/rule\\_5\\_5.html](http://www.abanet.org/cpr/mrpc/rule_5_5.html)

*See text of Model Rule 5.3 under "Addendum"*

#### **National Federation of Paralegal Associations (NFPA)**

#### **List of NFPA Affiliated Organizations**

<http://www.paralegals.org/Members/associations.html>

Map of NFPA member associations

#### **NFPA Model Code of Ethics and Professional Responsibility**

<http://www.paralegals.org/Development/modelcode.html>

In May 1993 NFPA adopted its "Model Code" to delineate the principles for ethics and conduct to which "every paralegal should aspire."

### **NFPA Ethics Opinions**

<http://www.paralegals.org/Development/Ethics/home.html>

Includes full text of “Informal Ethics and Disciplinary Opinions” since 1995.

### **NFPA Guidelines for Rendering Ethics and Disciplinary Opinions**

<http://www.paralegals.org/Development/ethicsguide.html>

## **National Association of Legal Assistants (NALA)**

### **List of NALA Affiliated Organizations**

[http://www.nala.org/Affiliated\\_Associations\\_Info.HTM](http://www.nala.org/Affiliated_Associations_Info.HTM)

### **NALA Code of Ethics and Responsibility**

<http://www.nala.org/stand.htm>

## **Utilization / Activities of Paralegals**

### **American Bar Association (ABA)**

#### **ABA Standing Committee on Legal Assistants**

<http://www.abanet.org/legalservices/legalassistants/home.html>

The mission of the ABA’s Standing Committee on Legal Assistants is to work within the ABA and with other groups to help make quality legal services more accessible and affordable, primarily by fostering the increasingly effective integration of legal assistants—or paralegals—into the legal services delivery team. The Committee advises and acts on behalf of the ABA on all matters relating to the present and future roles of traditional legal assistants who, as members of the legal services delivery team, work under the supervision of lawyers.

In particular, the Committee has jurisdiction over matters relating to the education, training and use of legal assistants or legal paraprofessionals. Within that mandate, the Committee, through its Approval Commission, continues to serve as the body to set standards for legal assistant education and training. The Committee also monitors trends in the field and recommends for approval and reapproval to the ABA’s policy-making body—the House of Delegates—those legal assistant training programs that have met the standards and guidelines set by the ABA for quality education.

#### **ABA Model Guidelines for the Utilization of Legal Assistant Services**

<http://www.abanet.org/legalservices/downloads/legalassistants/modelguidelines.pdf>

Guidelines adopted in 1991 by the ABA’s House of Delegates. Since lawyers are the intended audience, the guidelines are addressed to lawyer conduct and not directly to the conduct of legal assistants and paralegals.

#### **ABA Report: *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations***

##### **Executive Report**

<http://www.abanet.org/cpr/nonlawyer.html>

The ABA’s Commission on Nonlawyer Practice issued a report on the role of nonlawyers in the legal system in August of 1995. The Commission’s report, *Nonlawyer Activity in Law-Related Situations*, is based on the statements of nearly 400 witnesses and the information contained in more than 2,000 documents gathered during the course of the Commission’s deliberations and ten

hearings held from 1992 through 1994. Part One of the Report details the findings of the Commission. Part Two sets forth the Commission's analysis, conclusions and recommendations.

The Commission made three major conclusions in their report: 1) Increasing access to affordable assistance in law-related situations is an urgent goal of the legal profession and the state; 2) Protecting the public from the harm of 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

**Full report (for purchase)**

<http://www.abanet.org/webapp/wcs/stores/servlet/ProductDisplay?storeId=10251&productId=-11668&categoryId=-3593>

### **National Federation of Paralegal Associations (NFPA)**

**Comments of the NFPA to the ABA Commission on Nonlawyer Practice (June 1995)**

<http://www.paralegals.org/Development/abaresponse.html>

The NFPA urged the Commission to develop methods to:

- a) Identify traditional and non-traditional areas in which paralegal roles and responsibilities can be expanded;
- b) Revise the ABA Model Rules of Professional Responsibility to allow for expanded roles and responsibilities for paralegals, including:
  - a. Revision to the references concerning ultimate responsibility and accountability of a lawyer for paralegal's work rather than "under direct supervision";
  - b. Revision to references concerning nonlawyer partnerships with lawyers, fee sharing arrangement with non-lawyers, etc.;
- c) Provide a model for revisions to court rules which would permit expanded roles and responsibilities for paralegals;
- d) Provide a model for expanded rules of practice in state administrative agencies for representation by paralegals and other qualified nonlawyers.

**Statement of the NFPA at the 1996 "New Roles in the Law II" Conference**

<http://www.paralegals.org/Reporter/August96/statement.html>

Statement describing NFPA's positions on topics subsequently addressed at the "New Roles in the Law II: Improving Citizen Access to Justice" Conference held May 31-June 3, 1996 in Crystal City, Virginia. The purpose of the conference was to "develop positions, set strategies, and create policy."

### **National Association of Legal Assistants (NALA)**

**NALA Model Standards and Guidelines for the Utilization of Legal Assistants**

<http://www.nala.org/stand.htm>

The NALA Guidelines summarize case law, guidelines and ethical opinions of the various states affecting legal assistants. According to NALA, the guidelines "[provide] an outline of minimum qualifications and standards necessary for legal assistant professionals to assure the public and the legal profession that they are, indeed, qualified."

**Annotated version of NALA's Model Standards and Guidelines for the Utilization of Legal Assistants**

<http://www.nala.org/98model.htm>

Annotated version of the Model, which was revised extensively in 1997.

**Statements on Paralegal Regulation**

**National Federation of Paralegal Associations (NFPA)**

**NFPA Statement on Paralegal Regulation**

<http://www.paralegals.org/Development/abarerresponse.html>

In its response to the June 1995 Report of the ABA Commission on Nonlawyer Practice, the NFPA noted that:

“...Education is only one component to be viewed when determining whether and how to expand the role of paralegals. The Commission Report reflects that NFPA endorses adoption of a voluntary certification system for paralegals. This is wrong. NFPA members adopted a position to endorse regulation of paralegals as long as the paralegal would be able to do more under the regulatory plan than they were previously doing. Included within NFPA's position on regulation is a preference for a two-tiered licensing plan, which constitutes mandatory regulation, and provisions for, among other things, standards for ethics and education along with a testing component.”

**Paralegal Education / Certification**

**American Bar Association (ABA)**

**ABA Draft Revisions of Guidelines for the Approval of Legal Assistant Education Programs**

<http://www.abanet.org/legalservices/downloads/legalassistants/novfinalguidelines.pdf>

Revised as of November 3, 2002 (*PDF format*)

**National Federation of Paralegal Associations (NFPA)**

**NFPA PACE Exam**

<http://www.paralegals.org/PACE/home.html>

NFPA Paralegal Advanced Competency Exam (PACE)

**National Association for Legal Assistants (NALA)**

**NALA Certified Legal Education (CLE) Program**

<http://www.nala.org/cert.htm>

Established in 1976, the Certified Legal Assistant program offers a nationwide credential for legal assistants.

**American Association for Paralegal Education (AAfPE)**

**AAfPE**

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

AAfPE is a national organization that serves the needs of paralegal educators and institutions offering paralegal educational programs. Established in 1981, its roots go

back to the mid 70's when the American Bar Association sponsored conferences for paralegals.

#### IV. Definition of a “Paralegal”

##### American Bar Association (ABA)

###### ABA definition of a “paralegal”

<http://www.abanet.org/legalservices/legalassistants/def98.html>

At the August 1997 ABA Annual Meeting, the ABA's policy making body, the House of Delegates, adopted the current definition of "legal assistant/paralegal," as recommended by the Standing Committee on Legal Assistants. The current definition reads as follows:

“A legal assistant or paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.”

“The current definition of "legal assistant/paralegal" replaces the definition adopted by the ABA Board of Governors in 1986. It adds the term "paralegal" since the terms "legal assistant" and "paralegal" are, in practice, used interchangeably. The term that is preferred generally depends on what part of the country one is from. The current definition streamlines the 1986 definition and more accurately reflects how legal assistants are presently being utilized in the delivery of legal services.”

##### National Federation of Paralegal Associations (NFPA)

###### NFPA definition of a “paralegal” (as reaffirmed in 2002 resolution)

[http://www.paralegals.org/Development/NFPA\\_def.htm](http://www.paralegals.org/Development/NFPA_def.htm)

NFPA reaffirms Resolution 95M-4 that “Paralegal” is the preferred term for the profession, and adopts the following definition of Paralegal:

“A Paralegal is a person, qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work (emphasis added).”

###### NFPA definition of a “paralegal” (as defined in its Model Code of Ethics and Professional Responsibility)

<http://www.paralegals.org/Development/modelcode.html>

“Paralegal” is synonymous with “Legal Assistant” and is defined as a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency, or other entity or may be authorized by administrative, statutory, or court authority to perform this work.

###### Statement of the NFPA for the 1996 “New Roles in the Law II” Conference

<http://www.paralegals.org/Reporter/August96/statement.html>

In describing its membership, NFPA defines the bulk of its members as *traditional paralegals* who “work with supervision by or accountability to attorneys.” NFPA notes that

such individuals are referred to as *contract paralegals*, *freelance paralegals*, or *independent contractors*, and may be employed on a full or part-time basis or retained by an attorney on a case-by-case basis pursuant to contract. A small percentage of NFPA's membership is described as "work[ing] outside the supervision of attorneys pursuant to statute, administrative regulation, or court rule; e.g., regulations permitting non-lawyer representation in federal administrative agencies and court rules permitting non-lawyer court-appointed special advocates." Finally, NFPA noted, "some NFPA members perform procedural work that requires knowledge of procedural concepts. These individuals are referred to as *legal technicians* or *independent paralegals*."

## **National Association of Legal Assistants (NALA)**

### **NALA definition of a "paralegal"**

<http://www.nala.org/terms.htm>

NALA released a "Summary of Definitions of Terms: Legal Assistant and Paralegal," on January 23, 1997, and updated it on January of 2002. In the summary, NALA noted, "In recognition of the similarity of the [NALA and ABA] definitions and the need for one clear definition, in July 2001, the NALA membership approved a resolution to adopt the [1997 version of the] ABA definition," as follows:

"A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible."

Significantly, the "Summary" section includes commentary on the controversial issue of paralegal supervision:

"All definitions describe a professional group working under the direct supervision of an attorney, and acknowledge that the terms "paralegal" and "legal assistant" are used synonymously. They intentionally exclude persons who do not work under attorney supervision even though they may perform law related work. This direct supervision is required whether the legal assistant is utilized in the course of full time employment or is being utilized on a contractual basis by an attorney or firm. In both instances, the work product of the legal assistant becomes merged into the final product of the supervising attorney."

## **State Definitions of "Paralegal"**

### **NFPA listing of state definitions of "paralegal" (PDF format)**

<http://www.paralegals.org/Development/statedif.htm>

"Paralegal Regulation: Laws, Regulations and a Legislative Update," by Stephen P. Imondi, RP Office of the General Counsel, Brown University, Providence, RI. Compilation of state laws, regulations, state bar definitions and court rulings that define paralegals. Updated through January 2003.

### **NALA listing of state definitions of "paralegal"**

<http://www.nala.org/terms.htm>

Includes short narratives of developments among state bar associations, legislatures and supreme courts. Updated in January 2002.

## V. Definition of “Practice of Law” / Unauthorized Practice of Law / MDP

### A. Definition of “Practice of Law”

#### American Bar Association (ABA)

##### **ABA Task Force on the Model Definition of Law**

[http://www.abanet.org/cpr/model\\_def\\_home.html](http://www.abanet.org/cpr/model_def_home.html)

The ease of offering legal information and services over the Internet has spawned a new era of non-lawyer involvement in the provision of legal services, raising ethical issues about what it means “to practice law.” The Task Force on the Model Definition of the Practice of Law has posted a preliminary draft definition for review and is currently soliciting comments from interested parties.

##### **ABA Model Definition of the Practice of Law**

[http://www.abanet.org/cpr/model\\_def\\_definition.html](http://www.abanet.org/cpr/model_def_definition.html)

- (1) The “practice of law” is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.

##### **ABA Chose Wrong Side in Drafting “Unauthorized Practice” Rule**

<http://www.halt.org/FLIP/turner-legal-times-02-03-03.pdf>

Article by James C. Turner, *LegalTimes*, Week of February 3, 2003

##### **Lawyers Try to Define What They Do**

<http://www.law.com/servlet/ContentServer?pagename=OpenMarket/Xcelerate/View&c=LawArticle&cid=1044059452813&live=true&cst=1&pc=0&pa=0>

Article by Mary P. Gallagher, *New Jersey Law Journal*, February 11, 2003

#### National Federation of Paralegal Associations (NFPA)

##### **NFPA Response to ABA on Draft Definition of the Practice of Law (PDF format)**

<http://www.paralegals.org/Development/Regulations/aba2.pdf>

December 18, 2002

“Further, NFPA encourages study of means to improve access to legal services and supports any activity intended to increase the use of paralegal services for delivering legal services. Our stated mission is to expand the practiced of paralegals.”

“Should the ABA adopt the definition, NFPA and its member associations strongly encourage the Task Force to include a mechanism and suggested criteria that allows for regulated practice by non-lawyers that increases access to justice for low to middle income consumers, and the expansion of the role of trained, qualified paralegals and others, such as occurred in Washington State with the adoption of GR 2.5”

‘Should the ABA adopt a definition, NFPA strongly advocates specific exceptions be provided in the ABA definition and suggests that the following language be added to (d)(4) “or as otherwise authorized by statute, court rule, tribal law, or governmental authority.”

##### **State definitions of the “practice of law”**

[http://www.abanet.org/cpr/model\\_def\\_statutes.html](http://www.abanet.org/cpr/model_def_statutes.html)

## B. Unauthorized Practice of Law (UPL)

### ABA, NFPA and NALA

#### American Bar Association (ABA)

*See ABA Model Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law in attached Addendum*

#### **1994 Survey and Related Materials on the Unauthorized Practice of Law / Nonlawyer Practice**

<http://www.abanet.org/webapp/wcs/stores/servlet/ProductDisplay?storeId=10251&productId=-11668&categoryId=-3593>

Report published by the ABA Standing Committee on Lawyers' Responsibility for Client Protection, 1996. The survey reports on the enforcement of unauthorized practice of law provisions in the 50 states and the District of Columbia, including a brief definition of the practice of law in each state, the areas in which UPL activities are most prevalent, and the nature of nonlawyer activities. The Executive Summary of the report is posted at

<http://www.abanet.org/cpr/nonlawyer.html>

#### **Nonlawyer Practice in the United States: Summary of the Factual Record Before the Commission on Nonlawyer Practice**

<http://www.abanet.org/webapp/wcs/stores/servlet/ProductDisplay?storeId=10251&productId=-11666&categoryId=-3592>

This summary of the factual record was prepared to give the bar, the judiciary and the public an opportunity to supplement the record before the ABA Commission on Nonlawyer Practice.

#### National Federation of Paralegal Associations (NFPA)

#### **NFPA Informal Ethics and Disciplinary Opinion No. 96-2 on UPL**

<http://www.paralegals.org/Development/Ethics/ethics96-2.html>

In response to the question presented: "What are the ethical implications concerning the unauthorized practice of law as it relates to paralegals communicating in cyberspace?" NFPA responds:

"Paralegals communicating in cyberspace through any form of electronic communication shall not engage in the unauthorized practice of law. In addition, a paralegal's title shall be disclosed in each cybercommunication to avoid misunderstandings and misconceptions about the paralegal's role and responsibilities. In addition, due to the nature of cybercommunications and that paralegals may be communicating with intended and unintended parties and entities located in several jurisdictions, a paralegal's jurisdiction (state in which he/she is located) shall be disclosed in each cybercommunication to avoid misunderstandings and misconceptions about the jurisdiction(s) to which the communication may apply. Electronic communications may include, but are not limited to, communications transmitted or posted through E-mail (electronic mail), list serves, bulletin boards, World Wide Web Forms, forums and mailings and other public or semi-public forums located at websites, Internet Relay Chats, usenets and newsgroups."

## **NFPA Model for State Statute to Exempt Paralegals from UPL**

<http://www.paralegals.org/Development/statute.htm>

### **State UPL Activity**

#### **UPL Committees by State**

[http://www.abanet.org/cpr/cp-dir\\_upl.pdf](http://www.abanet.org/cpr/cp-dir_upl.pdf)

Directory of unauthorized practice of law committees, prepared by the ABA Center for Professional Responsibility, September 2002

#### **UPL Statutes by State**

<http://www.paralegals.org/Development/UPL-Chart.pdf>

Unauthorized practice of law (UPL) Statutes by State

### **Recent State Activity on UPL and/or Paralegal Regulation**

#### **Position Statement on the Unauthorized Practice of Law in New York State**

<http://www.paralegals.org/Development/empire.pdf>

Position statement presented by the Empire State Alliance of Paralegal Associations; Adopted February 1, 2003.

#### **California Regulates Paralegals**

<http://www.abanet.org/scripts/printview.jsp?Ref=http://www.abanet.org/legalservices/legalassistants/updatefiles/cacannon.html>

Article by Therese A. Cannon, Educational Consultant to the ABA Standing Committee on Legal Assistants, February 27, 2002.

#### **Bar Proposed Rule Could Establish Limited Non-Lawyer Practice in Washington State**

<http://www.abanet.org/scripts/printview.jsp?Ref=http://www.abanet.org/legalservices/legalassistants/updatefiles/washarticle.html>

Article by Ted Maloney, February 28, 2002.

#### **North Carolina State Bar Authorized Practice Advisory Opinion 2002-1**

[http://www.ncbar.com/eth\\_op/ethics\\_sel.asp?ID=656&LIST=number&BACK='ethics\\_o.asp](http://www.ncbar.com/eth_op/ethics_sel.asp?ID=656&LIST=number&BACK='ethics_o.asp)

On January 24, 2003, the North Carolina State Bar adopted opinions that allow nonlawyers to perform certain limited tasks related to a real estate closing. Although a nonlawyer may not handle a residential real estate closing for a party to the transaction, a nonlawyer who is acting under the supervision of a lawyer licensed in North Carolina may: (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; or (2) receive and disburse the closing funds.

#### **Arizona Revised Supreme Court Rule Regulating UPL**

<http://www.supreme.state.az.us/media/pdf/uplrule.pdf>

Changes to the Arizona Rules of the Supreme Court, effective July 1, 2003, for the first time in twenty years provide a remedy to Arizona consumers for harm caused by those who engage in unauthorized practice of law. The Rules define the practice of law, the unauthorized practice of law, and paralegals and legal assistants.

In addition, a groundbreaking provision allows “certified document preparers” to prepare legal documents but does not permit them to provide legal advice or to otherwise engage in the practice of law. The Arizona Supreme Court will regulate certified legal document preparers and limit the preparation of documents for which the preparer is competent; require a written disclaimer to the consumer stating that they are not a lawyer; require educational and experience criteria; require an examination for admission; mandate continuing education courses; and establish a code of ethics. Sanctions for those engaging in UPL include injunctive relief, restitution, costs, and possible incarceration if the person is found in contempt of court.

Notably, the new definition of “legal assistant/paralegal” is as follows:

“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.”

#### **Arizona administrative order on certification of “legal document preparers”**

<http://www.supreme.state.az.us/orders/admorder/Orders03/2003-14.pdf>

Arizona Administrative Order 2003-14, effective April 1, 2003, amending Supreme Court Rule 31.

“Rule 31, Rules of the Supreme Court, provides for the regulation and discipline of persons engaged in the practice of law, and provides exceptions where nonlawyers who have not been admitted to the State Bar of Arizona, may perform specified legal services. Legal document preparers are nonlawyers who prepare or provide legal documents, without the supervision of an attorney for an entity or a member of the public who is engaging in self-representation in any legal matter. The Court recognizes the need to protect the public from possible harm caused by nonlawyers providing legal services must be balanced against the public’s need for access to legal services.”

#### *Roles and Responsibilities of Certificate Holders*

1. Authorized Services. A certified legal document preparer may:
  - a. Prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public in any legal matter when that entity or person is not represented by an attorney;
  - b. Provide general legal information, but may not provide any kind of specific advice, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, or strategies;
  - c. Provide general factual information pertaining to legal rights, procedures, or options available to a person in a legal matter when that person is not represented by an attorney; and
  - d. Make legal forms and documents available to a person who is not represented by an attorney; and
  - e. File and arrange for service of legal forms and documents for a person in a legal matter when that person is not represented by an attorney.

The Order mandates that as of July 1, 2003, a person may not engage in the preparation of legal documents as specified in subsection (F)(1) of the code unless the person is certified pursuant to that code section. The Order includes an attached “Code of Conduct” for legal document preparers.

### **Brief Overview and Fact Sheet of Changes to Arizona Supreme Court Rules**

<http://www.azbar.org/StateBarInfo/FactSheet.cfm>

Summarizes recent changes to UPL rules

### **Additional UPL Resources**

#### ***Scriveners in Cyberspace: Online Document Preparation and the Unauthorized Practice of Law***

[http://www.hofstra.edu/PDF/law\\_lanctot.pdf](http://www.hofstra.edu/PDF/law_lanctot.pdf)

Article by Catherine Lanctot, *Hofstra Law Review*, Vol 30: 811, June 2002

#### **Report: *Bankruptcy Petition Preparers and the Unauthorized Practice of Law***

<http://www.sccla.org/BPPreport.pdf>

Study by the Los Angeles County Bar Association, Commercial Law & Bankruptcy Section, on UPL among bankruptcy petition preparers. Report includes the group's initial findings and recommendations.

#### **Agencies that Allow Nonlawyer Practice**

<http://www.paralegals.org/Development/Roles/allow.html>

NFPA's Roles and Responsibilities Committee has been researching which federal agencies allow nonlawyer representation, and provides a compilation of the Committee's research to date. In future the committee will develop a list of specific paralegal tasks under each of these areas.

## **C. Multijurisdictional Practice (MJP)**

### **American Bar Association (ABA)**

#### **ABA Commission on Multijurisdictional Practice**

<http://www.abanet.org/cpr/mjp-home.html>

Appointed in July 2000 to examine the legal and ethical burdens imposed on lawyers who represent clients across state lines, the MJP Committee's home page contains extensive materials on all aspects of the MJP issue, including a bibliography, links and articles, as well as position papers, comments and committee reports related to the ABA's examination of the issue.

#### **Report of the ABA Commission on MJP**

[http://www.abanet.org/cpr/mjp/final\\_mjp\\_rpt\\_5-17.pdf](http://www.abanet.org/cpr/mjp/final_mjp_rpt_5-17.pdf)

Report filed by the Commission on Multijurisdictional Practice and submitted to the ABA House of Delegates in August 2002.

#### ***Client Representation in the 21<sup>st</sup> Century***

[http://www.abanet.org/cpr/mjp/final\\_mjp\\_rpt\\_121702.pdf](http://www.abanet.org/cpr/mjp/final_mjp_rpt_121702.pdf)

Final Report of the Commission on Multijurisdictional Practice, ABA Center for Professional Responsibility, incorporating recommendations made by the ABA House of Delegates on August 12, 2002. Includes chapters on regulation of the profession by the Judiciary, mutijurisdictional practice of law, disciplinary authority, reciprocal discipline, interstate disciplinary enforcement mechanisms, pro hac vice admission, admission on motion, licensing of legal consultants, and temporary practice by foreign lawyers.

***The Problem with Being Everywhere: Managing Conflicts and Unauthorized Practice of Law in the Digital Age***

Article by David Hricik, TechShow 2002, March 16, 2002

## **VI. Current Trends / Issues in the Delivery of Legal Services**

### **A. Multidisciplinary Practice (MDP)**

#### **American Bar Association (ABA)**

##### **ABA Commission on Multidisciplinary Practice**

<http://www.abanet.org/cpr/multicom.html>

The ABA Commission on Multidisciplinary Practice, created in August 1998, was directed to study and report on the extent to which and the manner in which professional service firms operated by accountants and others who are not lawyers are seeking to provide legal services to the public. Although the ABA House of Delegates in July 2000 rejected the ethical changes proposed by Commission, the battle rages on, especially for state bars. The Commission's web site tracks its activities and provides an extensive collection of resources on MDP. The Law Practice Management Section's MDP/MJP Resource Center provides additional information at: <http://www.abanet.org/lpm/mdp/home.shtml>

##### **Summary of state MDP activity**

[http://www.abanet.org/cpr/mdp\\_state\\_summ.html](http://www.abanet.org/cpr/mdp_state_summ.html)

Updated March 11, 2003.

##### **Updated narrative describing state MDP activity**

[http://www.abanet.org/scripts/printview.jsp?Ref=http://www.abanet.org/cpr/mdp-state\\_action.html](http://www.abanet.org/scripts/printview.jsp?Ref=http://www.abanet.org/cpr/mdp-state_action.html)

Describes most recent activity of states dealing with the MDP issue (updated March 11, 2003).

### **B. Future of Law**

#### **American Bar Association (ABA)**

##### **ABA Committee on Research About the Future of the Legal Profession**

<http://www.abanet.org/lawfutures/home.html>

The ABA "Futures" Committee focused its efforts on developing a report on the current state of the profession to serve as a platform to examine the challenges and opportunities of change and how the legal profession can and should define its own future. On August 9th, 2002, the Committee presented its final report to the ABA Board of Governors (see *below*).

##### **Final Report of the ABA Committee on Research About the Future of the Legal Profession**

<http://www.abanet.org/lawfutures/report2002/>

##### **ABA Legal Technology Resource Center (LTRC) resources on the future of law**

<http://www.lawtechnology.org/techfuture.html>

Resources on technology and the future of the profession provided by the ABA's Legal Technology Resource Center (LTRC).

**Summary of state futures commissions**

<http://www.abanet.org/justice/01summary/justiceact/futurescomm.html>

**Paralegals, Profitability and the Future of Your Law Practice**

Book by Arthur G. Greene & Therese A. Cannon, *ABA Law Practice Management* Section, 2003.

**Seize the Future: Forecasting and Influencing the Future of the Legal Profession**

<http://www.abanet.org/lpm2/catalog/511-0444toc.html>

Book by Gary M. Munneke, ABA Law Practice Management Section, 2000.

### **C. Innovative Delivery Methods / eLawyering**

**ABA e-Lawyering Committee**

<http://www.elawyering.org/what/committee.shtml>

In 1998 ABA president Bill Paul asked the Law Practice Management Section to develop a proposal for the ABA to coordinate efforts toward the modernization of law practice through the use of technology, in order to connect lawyers with people of moderate means needing legal advice. Among its other activities, the TECH2000 Task Force created the eLawyering web site to promote the use of technology in legal services and explore innovative ways to deliver legal services over the Internet.

**eLawyering Task Force Final Report: Technology 2000 Conference**

[http://www.elawyering.org/what/report\\_conf.shtml](http://www.elawyering.org/what/report_conf.shtml)

Recommendations to the ABA: *E-Lawyering: Lawyers Serving Society Through Technology*

**eLawyering Task Force: Best Practices Guidelines for Web Site Providers**

<http://www.elawyering.org/tools/practices.shtml>

Guidelines created by the eLawyering Task Force in conjunction with the ABA Standing Committee on the Delivery of Legal Services, designed to enhance the quality of legal information available to consumers on the Internet. Approved by the ABA's House of Delegates on February 10, 2003, the guidelines allow legal web site providers to provide users with sufficient information to make assessments about the accuracy and quality of the legal information that is published.

***Innovations in the Delivery of Legal Services: Alternative and Emerging Models for the Practicing Lawyer***

<http://www.abanet.org/legalservices/downloads/delivery/innovations.pdf>

A new booklet produced by the ABA Standing Committee on the Delivery of Legal Services in September of 2002, outlining creative ways lawyers are providing legal services. Collaborative lawyering, micro-niche practices and unbundling are among the ideas advanced in the publication.

***Improving the Delivery of Affordable Legal Services Through the Internet: A Blueprint for the Shift to a Digital Paradigm***

<http://www.abanet.org/legalservices/delivery/deltech.html>

Article by ethicist William Hornsby "briefly examines the unmet legal needs of consumers, the proliferation of pro se representation and the delivery of legal services on an unbundled bases. It then assesses a series of operational inefficiencies within the traditional model of delivering personal legal services. These operational inefficiencies are found in client development, client

intake and screening, client education, form preparation, geographic barriers, on-going client communications, dispute resolution and ancillary business endeavors.”

#### **D. Legal Services / Pro Se Representation / Self-Help / Access to Justice**

##### **ABA Division for Legal Services**

<http://www.abanet.org/legalservices/>

The Division for Legal Services provides staff support for numerous ABA committees and commissions, which promote access to justice for all and improvements in the delivery of legal services. The emphasis on innovation in the delivery of legal services makes technology a significant factor in the Division’s work. Although the focus is on legal services organizations, many of the resources are applicable to anyone seeking low-cost alternatives for delivering legal services.

##### **ABA Standing Committee on the Delivery of Legal Services**

<http://www.abanet.org/legalservices/delivery/home.html>

ABA Committee dedicated to improving the delivery of legal services to the public, with a concentration on those of moderate income.

##### **ABA Standing Committee on Legal Aid and Indigent Defendants**

<http://www.abanet.org/legalservices/sclaid/civil.html>

The Standing Committee on Legal Aid and Indigent Defendants (SCLAID) examines issues relating to the delivery of civil legal services to the poor, and criminal defense services to indigent persons accused of crimes.

##### **Consumers Guide to Legal Help on the Internet**

<http://www.abanet.org/legalservices/findlegalhelp/>

##### **ABA Standing Committee on Pro Bono and Public Service**

<http://www.abanet.org/legalservices/probono/home.html>

The Standing Committee on Pro Bono and Public Service is the ABA’s center of activity for the development and promotion of pro bono policies and initiatives. The mission of the Committee includes fostering the development of pro bono programs and activities by law firms, bar associations, corporate legal departments, law schools, government attorney offices and others; analyzing the scope and function of pro bono programs; and proposing and reviewing legislation that affects lawyers’ ability to provide pro bono legal services

##### **Equal Justice Conference**

<http://www.abanet.org/legalservices/ejc/home.html>

Co-sponsored by the ABA Standing Committee on Pro Bono and Public Service, the Equal Justice Conference brings together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to low-income individuals in need of legal assistance. Through plenary sessions, workshops, networking opportunities and special programming, the conference provides a wide range of learning and sharing experiences for all attendees. Technology topics are a frequent topic on the agenda.

##### **ABA Coalition for Justice**

<http://www.abanet.org/justice/home.html>

The ABA Coalition for Justice works to improve public trust and confidence in justice by involving non-lawyers in specific justice improvement projects at the state and local levels. The Coalition publishes an annual survey of courts and bar associations that shows what’s new in justice reform: <http://www.abanet.org/justice/home.html>. Topics that are tracked include self-

representation, futures commissions, access to justice issues, ADR programs, “problem-solving courts,” professionalism (ethics, competency and client-lawyer relations), surveys and user-friendly courts.

## E. Unbundling / Alternative Billing

### Unbundling

#### **ABA Pro Se and Unbundling Resource Center**

<http://www.abanet.org/legalservices/delivery/delunbund.html>

This site, sponsored by ABA Bar Services, is designed as a resource to help lawyers, bar leaders, court administrators, scholars and the media better understand and critically analyze the issues involved in self-representation and unbundled legal services—trends which have been driven by technology and the Internet.

#### ***Unbundling to Meet the Demands of Self-Help Litigants***

<http://www.abanet.org/legalservices/legalassistants/updatefiles/unbundle.html>

Article by William Hornsby, Staff Counsel for the ABA Division of Legal Services

#### **Unbundling Legal Services**

<http://www.abanet.org/webapp/wcs/stores/servlet/ProductDisplay?storeId=10251&productId=-12487&categoryId=-3718>

Book by Forrest S. Mosten, ABA Law Practice Management Section, 2000.

#### **Conference on Unbundled Legal Services**

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

Materials from national conference on Unbundled Legal Services hosted by the Maryland Legal Assistance Network on October 12-14, 2000.

### Alternative Billing

#### **ABA Commission on Billable Hours**

<http://www.abanet.org/leadership/billhours.html>

The ABA’s Commission on Billable Hours is investigating and reporting on the effect of billable hours on the legal profession. There is a growing concern among lawyers and judges that the demands of increased billable hours is compromising the health and well-being of lawyers and, thereby, the communities in which they live.

#### **ABA Commission on Billable Hours Report and Toolkit**

<http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf>

The ABA Commission on Billable Hours created an on-line toolkit designed to assist bar associations, law firms and law departments interested in presenting a program on billable hours and its impact on the profession. Since the toolkit includes a selection of model programs, a customizable Power Point presentation, articles, research, case studies, an extensive bibliography and a speakers’ bureau, it’s a good starting point for lawyers looking for information on billable hours.

#### **Winning Alternatives to the Billable Hour**

<http://www.abanet.org/webapp/wcs/stores/servlet/ProductDisplay?catalogId=10001&storeId=10251&productId=-17832&categoryId=-3708>

Edited by James Calloway & Mark A. Robertson, ABA Law Practice Management Section, 2002.

***Break the Billable Hour Habit***

[http://www.abanet.org/lpm/magazine/articles/mag2002\\_v28n3\\_front.shtml](http://www.abanet.org/lpm/magazine/articles/mag2002_v28n3_front.shtml)

Series of articles on alternative billing in *Law Practice Management* magazine, April 2002.

## VII. Technology and Ethics

**Marketing and Legal Ethics: The Boundaries of Promoting Legal Services**

<http://www.abanet.org/lpm2/catalog/511-0432.html>

Book by William E. Hornsby, Jr., ABA Law Practice Management Section, 2000.

***Basic Technology Ethics: What Do You Need to Know?***

[http://www.abanet.org/techshow/H10\\_a-doc.pdf](http://www.abanet.org/techshow/H10_a-doc.pdf)

Article by David Hricik, ABA TechShow 2002, March 16, 2002.

***Basics of Ethics and Technology***

[http://www.abanet.org/techshow/H10\\_a2-pdf.pdf](http://www.abanet.org/techshow/H10_a2-pdf.pdf)

Article by Paul McLaughlin, ABA TechShow 2002, March 16, 2002.

***Ethical Use of Emerging Technologies in Law Practice***

<http://www.abanet.org/genpractice/magazine/janfeb2001/eder.html>

Article by Elliot Eder, *GPSOLO* magazine, Jan/Feb 2001.

***How to Commit Malpractice with Your Computer***

Article by Daniel E. Pinnington & Reid Trautz, ABA TechShow 2002, March 16, 2002.

***How (NOT) to Commit Malpractice with Your Computer***

<http://www.microlaw.com/cle/>

By Ross Kodner & Al Barsocchini, LegalTech Los Angeles 2002, May 9-10, 2002.

## VIII. Addendum

### ABA Model Rules of Professional Conduct

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## Model Rules of Professional Conduct

### *LAW FIRMS AND ASSOCIATIONS* **RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

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With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm 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; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm 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

## Model Rules of Professional Conduct

### *LAW FIRMS AND ASSOCIATIONS* **RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER**

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**(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:**

**(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; and**

**(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.**

**(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:**

**(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 ; or**

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

**Model Rules of Professional Conduct**

*LAW FIRMS AND ASSOCIATIONS*

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

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**(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:**

**(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; or**

**(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.**

**(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:**

**(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;**

**(2) are in or 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) are in or 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; or**

**(4) are not within paragraphs (c)(2) or (c)(3) and 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 in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:**

**(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or**

**(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction**

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**ABA Task Force on the Model Definition of the Practice of Law**

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**Draft (9/18/02)**

**DEFINITION OF THE PRACTICE OF LAW**

**(a) The practice of law shall be performed only by those authorized by the highest court of this jurisdiction.**

**(b) Definitions:**

**(1) The "practice of law" is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.**

**(2) "Person" includes the plural as well as the singular and denotes an individual or any legal or commercial entity.**

**(3) "Adjudicative body" includes a court, a mediator, an arbitrator or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.**

**(c) A person is presumed to be practicing law when engaging in any of the following conduct on behalf of another:**

**(1) Giving advice or counsel to persons as to their legal rights or responsibilities or to those of others;**

**(2) Selecting, drafting, or completing legal documents or agreements that affect the legal rights of a person;**

**(3) Representing a person before an adjudicative body, including, but not limited to, preparing or filing documents or conducting discovery; or**

**(4) Negotiating legal rights or responsibilities on behalf of a person.**

**(d) 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;**

**(2) Pro se representation;**

**(3) Serving as a mediator, arbitrator, conciliator or facilitator; and**

**(4) Providing services under the supervision of a lawyer in compliance with the Rules of Professional Conduct.**

**(e) Any person engaged in the practice of law shall be held to the same standard of care and duty of loyalty to the client independent of whether the person is authorized to practice law in this jurisdiction. With regard to the exceptions and exclusions listed in paragraph (d), if the person providing the services is a nonlawyer, the person shall disclose that fact in writing. In the case of an entity engaged in the practice of law, the liability of the entity is unlimited and the liability of its constituent members is limited to those persons participating in such conduct and those persons who had knowledge of the conduct and failed to take remedial action immediately upon discovery of same.**

**(f) 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.**

**Comment**

[1] The primary consideration in defining the practice of law is the protection of the public. Thus, for a person's conduct to be considered the practice of law, there must be another person toward whom the benefit of that conduct is directed. That explains the exception for pro se representation. The conduct also must be targeted toward the circumstances or objectives of a specific person. Thus, courts have held that the publication of legal self-help books is not the practice of law.

[2] The exception for pro se representation in paragraph (d)(2) contemplates not only self-representation by an individual but also representation of an entity by an authorized nonlawyer agent of the entity in those jurisdictions that permit such representation