

LEGAL ETHICS OPINION 1792

IS IT CONSIDERED ASSISTING IN THE
UNAUTHORIZED PRACTICE OF LAW FOR AN
ATTORNEY TO INSTRUCT A SOCIAL
WORKER TO ASSIST PRO-SE LITIGANTS TO
FILL-OUT SMALL CLAIMS FORMS?

Your request presents a hypothetical involving an attorney providing training to non-lawyers. Specifically, this attorney would be training social workers to assist members of the public in filling out forms for use in small claims court, usually to obtain payment of back wages from employers. The questions raised regarding that hypothetical situation are as follows:

1. Is it the unauthorized practice of law for a social worker to assist a *pro se* litigant in completing forms, such as the Warrant in Debt, for small claims court?
2. Would it be aiding in the unauthorized practice of law for an attorney to teach the social workers how to provide this assistance?

The purview of this committee is to interpret exclusively the Rules of Professional Conduct. In contrast, it is the purview of the Standing Committee on the Unauthorized Practice of Law to interpret the Unauthorized Practice Rules to determine the parameters of the practice of law. This Committee referred your first question to the Standing Committee on the Unauthorized Practice of Law, as within the purview of that Committee. The Virginia Supreme Court recently adopted UPL Op. 207, which the Unauthorized Practice of Law Committee had issued in response to your request. That opinion concludes as follows:

The preparation of warrants in debt and other forms necessary for *pro se* representation (“legal instruments of any character”) in Small Claims Court by a non-attorney social worker would be the unauthorized practice of law if the non-attorney social worker selects the forms for the litigant or advises the litigant as to which forms are appropriate based on the litigant’s particular case; or provide any legal advice to the litigant. The social worker may assist the litigant with completion of the form document using language specifically dictated by the litigant.

The only assistance that a social worker, or any non-lawyer, may provide to a *pro se* litigant to complete form legal documents is direct translation of the document (if the litigant does not speak or read English) to the litigant’s native language, direct transcription, or direct transcription and translation to English, of information necessary to complete forms as dictated by the litigant. The social worker may also provide general administrative instructions such as to how and where and when to file the forms with the appropriate court/tribunal.

Supreme Court Approved
November 2, 2016
Committee Opinion
January 10, 2006

With that resolution of your first question, this Committee can now address your second question. The second question of your hypothetical is whether an attorney may train those social workers to provide the assistance outlined above. Rule 5.5(a)(1) prohibits an attorney from assisting a nonlawyer in “the performance of activity that constitutes the practice of law.” Thus, the answer to this second question flows directly from that of the first. The attorney may not train the social workers to perform any work constituting the unauthorized practice of law, as outlined in this context by UPL Op. 207.

The committee wishes to clarify a point included in your request materials. Comment One to Rule 5.5 states that the rule is not intended to prohibit lawyers “from providing professional advice and instruction to nonlawyers whose employment requires knowledge of the law.” Examples cited in that comment are claims adjusters, employees of financial or commercial institutions, and social workers. The critical distinction here is between employment that “requires knowledge of the law” and employment that actually *is* the practice of law. A nonlawyer’s employment may well entail a necessary understanding of pertinent law; that knowledge, however, does not provide authority to provide legal services based on that understanding. Comment One is intended to allow lawyers to provide training on the law needed for performance of a job; it does not provide the receivers of that training an exception to the Unauthorized Practice Rules. To reiterate, this attorney cannot instruct these social workers in the unauthorized practice of law.

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