

Final

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The Unauthorized Practice of Law (“UPL”) is the exercise of law by someone who is not a lawyer and is not authorized to do so in a particular jurisdiction. The Florida Supreme Court established a system to safeguard the public from harm brought on by unlicensed individuals practicing law. Paralegals, legal assistants, and administrative staff of a law firm all must do what they can to avoid UPL, as they are the main points of contact with the public. Every client and potential client you interact with may not understand the different roles within a firm and how to differentiate between attorney and staff. It is the paralegal and staff’s duty to set clear boundaries and inform the parties they are interacting with that they are not an attorney. Paralegals are prohibited from expressing legal opinions or giving legal advice. On top of not giving legal advice, a paralegal is not authorized to establish an attorney-client relationship, set legal fees, etc. Paralegals are however able to do the following:

- Conduct client interviews.
- Conduct legal research.
- Draft correspondence, pleadings, and legal documents.
- Attend/witness execution or estate planning documents, depositions, hearings and trials accompanying an attorney.

As opposed to law based on constitutions, legislation, or regulations, case law is law that is based on judicial decisions. Case law relates to particular conflicts that are arbitrated by courts based on verifiable facts in a case. There are 230 reported cases of unlicensed practices of law in the state of Florida. UPL can happen in all areas of law. Some examples case law and statutes resulting from UPL are:

- The Florida Bar v. Moses, 380 So. 2d 412 (1980), under Administrative Practice.

- Falkner v. Blanton, 297 So. 2d 825 (1974), under Appearances Pro Se.
- The Florida Bar v. Savitt, 363 So. 2d 559 (1978), under Out of State Attorneys.

In *The Florida Bar v. Moses*, the Supreme Court of Florida ruled Article V, Section 1 of the Florida Constitution gives the legislature the constitutional authority to override the Court's duty to protect the public from the unlicensed practice of law in administrative proceedings, and when it does so, the practice of law conduct effectively becomes permitted representation. Non-attorney representation in administrative hearings may be permitted by the legislature. This is applicable to some federal and state agencies, it is not a blanket rule for all practices of law.

The definition of *pro se* is when an individual does not have an attorney and is choosing to represent themselves in a legal proceeding. In *Falkner v. Blanton*, the rule pertaining to appearances *pro se* generally does not apply to probate cases or to corporations. In probate proceedings, only if they are the sole interested party in a probate matter, they can represent as *pro se*. If they are not the sole interested party, or if they are representing a corporation, they must be represented by a member of the Florida Bar.

Regarding *The Florida Bar v. Savitt*, an attorney admitted to practice law in another state than Florida is not permitted to open a law office in Florida or participate in general legal practice in the state. In accordance with Florida Rule 2.510 of the Florida Rules of Judicial Administration, an attorney admitted to the practice of law in another state may not represent a party in the state of Florida without first requesting permission to appear *pro hac vice* (not to be confused with *pro se*).

These are some examples of case law and rules resulting from unauthorized practice or law.

Paralegals and other legal professionals who are not licensed attorneys, or attorneys not in their

practicing state can avoid unauthorized practice of law by keeping up to date and familiarizing themselves with the state's rules and regulations.

Work Cited

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