



Feature

## Steering Clear of UPL

By Charisse Dengler

**There is no phrase that strikes quite the same amount of fear in the hearts of paralegals as the phrase “unlicensed practice of law,” most commonly known as UPL. UPL refers to the giving of legal advice by someone not authorized to practice law; and for paralegals, the line between appropriate behavior and UPL is often a fine one and always a dangerous one.**



With the role of the paralegal growing broader every day, UPL has become an increasingly prominent issue. Whereas paralegals used to be the people behind the scenes doing most of the paperwork and research,

paralegals of today have more client contact and more freedom. In fact, the responsibilities and day-to-day tasks of the majority of practicing paralegals are mostly governed by the attorneys they work for.

Over the years, three major groups of paralegals have emerged. Traditional paralegals are those who work for law firms or corporations under the supervision of attorneys. Freelance paralegals are paralegals who are hired by attorneys to do contract work. Legal document assistants are paralegals who work directly with their own clients or the public.

Out of the three groups, though, it seems that traditional paralegals run into UPL problems less frequently because they are working directly with attorneys.

In fact, in an interview with *Lawyers Weekly USA*, Lori Holcomb, Director of the Unlicensed Practice of Law Section of the Florida Bar, said that she seldom encounters UPL issues with paralegals who are working for attorneys. She said that for the most part, if paralegals work under an attorney and do not set fees or give advice, they don't have anything to worry about.

“The only time we see a big problem is when we see the tail wagging the dog,” she said during the interview, referring to paralegals who take on work without the attorneys at their firms knowing.

For this reason, Holcomb warns paralegals about seeing a case and thinking they can handle it on their own, without the help of the attorneys at the firm.

Regardless of which category of paralegal you fall into, it's often difficult to find a balance between offering the best possible services to your clients and the attorneys at your firm and still remaining within the law. This brings up these questions: What exactly does UPL entail, and how can paralegals be sure they are staying within their limits?

The Florida Bar explains it like this: “In determining whether the giving of advice and counsel and the performance of services in legal matters constitute the practice of law, it is safe to follow the rule that if giving such advice and performance of services affect important rights of a person under the law and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and performance of services by one for another constitutes the practice of law.”

In general, the consensus is that paralegals are not allowed to give legal advice, accept cases, set fees, go to court, devise a case strategy, and/or make decisions regarding a case. The American Bar Association goes even further in its quest to clarify the issue, specifying that “a lawyer may not delegate to a legal assistant: (1) responsibility for establishing an attorney-client relationship; (2) responsibility for establishing the amount of fees to be charged for legal services; and (3) responsibility for a legal opinion rendered to a client.”

More helpful tips for staying within your bounds include always citing the source of information that you give out, making sure that the attorney you are working with oversees and approves all of your work, ensuring that your clients always meet with attorneys at the firm and not just you, and making a point of not signing pleadings or anything that could be viewed as advice.

The punishments associated with UPL range from a fine of \$25 to a cease and desist letter to a first-degree



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misdemeanor charge. Therefore, it is the responsibility of all paralegals, regardless of the type of work they provide or the environment they work in, to check their state statutes in

regard to UPL in order to ensure they are staying within their legal rights.

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