APPENDIX A State Definitions of the Practice of Law

Alabama

CODE OF ALABAMA TITLE 34. PROFESSIONS AND BUSINESSES. CHAPTER 3. ATTORNEY-AT-LAW. §34-3-6. Who may practice as attorneys.

(b) For the purposes of this chapter, the practice of law is defined as follows:

Whoever,

- (1) In a representative capacity appears as an advocate or draws papers, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or
- (2) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or relating to secular rights; or
- (3) For a consideration, reward or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or
- (4) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense;

is practicing law.

(c) Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands, nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon, but any such person, firm or corporation engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles to real or personal property are prohibited from preparing or drawing or procuring or assisting in the drawing or relating to secular rights, which acts are hereby defined to be an act of practicing law, unless such person, firm or corporation shall have a proprietary interest in such property; however, any such person, firm or corporation so engaged in preparing abstracts of title, certifying, guaranteeing or insuring titles shall be permitted to prepare or draw or procure or assist in the drawing or preparation of simple affidavits or statements of fact to be used by such person, firm or corporation in support of its title policies, to be retained in its files and not to be recorded.

Alaska

ALASKA STATUTES TITLE 8. BUSINESS AND PROFESSIONS. CHAPTER 08. ATTORNEYS. ARTICLE 4. Unlawful Acts. Sec. 08.08.230 Unlawful practice a misdemeanor. RULE 63. UNAUTHORIZED PRACTICE OF LAW--AS 08.08.230

For purposes of AS 08.08.230 (making unauthorized practice of law a misdemeanor), "practice of law" is defined as:

- (a) representing oneself by words or conduct to be an attorney, and, if the person is authorized to practice law in another jurisdiction but is not a member of the Alaska Bar Association, representing oneself to be a member of the Alaska Bar Association; and
- (b) either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which effect legal rights or duties.

Rule 15. Grounds For Discipline.

. . .

(b) Unauthorized Practice of Law. (1) For purposes of the practice of law prohibition for disbarred and suspended attorneys in subparagraph (a)(6) of this rule, except for attorneys suspended solely for non-payment of bar fees, "practice of law" is defined as: (A) holding oneself out as an attorney or lawyer authorized to practice law; (B) rendering legal consultation or advice to a client; (C) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body which is operating in its adjudicative capacity, including the submission of pleadings; (D) appearing as a representative of the client at a deposition or other discovery matter; (E) negotiating or transacting any matter for or on behalf of a client with third parties; or (F) receiving, disbursing, or otherwise handling a client's funds. (2) For purposes of the practice of law prohibition for attorneys suspended solely for the non-payment of fees and for inactive attorneys, "practice of law" is defined as it is in subparagraph (b)(1) of this rule, except that these persons may represent another to the extent that a layperson would be allowed to do so.

Arizona (Adopted January 15, 2003, effective July 1, 2003) RULES OF THE SUPREME COURT OF ARIZONA – RULE 31 – REGULATION OF THE PRACTICE OF LAW

- (a) Supreme Court Jurisdiction Over the Practice of Law
 - 1. Jurisdiction. Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.
 - 2. Definition: Practice of Law. The "practice of law" means providing legal advice or services to or for another by:
 - (A)Preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
 - (B)Preparing or expressing legal opinions;
 - (C)Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitrations and mediations;
 - (D)Preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
 - (E)Negotiating legal rights or responsibilities for a specific person or entity.
 - 3. Definition: Unauthorized Practice of Law. "Unauthorized practice of law" includes but is not limited to:
 - (A)Engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

- (B)Using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "JD," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.
- 4. *Definition of Paralegal/Legal Assistant*. A "legal assistant/paralegal" is a person qualified by education and training who performs substantive legal work, which requires a sufficient knowledge and expertise of 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.
- 5. *Definition of Mediator*. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, signed by all disputants, to mediate a dispute.
- (b) Authority to Practice. Except as hereinafter provided in section (c), no person shall practice law in this state or hold himself out as one who may practice law in this state unless he is an active member of the state bar, and no member shall practice law in this state or hold himself out as one who may practice law in this state, while suspended, disbarred, or on disability inactive status.
- (c) Exceptions. Notwithstanding the provisions of section (b):
- 1. In any proceeding before the Department of Economic Security, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.
- 2. An employee may represent himself or designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.
- 3. An officer of a corporation who is not an active member of the state bar may represent the corporation before a justice court or police court, provided that: the corporation has specifically authorized such officer to represent it before such courts; such representation is not the officer's primary duty to the corporation, but secondary or incidental to other duties relating to the management or operation of the corporation; and the corporation was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence which gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.
- 4. A person who is not an active member of the State Bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.
- 5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.
- 6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

- 7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized fulltime employee of the corporation who is not charging a fee for the representation.
- 8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation.
- 9. An officer or employee of a corporation or unincorporated association who is not an active member of the State Bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.
- 10. An officer or full- time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona department of environmental quality in an administrative proceeding authorized under Arizona Revised Statutes, Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.
- 11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other
- than reimbursement for costs) for such representation.
- 12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may appear on his or her own behalf or be represented by a duly authorized agent who is not charging a fee for the representation.
- 13. In any administrative proceeding before the Arizona Department of Revenue or before the Office of Administrative Hearings relating to the Arizona Department of Revenue, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including the Department, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the

particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

- 14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).
- 15. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the rules of professional conduct.
- 16.Nothing in these rules shall prohibit the supreme court, court of appeals, or superior courts in this state from creating and distributing form documents for use in Arizona courts.
- 17.Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.
 - 18. Nothing in these rules shall prohibit the preparation of tax returns.
- 19. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.
- 20. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.
- 21. Nothing in these rules shall prohibit a certified document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.

Arkansas

Arkansas Bar Association v. Block, 323 S.W.2d 912 (1959).

Research of authorities by able counsel and by this court has failed to turn up any clear, comprehensible definition of what really constitutes the practice of law. Courts are not in agreement. We believe it is impossible to frame any comprehensive definition of what constitutes the practice of law. Each case must be decided upon its own particular facts.--The practice of law is difficult to define. Perhaps it does not admit of exact definition.

California

People v. Merchants Protective Corp., 209 P.363, 365 (1922)

'As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.' *Quoting In the case of Eley v. Miller*, 7 Ind. App. 529, 34 N. E. 836.

Baron v. Los Angeles, 2 C.3d 535, 86 C.R. 673, 469 P.2d 353 (1970).

(T)he Legislature adopted the state bar act in 1927 and used the term 'practice law' without defining it. [FN7] The conclusion is obvious and inescapable that in so doing it accepted both the definition already judicially supplied for the term and the declaration of the Supreme Court (in *Merchants*') that it had a sufficiently definite meaning to need no further definition. The definition above quoted from *People v. Merchants' Protective Corp.* has been approved and accepted in the subsequent California decisions (citations), and must be regarded as definitely establishing, for the jurisprudence of this state, the meaning of the term 'practice law." (*People v. Ring* (1937) supra. 26 Cal.App.2d Supp. 768, 772, 70 P.2d 281, 283.)

Colorado

Koscove v. Bolte, 30 P.3d 784 (Colo.App. 2001)

While acknowledging the difficulty of giving an all-inclusive definition of the practice of law, the supreme court has defined it as follows: We believe that generally one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting him in connection with these rights and duties is engaged in the practice of law. *Denver Bar Ass'n v. Public Utilities Commission*, 154 Colo. 273, 279, 391 P.2d 467, 471 (1964). *See also* C.R.C.P. 201.3(2).

COLORADO COURT RULES GOVERNING ADMISSION TO THE BAR CHAPTER 18. RULES GOVERNING ADMISSION TO THE BAR RULE 201.3. CLASSIFICATION OF APPLICANTS Rule 201.3(2)

- (2) For purposes of this rule, "practice of law" means:
- (a) the private practice of law as a sole practitioner or as a lawyer employee of or partner or shareholder in a law firm, professional corporation, legal clinic, legal services office, or similar entity; or
- (b) employment as a lawyer for a corporation, partnership, trust, individual, or other entity with the primary duties of:
 - (i) furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or
 - (ii) preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or
- (c) employment as a lawyer in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of
 - (i) furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or
 - (ii) preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or
- (d) employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or similar official of the United States, including the independent agencies thereof, or of any state, territory or municipality of the United States with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to a lawyer; or
- (e) employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or
 - f) any combination of subparagraphs (a)-(e) above.

Connecticut

State Bar Association of Connecticut v. Connecticut Bank & Trust Co., 140 A.2d 863, 870 (1958) The practice of law consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces the giving of legal advice on a large variety of subjects and the preparation of legal instruments covering an extensive field.

Delaware

Marshall-Steele v. Nanticoke Memorial Hosp., Inc., 1999 WL 458724 (Del.Super. 1999) The Delaware Supreme Court has sanctioned the following definition of the practice of law:

In general, one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill. The practice of law includes 'all advice to clients, and all actions taken for them in matters connected with the law' ... and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a quasi judicial tribunal. *Delaware State Bar Ass'n v. Alexander, Del.Supr.*, 386 A.2d 652, 661 (1978).

District of Columbia

COURT RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS TITLE VI. GENERAL PROVISIONS RULE 49. UNAUTHORIZED PRACTICE OF LAW

- (2) "Practice of Law" means the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:
- (a) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, wills, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;
 - (b) Preparing or expressing legal opinions;
 - (c) Appearing or acting as an attorney in any tribunal;
- (d) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;
- (e) Providing advice or counsel as to how any of the activities described in sub-paragraph (a) through (d) might be done, or whether they were done, in accordance with applicable law;
- (f) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.

Comment:

Although section (b) of the original rule included definitions, not all of the essential terms were defined. The new section (b) follows the conventional approach of rules and statutes in defining such terms

As originally stated in sections (b)(2) and (3) of the prior Rule, the "practice of law" was broadly defined, embracing every activity in which a person provides services to another relating to legal rights. This approach has been refined, in recognition that there are some legitimate activities of non-Bar members that may fall within an unqualifiedly broad definition of "practice of law."

The definition set forth in section (b)(2) is designed to focus first on the two essential elements of the practice of law: The provision of legal advice or services, and a client relationship of trust or reliance. Where one provides such advice or services within such a relationship, there is an implicit representation that the provider is authorized or competent to provide them; just as one who provides any services requiring special skill gives an implied warranty that they are provided in a good and workmanlike manner. See, e.g., Ehrenhaft v. Malcolm Price, Inc., 483 A.2d 1192, 1200(D.C. 1984); Carey v. Crane Service Co., Inc., 457 A.2d 1102, 1007 (D.C. 1983).

Recognizing that the definition of "practice of law" may not anticipate every relevant circumstance, the Rule adopts four methods of definition: (1) the more refined definition focusing on the provision of legal advice or services and a client relationship of trust or reliance; (2) an enumerated list of the most common activities which are rebuttably presumed to be the practice

of law; (3) this commentary; and (4) opinions of the Committee on Unauthorized Practice of Law where further questions of interpretation may arise. See section (d)(3)(G) below. (Emphasis added)

The definition of "practice of law," the list of activities, this commentary and opinions of the Committee on Unauthorized Practice of Law are to be considered and applied in light of the purposes of the Rule as set forth in the commentary to sections (a) and (b).

The presumption that one's engagement in one of the enumerated activities is the "practice of law" may be rebutted by showing that there is no client relationship of trust or reliance, or that there is no explicit or implicit representation of authority or competence to practice law, or that both are absent. (Emphasis added)

While the Rule is meant to embrace every client relationship where legal advice or services are rendered, or one holds oneself out as authorized or competent to provide such services, the Rule is not intended to cover conduct which lacks the essential features of an attorney-client relationship.

For example, a law professor instructing a class in the application of law to a particular real situation is not engaged in the practice of law because she is not undertaking to provide advice or services for one or more clients as to their legal interests. An experienced industrial relations supervisor is not engaged in the practice of law when he advises his employer what he thinks the firm must do to comply with state or federal labor laws, because the employer does not reasonably expect it is receiving a professional legal opinion. See also the exception for Internal Counsel set forth in Section (c)(6). Law clerks, paralegals and summer associates are not practicing law where they do not engage in providing advice to clients or otherwise hold themselves out to the public as having authority or competence to practice law. Tax accountants, real estate agents, title company attorneys, securities advisors, pension consultants, and the like, who do not indicate they are providing legal advice or services based on competence and standing in the law are not engaged in the practice of law, because their relationship with the customer is not based on the reasonable expectation that learned and authorized professional legal advice is being given. Nor is it the practice of law under the Rule for a person to draft an agreement or resolve a controversy in a business context, where there is no reasonable expectation that she is acting as a qualified or authorized attorney.

The rule is not intended to cover the provision of mediation or alternative dispute resolution ("ADR") services. This intent is expressed in the first sentence of the definition of the "practice of law" which requires the presence of two essential factors: the provision of legal advice or services and a client relationship of trust or reliance. ADR services are not given in circumstances where there is a client relationship of trust or reliance; and it is common practice for providers of ADR services explicitly to advise participants that they are not providing the services of legal counsel.

While payment of a fee is often a strong indication of an attorney-client relationship, it is not essential.

Ordinarily, one who provides or offers to provide legal advice or services to clients in the District of Columbia implies to the consumer that he or she is authorized and competent to practice law in the District of Columbia. It is not sufficient for a person who is not an enrolled, active member of the District of Columbia Bar merely to give notice that he is not a lawyer while engaging in conduct that is likely to mislead consumers into believing that he is a licensed attorney at law. Where consumers continue to seek services after such notice, the provider must take special care

to assure that they understand that the person they are consulting does not have the authority and competence to render professional legal services in the District of Columbia. *See In Re Banks*, 561 A.2d 168 (D.C. 1987).

The Rule also confines the practice of law to provision of legal services under engagement for another. One who represents himself or herself is not required to be admitted to the District of Columbia Bar.

The conduct described in Section (b)(2)(F) concerning the furnishing of attorneys is not intended to include legitimate or official referral services, such as those offered by the District of Columbia Bar, bar associations, labor organizations, non-fee pro bono organizations and other courtauthorized organizations.

Florida

State ex rel. The Florida Bar v. Sperry, 140 So.2d 587, 591 (1962)

Many courts have attempted to set forth a broad definition of the practice of law. Being of the view that such is nigh onto impossible and may injuriously affect the rights of others not here involved, we will not attempt to do so here. Rather we will do so only to the extent required to settle the issues of this case.

It is generally understood that the performance of services in representing another before the courts is the practice of law. But the practice of law also includes the giving of legal advice and counsel to others as to their rights and obligations under the law and the preparation of legal instruments, including contracts, by which legal rights are either obtained, secured or given away, although such matters may not then or ever be the subject of proceedings in a court.

We think that in determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of such advice and performance of such 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 a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.

Georgia

CODE OF GEORGIA ANNOTATED TITLE 15. COURTS CHAPTER 19. ATTORNEYS ARTICLE 3. REGULATION OF PRACTICE OF LAW \$5-19-50. "Practice of law" defined.

The practice of law in this state is defined as: (1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body; (2) Conveyancing; (3) The preparation of legal instruments of all kinds whereby a legal right is secured; (4) The rendering of opinions as to the validity or invalidity of titles to real or personal property; (5) The giving of any legal advice; and (6) Any action taken for others in any matter connected with the law.

Hawaii

Fought & Co., Inc. v. Steel Engineering and Erection, Inc., 951 P.2d 487 (Hawaii 1998)

In drafting the statutes, the legislature expressly declined to adopt a formal definition of the term "practice of law," noting that "[a]ttempts to define the practice of law in terms of enumerating the specific types of services that come within the phrase are fruitless because new developments in society, whether legislative, social, or scientific in nature, continually create new concepts and

new legal problems." Sen. Stand. Comm. Rep. No. 700, in 1955 Senate Journal, at 661; Hse. Stand. Comm. Rep. No. 612, in 1955 House Journal at 783. The legislature recognized that the practice of law is not limited to appearing before the courts. It consists, among other things of the giving of advice, the preparation of any document or the rendition of any service to a third party affecting the legal rights ... of such party, where such advice, drafting or rendition of service requires the use of any degree of legal knowledge, skill or advocacy.

Sen. Stand. Comm. Rep. No. 700, in 1955 Senate Journal. at 661 (emphasis added); *see also* Hse. Stand. Comm. Rep. No. 612, in 1955 House Journal, at 783.

Similarly, while it has explored the concept's dimensions, this court has never formally defined the term "practice of law."

Idaho

Idaho State Bar v. Villegas, 879 P.2d 1124 (Idaho 1994)

This Court has defined the practice of law as:

'The doing or performing services in a court of justice, in any matter depending [sic] therein, throughout its various stages, and in conformity with adopted rules of procedure. But in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be depending [sic] in a court.'

Idaho State Bar v. Meservy, 80 Idaho 504, 508, 335 P.2d 62, 65 (1959) (emphasis in original) (quoting In re Matthews, 57 Idaho 75, 83, 62 P.2d 578, 584 (1936)).

Illinois

Continental Cas. Co. v. Cuda, 715 N.E.2d 663 (Ill.App. 1 Dist., 1999)

Our supreme court has described the practice of law as:

"[T]he giving of advice or rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill." *People ex rel. Illinois State Bar Ass'n v. Schafer*, 404 III. 45, 51, 87 N.E.2d 773 (1949).

Indiana

(On January 24, 2002, the Indiana State Bar House of Delegates approved a recommendation calling for a definition of the practice of law. The Bar's Unauthorized Practice of Law Committee is developing a definition. Should there be a House meeting in the spring of 2003, it's likely a recommendation would be ready for consideration by the delegates at that time.)

Fink v. Peden, 17 N.E.2d 95 (1938)

The practice of law is defined in 7 C.J.S., Attorney and Client, 703, Section 3(g), as follows: 'The general meaning of the term, 'practice law' or 'practice of law', is of common knowledge, although the boundaries of its definition may be indefinite as to some transactions. As generally understood, it is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure; but it is not confined to performing services in an action or proceeding pending in courts of justice, and, in a larger sense, it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court. To 'practice law' is to carry on the business of an attorney at law; to do or practice that which an attorney or counselor at law is authorized to do and practice; to exercise the calling or profession of the law; usually for the purpose of gaining a livelihood, or at least for gain; to make it one's business to act for, and by the warrant of, others in legal formalities, negotiations, or proceedings.' (Court's italics.)

Iowa

Iowa Supreme Court Com'n on Unauthorized Practice of Law v. Sturgeon, 635 N.W.2d 679 (Iowa 2001)

The commission notes that this court has the inherent authority to define and regulate the practice of law, citing *Baker* (*Committee on Professional Ethics & Conduct v. Baker*, 492 N.W.2d 695, 700 (Iowa 1992). In *Baker* we approved the nonexclusive definition of the practice of law found in Ethical Consideration 3-5:

It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. However, the practice of law includes, but is not limited to, representing another before the courts; giving of legal advice and counsel to others relating to their rights and obligations under the law; and preparation or approval of the use of legal instruments by which legal rights of others are either obtained, secured or transferred even if such matters never become the subject of a court proceeding. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of professional judgment of the lawyer is the educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, nonlawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional judgment is required.

Iowa Code of Prof'l Responsibility EC 3-5; see also Baker, 492 N.W.2d at 701 (approving a similar version of this definition).

Kansas

(The Kansas Bar has created a UPL Task Force that, among other things, is discussing the definition of the practice of law. The task force does not yet have a report or recommendation.)

State v. Schumacher, 519 P.2d 1116 (1974)

I. What is the practice of law?

Although it may sometimes be articulated more simply, one definition has gained widespread acceptance, and has been adopted by this Court:

A general definition of the term frequently quoted with approval is given in *Eley v. Miller*, 7 Ind.App. 529, 34 N.E. 836, as follows:

'As the term is generally understood, the 'practice' of law is the doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' *State ex rel. v. Perkins*, 138 Kan. 899, 907, 908, 28 P.2d 765, 769 (1934).

The court, in *Perkins*, also pointed out that '(o)ne who confers with clients, advises them as to their legal rights, and then takes the business to an attorney and arranges with him to look after it in court is engaged in the practice of law.' 138 Kan. at 908, 28 P.2d at 770. The quotation from the *Eley* case has been adopted as the general rule in 7 C.J.S. Attorney and Client s 3 g (1937).

A more recent source defines the practice of law as 'the rendition of services requiring the knowledge and application of legal principles and technique to serve the interests of another with his consent.' R. J. Edwards, Inc. v. Hert, 504 P.2d 407, 416 (Okl. 1972).

Kentucky

KENTUCKY REVISED STATUTES, RULES OF THE SUPREME COURT III, PRACTICE OF LAW SCR 3.020. Practice of Law Defined.

The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor. An appearance in the small claims division of the district court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law.

Louisiana

LOUISIANA REVISED STATUTES TITLE 37. PROFESSIONS AND OCCUPATIONS CHAPTER 4. ATTORNEYS § 212.

37:212 Practice of Law defined.

A. The Practice of law means and includes:

- (1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state; or
- (2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect;
 - (a) The advising or counseling of another as to secular law;
 - (b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;
 - (c) The doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right; or
 - (d) Certifying or giving opinions as to title to immovable property or any interest therein or as to the rank or priority or validity of a lien, privilege or mortgage as well as the preparation of acts of sale, mortgages, credit sales or any acts or other documents passing titles to or encumbering immovable property.
- B. Nothing in this Section prohibits any person from attending to and caring for his own business, claims, or demands; or from preparing abstracts of title; or from insuring titles to property, movable or immovable, or an interest therein, or a privilege and encumbrance thereon, but every title insurance contract relating to immovable property must be based upon the certification or opinion of a licensed Louisiana attorney authorized to engage in the practice of law. Nothing in this Section prohibits any person from performing, as a notary public, any act necessary or incidental to the exercise of the powers and functions of the office of notary public, as those powers are delineated in Louisiana Revised Statutes of 1950, Title 35, Section 1, et seq.
- C. Nothing in this Section shall prohibit any partnership, corporation, or other legal entity from asserting any claim, not exceeding five thousand dollars, or defense pertaining to an open account or promissory note, or suit for eviction of tenants on its own behalf in the courts of limited jurisdiction on its own behalf through a duly authorized partner, shareholder, officer, employee, or duly authorized agent or representative. No partnership, corporation, or other entity may assert any claim on behalf of another entity or any claim assigned to it.
- D. Nothing in Article V, Section 24, of the Constitution of Louisiana or this Section shall prohibit justices or judges from performing all acts necessary or incumbent to the authorized exercise of duties as judge advocates or legal officers.

Louisiana Rule of Professional Conduct 5.5: Unauthorized Practice of Law

For purposes of this Rule, the practice of law shall include the following activities:

- (i) Holding oneself out as an attorney or lawyer authorized to practice law;
- (ii) Rendering legal consultation or advice to a client;
- (iii) Appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;
- (iv) Appearing as a representative of the client at a deposition or other discovery matter;
- (v) Negotiating or transacting any matter for or on behalf of a client with third parties;
- (vi) Otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.

Maine

Board of Overseers of the Bar v. Mangan, 763 A.2d 1189 (Me. 2001)

The Maine Bar Rules do not explicitly state what constitutes the "practice of law," nor have we ever defined what constitutes the "practice of law."

The term "practice of law" is a "'term of art connoting much more than merely working with legally-related matters.' " *Attorney Grievance Commission of Maryland v. Shaw*, 354 Md. 636, 732 A.2d 876, 882 (1999) (*quoting In re Application of Mark W.*, 303 Md. 1, 491 A.2d 576, 585 (1985)).

"The focus of the inquiry is, in fact, 'whether the activity in question required legal knowledge and skill in order to apply legal principles and precedent.' " *Id.* (quoting In re Discipio, 163 Ill.2d 515, 206 Ill.Dec. 654, 645 N.E.2d 906, 910 (1994)). Even where " 'trial work is not involved but the preparation of legal documents, their interpretation, the giving of legal advice, or the application of legal principles to problems of any complexity, is involved, these activities are still the practice of law.' " *Shaw*, 732 A.2d at 883 (quoting Lukas v. Bar Ass'n of Montgomery County, 35 Md.App. 442, 448, 371 A.2d 669, 673, cert. denied, 280 Md. 733 (1977)).

[¶ 14] In Shaw, 354 Md. 636, 732 A.2d 876, 882 (1999), the court noted that the practice of law includes " '[u]tilizing legal education, training, and experience [to apply] the special analysis of the profession to a client's problem.' " (quoting Kennedy v. Bar Ass'n of Montgomery County, Inc., 316 Md. 646, 662, 561 A.2d 200, 208 (1989)). The Shaw court further noted that "[t]he Hallmark of the practicing lawyer is responsibility to clients regarding their affairs, whether as advisor, advocate, negotiator, as intermediary between clients, or as evaluator by examining a client's legal affairs." Shaw, 732 A.2d at 883 (quoting In re Application of R.G.S., 312 Md. 626, 632, 541 A.2d 977, 980 (1988)).

[¶ 15]

As attorneys' roles increase in complexity and overlap with other professions, the answer to [the question of what constitutes the practice of law] will continue to evolve. Ultimately, the question will turn on the specific facts of the work undertaken and the understanding of the parties.

[¶ 16] The determination of what constitutes the practice of law is very fact specific.

Maryland

ANNOTATED CODE OF MARYLAND BUSINESS OCCUPATIONS AND PROFESSIONS, TITLE 10. LAWYERS SUBTITLE 1--DEFINITIONS; GENERAL PROVISIONS § 10-101. Definitions

Sec. 10-101(h)

(1) "Practice law" means to engage in any of the following activities:

- (i) giving legal advice;
- (ii) representing another person before a unit of the State government or of a political subdivision; or
- (iii) performing any other service that the Court of Appeals defines as practicing law (2) "Practice law" includes:
 - (i) advising in the administration of probate of estate of decedents in an orphans' court of the state
 - (ii) preparing an instrument that affects title to real estate
 - (iii) preparing or helping in the preparation of any form or document that is filed in a court or affects a case that is or may be filed in a court; or
 - (iv) giving advice about a case that is or may be filed in a court.

§ 10-206. Bar admission requirement

- (a) Except as otherwise provided by law, before an individual may practice law in the State, the individual shall:
 - (1) Be admitted to the Bar; and
 - (2) Meet any requirement that the Court of Appeals may set by rule.
- (b) This section does not apply to:
- (1) A person while representing a landlord in a summary ejectment proceeding in the District Court of Maryland;
- (2) A person while representing a tenant in a summary ejectment proceeding in the District Court of Maryland if the person is:
 - (i) A law student practicing in a clinical law program at a law school accredited by the American Bar Association with the in-court supervision of a faculty member; or
 - (ii) Employed by a nonprofit organization receiving grants from the Maryland Legal Services Corporation and:
 - 1. The person has training and experience;
 - 2. The person is supervised by a lawyer; and
 - 3. The supervising lawyer's appearance is entered in the proceeding;
 - (3) An insurance company while defending an insured through staff counsel;
- (4) (i) An officer of a corporation, an employee designated by an officer of a corporation, a partner in a business operated as a partnership or an employee designated by a partner, or an employee designated by the owner of a business operated as a sole proprietorship while the officer, partner, or employee is appearing on behalf of the corporation, partnership, or business in a civil action in the District Court of Maryland if the action:
 - 1. Is based on a claim that does not exceed the amount set under § 4-405 of the Courts Article for a small claim action; and
 - 2. Is not based on an assignment, to the corporation, partnership, or business, of the claim of another;
 - (ii) An employee designated under subparagraph (i) of this paragraph:
 - 1. May not be assigned on a full-time basis to appear in the District Court on behalf of the corporation, partnership, or business;
 - 2. Shall provide the court a power of attorney sworn to by the employer that certifies that the designated employee is an authorized agent of the corporation, partnership, or sole proprietorship and may bind the corporation, partnership, or sole proprietorship on matters pending before the court; and
 - 3. May not be an individual who is disbarred or suspended as a lawyer in any state;
 - (iii) A corporation, partnership, or business may not contract, hire, or employ another business entity to provide appearance services under subparagraph (i) of this paragraph; or

- (5) An individual who is authorized by a county employee to represent the employee at any step of the county's grievance procedure.
- (c) (1) In this subsection, "practice patent law":
 - (i) Means to perform professional services that the Patent and Trademark Office requires to be performed by an individual registered to practice before that Office; and
 - (ii) Includes preparing a copyright application or assignment and submitting it to the Copyright Office of the Library of Congress.
- (2) While there is a Patent and Trademark Office in the State, an individual may practice patent law in the State if the individual is:
 - (i) Authorized to practice law in any other state; and
 - (ii) Registered to practice patent law before the Patent and Trademark Office.
- (3) Unless otherwise authorized under this title, an individual who practices patent law under this subsection may not:
 - (i) Appear as an attorney at law in a court; or
 - (ii) Practice law generally in the State.
- (d) (1) Subject to paragraph (2) of this subsection, this section does not apply to an individual while giving legal advice to a corporation in this State if the individual is:
 - (i) Employed by the corporation; and
 - (ii) Admitted to the bar of any other state.
 - (2) An individual who gives legal advice under this subsection:
 - (i) Is subject to disciplinary proceedings as the Maryland Rules provide;
 - (ii) May not appear before a unit of the State government or of a political subdivision unless a court grants the individual a special admission in accordance with § 10-215 of this subtitle. (Special admission to practice law)

Massachusetts

Massachusetts Conveyancers Ass'n, Inc. v. Colonial Title & Escrow, Inc., 2001 WL 669280 (Mass.Super. 2001)

Whether a particular activity constitutes the practice of law is fact specific. *Matter of Shoe Manufacturers Protective Association*, 295 Mass. 369, 372 (1936). While a comprehensive definition would be impossible to frame what constitutes "the practice of law", in general, consists of:

"[D]irecting and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and to act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, the practice of giving or furnishing legal advice as to such rights and methods and the practice, as an occupation, of drafting documents by which such rights are created, modified, surrendered or secured ..."

Id.

Michigan

Dressel v. Ameribank, 635 N.W.2d 328 (Mich.App. 2001)

Michigan law prohibits the unauthorized practice of law by individuals. MCL 600.916. Moreover, M.C.L. § 450.681 specifically enjoins corporations from practicing law without a license. . . . However, these statutes fail to define precisely what constitutes the "practice of law." Rather, such determinations have been left to the discretion of the courts.

This Court agrees with the majority opinion of the states that charging a fee can take an otherwise incidental act into the realm of the unauthorized practice of law.

Minnesota

Cardinal v. Merrill Lynch Realty/Burnet, Inc., 433 N.W.2d 864 (Minn. 1988)

The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyers' field. ' *Cowern v. Nelson*, 207 Minn. 642, 647, 290 N.W. 795, 797 (1940).

Proposed to Supreme Court in Petition of Minnesota State Bar Association Regarding Multidisciplinary Practice (Jan. 2002) – Petition Denied Sept, 17, 2002

"Practice of law" denotes the following activities:

- 1. Rendering legal consultation or advice to a client;
- 2. Appearing on behalf of a client in any hearing, proceeding or related deposition or discovery matter or before any judicial officer, court, public agency, referee, magistrate, commissioner or hearing officer, except where rules of the tribunal involved permit representation by nonlawyers;
- 3. Engaging in other activities that constitute the practice of law as provided by statute or common law.

Mississippi

Mississippi Com'n on Judicial Performance v. Jenkins, 725 So.2d 162 (Miss. 1998)

This Court defined the practice of law to include "... the drafting or selection of documents, the giving of advice in regard to them, and the using of an informed or trained discretion in the drafting of documents to meet the needs of the person being served. So any exercise of intelligent choice in advising another of his legal rights and duties brings the activity within the practice of the legal profession. *Oregon State Bar v. Security Escrows, Inc.*, 233 Or. 80, 377 P.2d 334 (1962)." *Darby v. Mississippi State Bd. of Bar Admissions*, 185 So.2d 684, 687 (Miss.1966).

Darby v. Mississippi State Board of Bar Admissions, 185 So.2d 684, 688 (1966).

The acts designated in Section 8682 as constituting the practice of law are not all-exclusive nor all-inclusive. Manifestly there are many others which might be performed by an unlicensed person which may also constitute the practice of law. Section 8682 (Miss. Code Ann.) simply provides that the designated acts under the defined circumstances constitute the unlawful practice of law, but it does not encroach on the constitutional power of the judiciary to determine that other acts may also do so.

Mississippi Code Annotated §73-3-55. Unlawful to practice law without license; certain abstract companies may certify titles.

It shall be unlawful for any person to engage in the practice of law in this state who has not been licensed according to law. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of section 97-23-43. Any person who shall for fee or reward or promise directly or indirectly write or dictate any paper or instrument of writing to be filed in any cause or proceeding pending or to be instituted in any court in this state or give any counsel or advice therein or who shall write or dictate any bill of sale deed of conveyance deed of trust mortgage contract or last will and testament or shall make or certify to any abstract of title or real estate other than his own or in which he may own an interest shall be held to be engaged in the practice of law. This section shall not however prevent title or abstract of title guaranty companies incorporated under the laws of this state from making abstract or certifying titles to real estate where it acts through some person as agent authorized under the laws of the State of Mississippi to practice law; nor shall this section prevent any abstract company chartered under the laws of the State of Mississippi with a

paid up capital of fifty thousand dollars (\$50,000.00) or more from making or certifying to abstracts of title to real estate through the president secretary or other principal officer of such company.

Missouri Revised Statutes

MISSOURI STATUTES TITLE XXXII. COURTS CHAPTER 484. ATTORNEYS AT LAW §484.010. Practice of the law and law business defined.

- 1. The "practice of the law" is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.
- 2. The "law business" is hereby defined to be and is the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever.

Montana

Pulse v. North American Land Title Co. of Montana, 707 P.2d 1105 (Mont. 1985)

What constitutes the practice of law is not easily defined. In *Cowern v. Nelson* (1940), 207 Minn. 642, 290 N.W. 795, 797, the Minnesota Court stated: "The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyer's field."

Nebraska

State ex rel. Johnson v. Childe, 23 N.W.2d 720 (Neb. 1946)

The power to define what constitutes the practice of law is lodged with this court. The sole power to punish any person assuming to practice law within this state without having been licensed to do so also rests with this court. It is the character of the act and not the place where the act is performed that constitutes the controlling factor. An all inclusive definition of what constitutes the practice of law is too difficult for simple statement. We shall not attempt it here, but will follow the practice established by the previous decisions of this court and examine the facts and circumstances of each case and determine whether the defendant purported to exercise the legal training, experience and skill of an attorney at law without a license to do so. Our former decisions supporting these views are collected and discussed in *State ex rel. Johnson v. Childe*, 139 Neb. 91, 295 N.W. 381.

Nevada

Pioneer Title Ins. & Trust Co. v. State Bar of Nev., 326 P.2d 408 (Nev. 1958) As stated in *Lowell Bar Ass'n v. Loeb*, supra [315 Mass. 176, 52 N.E.2d 34], 'The actual practices of the community have an important bearing on the scope of the practice of law.'

New Hampshire Sup.Ct.Rules, Rule 35, Rule 1 There is no satisfactory, all-inclusive definition of what constitutes the practice of law. Ethical Consideration 3-5 (E.C. 3-5) of the former Code of Professional Responsibility provided:

"It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of a lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment."

HB 1420 – CHAPTER 218:1, LAWS OF 2002 AN ACT establishing a task force to define the practice of law in New Hampshire.

Final Report

The above-named Task Force appointed to define the practice of law in New Hampshire, having duly met offers the following final report:

· That we are unable to reach a consensus of opinion in order to offer specific findings and recommendations on the practice of law in New Hampshire.

New Jersey

In re Jackman, 761 A.2d 1103 (N.J. 2000)

The practice of law in New Jersey is not limited to litigation. *State v. Rogers*, 308 N.J.Super. 59, 67-70, 705 A.2d 397 (App.Div.), certif. denied, 156 N.J. 385, 718 A.2d 1214 (1998). One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required. *Id.* at 66, 705 A.2d 397. Other jurisdictions have adopted a similar definition. *See Kennedy v. Bar Ass'n*, 316 Md. 646, 561 A.2d 200, 208 (1989)(using legal education, training, and experience to apply legal analysis to client's problems constitutes practice of law).

In re Opinion 33 of Committee on Unauthorized Practice of Law, 733 A.2d 478 (N.J. 1999) In *In re Opinion 26*, *supra*, 139 N.J. at 340, 654 A.2d 1344, we described that standard in simple and pragmatic terms:

Practically all of the cases in this area are relatively recent. They consistently reflect the conclusion that the determination of whether someone should be permitted to engage in conduct that is arguably the practice of law is governed not by attempting to apply some definition of what constitutes that practice, but rather by asking whether the public interest is disserved by permitting such conduct. The resolution of the question is determined by practical, not theoretical, considerations; the public interest is weighed by analyzing the competing policies and interests that may be involved in the case; the conduct, if permitted, is often conditioned by requirements designed to assure that the public interest is indeed not disserved.

Our earliest precedents are faithful to that formulation. In *Auerbacher v. Wood*, 142 N.J.Eq. 484, 59 A.2d 863 (E. & A.1948), . . . observing that "[w]hat constitutes the practice of law does not lend itself to precise and all-inclusive definition." *Id.* at 485, 59 A.2d 863

New Mexico

NEW MEXICO STATUTES ANNOTATED Rules Governing Legal Assistant Services Rules Governing the Bar

Rule 20-102. Definitions. As used in these guidelines:

B. practice of law, insofar as court proceedings are concerned, includes: (1) representation of parties before judicial or administrative bodies; (2) preparation of pleadings and other papers, incident to actions and special proceedings; (3) management of such actions and proceedings; and (4) noncourt-related activities, such as: (a) giving legal advice and counsel; (b) rendering a

service which requires use of legal knowledge or skill; and (c) preparing instruments and contracts by which legal rights are secured.

Comes from *State ex. rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 514 P.2d 40 (1973), which also states that there is no definition of the practice of law that may be employed to fit all situations.

New York

The August 2001 Report of the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation recommended that New York adopt the definition below. The report went to the NYSBA House of Delegates on January 25, 2002. There were a number of concerns raised in the House, primarily centering on whether the proposed statute would criminalize conduct that would be permissible under current New York law. Accordingly, the House voted to re-commit the report to the Committee for further development. The committee will be working with representatives of the New York County Lawyers' Association and the City Bar - both of which expressed concerns - to see whether a modified statute would be acceptable. There is no timetable to bring it back to the House, but it would probably be June 2002 at the earliest.

- 1. "Practice of Law" means the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person. The practice of law includes, but is not limited to:
- a. the provision of advice involving the application of legal principles to specific facts or purposes;
- b. the preparation of legal instruments of any character, including but not limited to pleadings and other papers incident to actions or proceedings, deeds, mortgages, assignments, discharges, leases, or other instruments affecting real estate, wills, codicils, trusts, or other instruments affecting the disposition of property after death; and documents or agreements which affect the legal rights of an entity or person.
- c. except as otherwise authorized by law, the representation of the interest of another before any judicial, executive, or administrative tribunal.

North Carolina

NORTH CAROLINA GENERAL STATUTES ANNOTATED. CHAPTER 84. ATTORNEYS-AT-LAW. ARTICLE 1. QUALIFICATIONS OF ATTORNEY; UNAUTHORIZED PRACTICE OF LAW

§84-2.1. "Practice of law" defined.

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

North Dakota

State v. Niska, 380 N.W.2d 646 (N.D. 1986) – what constitutes the practice of law does not lend itself to an inclusive definition.

Ohio

Land Title Abstract & Trust Co. v. Dworken, 193 N.E. 650 (1934) at 650.

The practice of law is, 'as generally understood, the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court.' 49 Corpus Juris, p. 1313.

This view is supported by substantial authorities, among the cases being *People v. Alfani*, 227 N. Y. 334, 125 N. E. 671, where it is held as follows:

The practice of law is not limited to the conduct of cases in courts. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law. An attorney-at-law is one who engages in any of these branches of the practice of law.'

A very terse definition of the practice of law is announced in the case of *People v. Title Guarantee & Trust Co.*, 180 App.Div. 648, 168 N. Y. S. 278, 280, as follows:

'The 'practice of the law,' as the term is now commonly used, embraces much more than the conduct of litigation. The greater, more responsible, and delicate part of a lawyer's work is in other directions. Drafting instruments creating trusts, formulating contracts, drawing wills and negotiations, all require legal knowledge and power of adaptation of the highest order. Beside these employments, mere skill in trying lawsuits, where ready wit and natural resources often prevail against profound knowledge of the law, is a relatively unimportant part of a lawyer's work.'

Though this case was distinguished from *People v. Alfani, supra*, and the judgment reversed in 227 N. Y. 366, 125 N. E. 666, 669, the several opinions disclose wherein the case differs materially from the instant case, in that such decision turned upon the interpretation of the New York statute with reference to which the majority opinion states that 'persuasive reasons might be marshalled in favor of a decision of the question in either way.' The correctness of this observation is indicated by the fact that, of the four judges joining in the judgment, two state limited concurrences, while Cardozo, J., announces a dissent in which two judges concur. But in none of those opinions is there any modification of the definition of the practice of law as theretofore announced.

In the case of *Boykin v. Hopkins*, 174 Ga. 511, 162 S. E. 796, the Supreme Court of Georgia adopts and applies the definition of the practice of law above quoted.

McMillan v. McCahan, 167 N.E.2d 541 (1960) at 550. (followed above).

Oklahoma

R.J. Edwards, Inc. v. Hert, 504 P.2d 407 (1972)

Our decisions definitely spell out the concept of the practice of law: the rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent.

State Bar of Arizona v. Arizona Land Title & Trust Co., 90 Ariz. 76, 366 P.2d 1 (1961); Beach Abstract & Guaranty Co. v. Bar Assoc. of Arkansas, 230 Ark. 494, 326 S.W.2d 910 (1930); Arkansas Bar Assoc. v. Union Nat. Bank, 224 Ark. 48, 273 S.W.2d 408 (1954); Biakanja v. Irving, 49 Cal.2d 647, 320 P.2d 16, 65 A.L.R.2d 1358 (1958); Title Guar. & Trust Co. v. Denver Bar Assoc., 135 Colo. 423, 312 P.2d 1011 (1937); People ex rel. Illinois State Bar Assoc. v. People's Stock Yards State Bank, 344 III. 462, 176 N.E. 901 (1931); People ex rel. Chicago Bar Assoc. v. Tinkoff, 399 Ill. 282, 77 N.E.2d 693 (1948); State ex rel. Boynton v. Perkins, 138 Kan. 899, 28 P.2d 765 (1934); Depew v. Wichita Assoc. of Credit Men, Inc., 142 Kan. 403, 49 P.2d 1041 (1935); Frazee v. Citizens Fidelity Bank & Trust Co., 393 S.W.2d 788 (Ky.1965); Fritchette v. Taylor, 191 Minn. 582, 254 N.W. 510, 94 A.L.R. 356; Liberty Mut. Ins. Co. v. Jones, 344 Mo. 932, 130 S.W.2d 945 (1919); Hulse v. Criger, 363 Mo. 26, 247 S.W.2d 855 (Mo.1952); Hoffmeister v. Tod, 349 S.W.2d 5 (Mo.1961); State ex rel. Johnson v. Childe, 147 Neb. 527, 23 N.W.2d 720 (1940); People v. Alfani, 227 N.Y. 234, 125 N.E. 671 (1919); People v. Lawyers Title Corp., 282 N.Y. 513, 27 N.E.2d 30 (1940); Judd v. City Trust & Savings Bank, 133 Ohio St. 81, 12 N.E.2d 288 (1937); Oregon State Bar v. John H. Miller & Co., 235 Ore. 341, 385 P.2d 181 (1965); In re Morse, 98 Vt. 85, 126 A. 550 (1924); Washington State Bar Assoc. v. Washington Assoc. of Realtors, 41 Wash.2d 697, 251 P.2d 619 (1953); State ex rel. Reynolds v. Dinger, 14 Wis.2d 193, 109 N.W.2d 685.

In view of our own prior statements, and of this long line of like statements elsewhere, it was unnecessary that we should otherwise have defined 'practice of law' to include specific acts as a prerequisite to the exercise of the proper jurisdiction of the judicial department.

Oregon

Oregon State Bar v. Security Escrows, Inc., 377 P.2d 334 (Or. 1962)

The present statutes contain no definition of the practice of law. From 1919 to 1937 there was a statutory definition. See § 32-505, Oregon Code 1930, repealed by Oregon Laws 1937, ch. 343.

Even so, we have found no authority for the proposition that legislative silence in this instance is the equivalent of a legislative definition of the practice of law. We must hold that the legislature has not attempted to define the practice of law, and, accordingly, there is no need to inquire whether it has the power to do so.

Before we may proceed with the case at bar, however, it is necessary to have before us enough of a definition so that we can decide whether the court below should have issued the injunction. We must mark out at least enough of the boundaries of the practice of law so that we can decide whether or not the activities complained of fall within them, leaving to future cases such other definitional problems as may remain unresolved.

There have been numerous attempts elsewhere to define the practice of law. [FN1] None has been universally accepted. [FN2] The Arizona Supreme Court has said that an exhaustive definition is impossible. Perhaps it is. *See State Bar of Arizona v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 366 P.2d 1, 9 (1961), on petition for rehearing, 91 Ariz. 293, 371 P.2d 1020 (1962).

For the purposes of this case, we hold that the practice of law includes the drafting or selection of documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons

being served. The knowledge of the customer's needs obviously cannot be had by one who has no knowledge of the relevant law. One must know what questions to ask. Accordingly, any exercise of an intelligent choice, or an informed discretion in advising another of his legal rights and duties, will bring the activity within the practice of the profession. We reject such artificial or haphazard tests as custom, payment, [FN5] or the quality of being 'incidental.' [FN6]

Pennsylvania

Gmerek v. State Ethics Com'n, 751 A.2d 1241 (Pa.Cmwlth. 2000)

In attempting to determine the parameters of what constitutes the "practice of law", the Pennsylvania Supreme Court stated long ago:

There is no need for present purposes to venture upon a comprehensive survey of the boundaries-necessarily somewhat obscure--which limit the practice of law. An attempt to formulate a precise definition would be more likely to invite criticism than to achieve clarity. We know, however, that when a lawyer has, through patient years of study, acquired an understanding of the law and obtained a license to engage in its practice, he applied his knowledge in three principal domains of professional activity:

- 1. He instructs and advises clients in regard to the law, so that they may properly pursue their affairs and be informed as to their rights and obligations.
- 2. He prepares for clients documents requiring familiarity with legal principles, beyond the ken of the ordinary layman,--for example, wills and such contracts as are not of a routine nature.
- 3. He appears for clients before public tribunals to whom is committed the function of determining rights of life, liberty and property according to the law of the land, in order that he may assist the deciding official in the proper interpretation and enforcement of the law... *Shortz v. Farrell*, 327 Pa. 81, 84, 193 A. 20, 21 (1937). Thus, although the "practice of law" may be difficult to define, it most assuredly encompasses: advising clients regarding the law; preparing documents for clients which require a familiarity with legal principles beyond the ken of the ordinary layman such as wills and contracts; and appearing for clients before public

However, it is important to stress that the "practice of law" is not limited to a lawyer's appearance in court. As it has been previously noted:

tribunals charged with the power of determining liberty or property rights. *Id*.

[I]t is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts. According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients, and all action taken for them in matters connected with the law. An attorney at law is one who engages in any of these branches of the practice of law. The following is the concise definition given by the Supreme Court of the United States: "Persons acting professionally in legal formalities, negotiations, or proceedings by the warrant or authority of their clients may be regarded as attorneys at law within the meaning of that designation as employed in this country." [Savings Bank v. Ward, 100 U.S. 195, 199, 10 Otto 195, 25 L.Ed. 621 (1879).]

In re Duncan, 83 S.C. 186, 187-190, 65 S.E. 210, 211 (1909).

Rhode Island

GENERAL LAWS OF RHODE ISLAND, 1956 TITLE 11. CRIMINAL OFFENSES CHAPTER 27. LAW PRACTICE

§11-27-2. Practice of law defined.

The term "practice law" as used in this chapter shall be deemed to mean the doing of any act for another person usually done by attorneys at law in the course of their profession, and, without limiting the generality of the foregoing, shall be deemed to include the following:

- (1) The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power, or the preparation of pleadings or other legal papers incident to any action or other proceeding of any kind before or to be brought before the court or other body;
- (2) The giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question or a court action or judicial proceeding brought or to be brought;
- (3) The undertaking or acting as a representative or on behalf of another person to commence, settle, compromise, adjust, or dispose of any civil or criminal case or cause of action;
- (4) The preparation or drafting for another person of a will, codicil, corporation organization, amendment, or qualification papers, or any instrument which requires legal knowledge and capacity and is usually prepared by attorneys at law.

South Carolina

In re Duncan, 65 S.E. 210 (1909)

According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients, and all action taken for them in matters connected with the law.

South Dakota

(In 2001, a Bar Association Task Force proposed the following definition, which has now been withdrawn and is being reworked.)

"Practice of law" means the performance for another person or entity, of any of the following services:

- (a) Representation before a judicial, legislative, or executive, administrative, or other governmental official or body, or before a government-owned body, or before an arbitrator or similar body;
- (b) Preparation or review of documents involving liberty, property, or other rights or interests; or
- (c) Any other service including, but not limited to, advice or negotiation, which in view of the facts and circumstances requires the knowledge, skill and judgment of a person trained in law.
- (d) Whether or not they constitute the "Practice of law", the following are permitted:
 - (1) Practicing law in accordance with §16-16-7.1, 16-16-7.6, 16-16-17.1, 16-18-2, 16-18-
 - 2.1 to 16-18-2.10, and 16-18-34 to 16-18-34.6.
 - (2) Acting as a lay representative before administrative agencies or tribunals, if statutorily authorized.
 - (3) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

- (4) "Participating in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements."
- (5) Providing assistance to another to complete a form provided by a court for protection under Chapters 29-19(a) and 25-10 when no fee is charged to do so.
- (6) Acting as a registered legislative lobbyist under Chapter 2-12.
- (7) Preparing a federal, state or local tax return or an appearance before a federal, state or local taxing authority in connection with an audit or administrative appeal of an audit or return by a person with respect to (i) their own tax returns, or (ii) tax returns of entities of which they are a substantial (ten percent or more) owner. The preparation of federal, state or local tax returns for third parties or the appearance before agents of taxing authorities in connection with audits on behalf of third parties or appearances before non-evidentiary administrative appeal bodies are also permitted.
- (8) Other activities that the South Dakota Supreme Court has determined do not constitute the unauthorized practice of law.

For reference:

§16-16-7.1 refers to nonresident attorneys employed by legal aid bureaus or public defender agencies;

§16-16-7.6 refers to attorneys who are state court administrators or full-time law school faculty and administrators;

§16-16-17.1 refers to conditionally admitted bar applicants;

§16-18-2 refers to nonresident attorneys admitted for a trial or hearing of a particular cause;

§16-18-2.1 refers to law students serving as legal interns; and to 16-18-2.10

§16-18-34 refers to legal assistants. to 16-18-34.6

"Unauthorized practice of law" means the practice of law by a person or entity who is not legally authorized to do so.

As to EXCEPTION 5, SDCL 29-19(a) pertains to stalking and SDCL 25-10 pertains to domestic abuse.

Tennessee

TENNESSEE CODE ANNOTATED, TITLE 23. ATTORNEYS-AT-LAW CHAPTER 3. UNAUTHORIZED PRACTICE AND IMPROPER CONDUCT PART 1--GENERAL PROVISIONS §23-3-101. Definitions.

As used in this chapter, unless the context otherwise requires: (1) "Law business" means the advising or counseling for a valuable consideration of any person, firm, association, or corporation, as to any secular law, or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights, or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to secure for any person, firm, association or corporation any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services; and (2) "Practice of law" means the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

Texas

TEXAS STATUTES AND CODES. GOVERNMENT CODE. TITLE 2. JUDICIAL BRANCH. SUBTITLE G. ATTORNEYS. CHAPTER 81. STATE BAR. SUBCHAPTER G. UNAUTHORIZED PRACTICE OF LAW

§81.101. Definition.

- (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.
- (b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.
- (c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

In April 2001, the Texas UPL Task Force recommended changing 81.101 to the following:

§ 81.101 Definitions

A. The "practice of law," as used in this chapter, includes

- 1. Providing legal representation;
- 2. Providing legal advice;
- 3. Preparing or negotiating, in whole or in part, a will, trust, contract, conveyance, pleading, or other instrument to the extent such preparation or negotiation is performed or offered explicitly or implicitly to provide legal advice or legal representation; or
 - 4. Those activities described in section 81.102.B.
- B. "Legal representation" means acting as an advocate in governmental adjudicative proceedings in a court or administrative agency to determine the specific rights or obligations of one or more persons.
- C. "Legal advice" means acting in a professional capacity as a personal advisor to another person as to the specific rights or obligations of one or more persons through the interpretation and application of laws, regulations, and other legal standards;
- D. "In a professional capacity" means acting i) with the expectation that compensation for such advice will be provided by or on behalf of the person receiving the advice or that such compensation, although ordinarily expected by the provider, will be waived for charitable or civic reasons, ii) with the express or implied representation that the provider is an attorney or lawyer, or iii) as part of a pattern of recurring conduct in which the provider holds himself or herself out as an advisor having special competence in the interpretation and application of laws, regulations, and other legal standards.
- E. "Individual" means a human being.
- F. "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any legal entity.
- G. "Attorney" or "lawyer" means an individual who is a member of the state bar or is otherwise licensed and in good standing to practice law in another state of the United States.
- H. The definition of the practice of law in this section is not exclusive and does not deprive the judicial branch of the power and authority to determine whether other services and acts not enumerated may constitute the practice of law.

§83.001. Prohibited Acts. (Current)

- (a) A person, other than a person described in Subsection (b), may not charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien.
 - (b) This section does not apply to:
 - (1) an attorney licensed in this state;
- (2) a licensed real estate broker or salesman performing the acts of a real estate broker pursuant to The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes); or
- (3) a person performing acts relating to a transaction for the lease, sale, or transfer of any mineral or mining interest in real property.

Utah

Board of Com'rs of Utah State Bar v. Petersen, 937 P.2d 1263 (Utah 1997)

Although "the practice of law" has not been exactly defined, an "ordinary reader" would understand that certain services, when performed on someone else's behalf, are part of such practice. Such services would include not only appearing in court, but also drafting complaints, drafting or negotiating contracts, drafting wills, counseling or giving advice on legal matters, and many other things. *In Utah State Bar v. Summerhayes & Hayden, Public Adjusters*, 905 P.2d 867 (Utah 1995), this court, while noting that "[w]hat constitutes the practice of law in any given situation requires a case-by-case decision," stated:

The practice of law, although difficult to define precisely, is generally acknowledged to involve the rendering of services that require the knowledge and application of legal principles to serve the interests of another with his consent. It not only consists of performing services in the courts of justice throughout the various stages of a matter, but in a larger sense involves counseling, advising, and assisting others in connection with their legal rights, duties, and liabilities. It also includes the preparation of contracts and other legal instruments by which legal rights and duties are fixed.

Id. at 869-70 (citations omitted). Further, when such services are performed for a fee, it is even more likely that they constitute the practice of law. In *Nelson v. Smith*, 107 Utah 382, 154 P.2d 634 (1944), this court stated that "[t]he practice of law, though impossible of exact definition, involves the carrying on of the calling of an attorney usually for gain. " *Id.* at 389, 154 P.2d 634. The court further stated that an element of the practice of law is "the rendering of legal service or the giving of legal advice to another usually for gain." *Id.* at 390, 154 P.2d 634.

Proposed H.B. 349 (Passed March 5, 2003 – To Take Effect, May 3, 2004 - Pending Governor's signature – March 20, 2003)

PRACTICE OF LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

This act defines the practice of law and states that only persons admitted by the Supreme Court may practice law in this state.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS: 78-9-102, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah: Section 78-9-101 is repealed [May 1, 2003] May 3, 2004. Section 2. Section 78-9-102 is enacted to read:

78-9-102. Practice of law defined -- Who may practice.

(1) The term "practice law" means appearing as an advocate in any criminal proceeding or before any court of record in this state in a representative capacity on behalf of another person.

- (2) Only persons who have been admitted by the Supreme Court of this state to practice law may practice or hold themselves out as licensed to practice law in this state.
- (3) A person may not use "J.D.", "Esq.", "attorney", or "attorney-at-law" on business cards, signs, advertisements, or official documents as those terms are used to indicate status as an attorney, unless licensed to practice law.

Vermont

In re Welch, 185 A.2d 458 (1962)

In general, one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill. The practice of law includes all advice to clients, and all actions taken for them in matters connected with the law.

Practice of law includes the giving of legal advice and counsel, and the preparation of legal instruments and contracts of which legal rights are secured.

Where the rendering of services for another involves the use of legal knowledge or skill on his behalf--where legal advice is required and is availed of or rendered in connection with such services--these services necessarily constitute or include the practice of law.

Virginia

ANNOTATED CODE OF VIRGINIA RULES OF THE SUPREME COURT OF VIRGINIA PART SIX. INTEGRATION OF THE STATE BAR SECTION I. UNAUTHORIZED PRACTICE RULES AND CONSIDERATIONS PRACTICE OF LAW IN THE COMMONWEALTH OF VIRGINIA Part 6, §1. Practice of Law in the Commonwealth of Virginia.

- (A) No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia or in any manner hold himself out as authorized or qualified to practice law in the Commonwealth of Virginia except as may be authorized by rule or statute.(B) Definition of the Practice of Law. The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore, it is from the relation of attorney and client that any practice of law must be derived. The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is nonetheless practicing law though such person may employ others to whom may be committed the actual performance of such duties. The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the necessity for protection of society in its affairs and in the ordered proceedings of its tribunals. have developed the principles which serve to define the practice of law. Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill. Specifically, the relation of attorney and client exists, and one is deemed to be practicing law whenever
- (1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.(3) One

undertakes, with or without compensation, to represent the interest of another before any tribunal-judicial, administrative, or executive--otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.

Washington

WASHINGTON COURT RULES PART I. RULES OF GENERAL APPLICATION GENERAL RULES, GR 24

Definition of the Practice of Law

- (a) General Definition: The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law. This includes but is not limited to:
- (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
- (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
- (3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
 - (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).
- (b) 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 pursuant to Admission to Practice Rules 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).
 - (2) Serving as a court house facilitator pursuant to court rule.
 - (3) Acting as a lay representative authorized by administrative agencies or tribunals.
 - (4) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.
- (5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.
- (6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.
 - (7) Acting as a legislative lobbyist.
 - (8) Sale of legal forms in any format.
 - (9) Activities which are preempted by Federal law.
- (10) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Supreme Court.

- (c) Nonlawyer Assistants: Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.
- (d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.
- (e) Governmental agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.
- (f) Professional Standards: Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

West Virginia

ANNOTATED CODE OF WEST VIRGINIA, CHAPTER 51. COURTS AND THEIR OFFICERS, ARTICLE 1. SUPREME COURT OF APPEALS WV ST § 51-1-4a

§ 51-1-4a Rules governing practice of law; creation of West Virginia State bar; providing its powers, and fees for administration.

The supreme court of appeals of West Virginia shall, from time to time, prescribe, adopt, promulgate, and amend rules:

(a) Defining the practice of law.

Brammer v. Taylor, 338 S.E.2d 207 (W.Va. 1985)

This Court has promulgated a definition of the practice of law, pursuant to our "power to promulgate rules ... for all of the courts of the State relating to ... practice ...," W.Va. Const. art. VIII, § 3, and pursuant to the express provision of W.Va.Code, 51-1-4a(a) [1945] to promulgate rules defining the practice of law. This definition, [FN7] emphasizing the need for protection of the public from legal advice and representation from and by persons who are "unqualified and undisciplined," is to be read in pari materia with W.Va.Code, 30-2-4 [1931] and W.Va.Code, 30-2-5 [1972], which impose misdemeanor criminal penalties for the unauthorized practice of law by a natural person or by a corporation or association.

FN7. Adopted in 1947 and last amended in 1961, our "Definition of the Practice of Law" is as follows (after a preamble reciting the importance of licensing and regulation of persons performing legal services):

In general, one is deemed to be practicing law whenever he or it furnishes to another advice or service under circumstances which imply the possession of [or] use of legal knowledge and skill. More specifically but without purporting to formulate a precise and completely comprehensive definition of the practice of law or to prescribe limits to the scope of that activity, one is deemed to be practicing law whenever (1) one undertakes, with or without compensation and whether or not in connection with another activity, to advise another in any matter involving the application of legal principles to facts, purposes or desires; (2) one undertakes, with or without compensation and whether or not in connection with another activity, to prepare for another legal instruments of any character; or (3) one undertakes, with or without compensation and whether or not in connection with another activity, to represent the interest of another before any judicial tribunal or officer, or to represent the interest of another before any executive or administrative tribunal, agency or officer otherwise than in the presentation of facts, figures or factual conclusions as distinguished from legal conclusions in respect to such facts and figures. (emphasis added)

WV ST § 30-2-4 - Practice without license or oath; penalty; qualification after institution of suits.

It shall be unlawful for any natural person to practice or appear as an attorney-at-law for another in a court of record in this state, or to make it a business to solicit employment for an attorney, or to furnish an attorney or counsel to render legal services, or to hold himself out to the public as being entitled to practice law, or in any other manner to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law, or in any manner to advertise that he, either alone or together with other persons, has, owns, conducts or maintains a law office, without first having been duly and regularly licensed and admitted to practice law in a court of record of this state, and without having subscribed and taken the oath required by the next preceding section [§30-2-3]. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars; but this penalty shall not be incurred by any attorney who institutes suits in the circuit courts after obtaining a license, if he shall qualify at the first term thereafter of a circuit court of any county of the circuit in which he resides.

WV ST § 30-2-5 - Practice by corporations or voluntary associations; penalties; limitations of section.

Except as provided by section five-a [§ 30-2-5a] of this article, it shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person in any court of this state or before any judicial body, or to hold itself out to the public as being entitled to practice law, or to render or furnish legal services or advice, or to furnish an attorney or counsel to render legal services of any kind in actions or proceedings of any nature, or in any other manner to assume to be entitled to practice law, or assume, use or advertise the title of lawyer in such manner as to convey the impression that it is entitled to practice law or to furnish legal advice, services or counsel, or to advertise that, either alone or together with or by or through any person, whether a duly and regularly admitted attorney-at-law or not, it has, owns, conducts or maintains a law office for the practice of law, or for furnishing legal advice, services or counsel. It shall be unlawful further for any corporation or voluntary association to solicit, itself or by or through its officers, agents or employees, any claim or demand for the purpose of bringing an action thereon, or of settling the estate of any insolvent debtor, or of representing as attorney-at-law, or of furnishing legal advice, services or counsel to, a person sued or about to be sued in any action or proceeding, or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil or criminal remedy. Any corporation or voluntary association violating the provisions of this section, or any officer, trustee, director, agent or employee of such corporation or voluntary association who directly or indirectly engages in any of the acts herein prohibited, or assists such corporation or voluntary association to do such prohibited acts, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars. The fact that any such officer, trustee, director, agent or employee shall be a duly and regularly admitted attorney-at-law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein, nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section.

This section shall not apply to a partnership composed of licensed attorneys, or to a corporation or voluntary association lawfully engaged in examining and insuring the titles to real property, nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a

party, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy.

Wisconsin

On November 8, 2002, the Wisconsin State Bar Board of Governors approved a recommendation to petition the supreme court to appoint a committee to develop proposed rules for the court's consideration and action that define the practice of law and establish a system to administer the program.

(Current)

WISCONSIN STATUTES ANNOTATED COURTS CHAPTER 757. GENERAL PROVISIONS CONCERNING COURTS OF RECORD, JUDGES, ATTORNEYS AND CLERKS WI ST 757.30 Penalty for practicing without license

(2) Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

Wvoming

Rules of the Supreme Court of Wyoming Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming Rule 11. Attorney's right to practice law.

(a) "Practice of law" means advising others and taking action for them in matters connected with law. It includes preparation of legal instruments and acting or proceeding for another before judges, courts, tribunals, commissioners, boards or other governmental agencies.