Professional Responsibility Issues for Marketing and Providing Legal Services over the Internet

James M. McCauley, Ethics Counsel

Internet usage by lawyers is no longer a new topic. Nevertheless, many unanswered questions still remain, although consensus has developed among bar regulators on some ethical issues that apply to marketing and providing legal services over the Internet.

An increasing segment of the general public uses the Internet to find lawyers and legal services. A growing aspect of this "information age" is the public's expectation of quick access to information about professional services, including lawyers and law firms. Consumers rely increasingly on the Internet to assist them in choosing a legal service provider rather than by traditional means such as word-of-mouth or the *Yellow Pages*. In keeping with this trend, the Virginia State Bar, for example, has upgraded its Internet Web site to allow consumers to investigate whether a particular Virginia lawyer is in good standing with the bar, has ever been disciplined publicly, or has legal malpractice insurance coverage.[1]

Are Lawyer Web Pages Always Subject to the Bar's Rules Governing Lawyer Advertising?

The answer to this question must be "yes." An attorney's Web site is a "public communication" concerning the lawyer or lawyer's services within the meaning of Rule 7.1.[2] It is true that a Web site is accessed on the initiative of the consumer as opposed to being "directed" at the consumer like advertising via radio, TV or targeted mailing. Similar to an interstate billboard, which clearly is a means to advertise, the consumer navigating the "information highway" must choose to read a Web page in order for the advertiser's message to be communicated. This distinction, however, does not make the lawyer's Web page any less of a public communication. Rule 7.1 does not require that the communication overtly attempt to solicit business or propose employment. Even if the Web page includes general information and matters of general public interest, the lawyer's Web page still remains subject to the requirements of Rule 7.1 because it communicates to the public the lawyer's availability for professional employment. The hallmark of Rule 7.1, of course, is that any communication subject to the rule cannot contain statements or claims that are "false, fraudulent, deceptive or misleading." Most bars now hold that Web sites are a form of advertising, and therefore must comply with applicable rules.[3] Virginia has explicitly adopted this approach.[4]

Is a Lawyer's Web Page a Form of Solicitation Governed by Rule 7.3?

No, an attorney's Web site is not a "solicitation" that is restricted by Rule 7.3. Even if we assume that "pecuniary gain" is the attorney's motivation for creating and maintaining the Web site, the Web site is not a communication in person or by telephone. The distinction between *advertising* legal services and soliciting legal business is very important, because some states have very broad prohibitions against or restrictions on lawyer solicitation that do not apply to general lawyer advertising or public communications about legal services.

Neither the nature of the technology nor the interactive characteristics of a Web site change this conclusion. Although e-mail, bulletin boards and listservs permit faster communication than other traditional written communication, they do not create an opportunity for over persuasion or the ability to unduly influence the prospective client that may result from in-person solicitation. On the other hand, if the Web site provides a forum for real-time chat, some ethics opinions hold that a lawyer's attempt to solicit prospective clients in a chat room constitutes "in-person" solicitation. Remember, however, that the attorney must be the initiator of the communication if he or she is to be regarded as "soliciting" a prospective client. If the client initiates the contact or communication, and the lawyer responds, this is not "solicitation." An attorney is not the initiator of the communication merely because he or she provides on the Web site a means by which clients can contact the attorney. The inclusion of e-mail capability at the Web site is analogous to a lawyer listing his or her telephone number in a printed advertisement, which no one regards as an attempt to "solicit" a client.

Interstate Communications: Which States' Rules Apply?

This topic generates far more questions than answers. Because a lawyer's Web page can be viewed by a computer user in any state or country, choice of law issues arise. Rule 8.5 states that a lawyer is subject to the rules of the state where he or she is admitted to practice even if the conduct at issue occurs elsewhere. The difficulty with lawyer advertising over the Internet is determining where the conduct occurs. Rule 8.5 also allows that the lawyer may be subject to both the rules of the admitting state and the rules of another state. If a lawyer's Web site violates Virginia's version of Rule 7.1, it may also violate another state's comparable rule—although not necessarily. This invites the conflict of law issue. Suppose a law firm has lawyers admitted in multiple jurisdictions and the firm's Web site complies with Virginia's rules but violates the rules of another state in which the firm is authorized to practice? Rule 8.5 (b)(2)(ii) attempts to address this question and states:

> . . . if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Suppose, for example, the Florida Bar finds that a law firm that principally practices law in Virginia maintains a Web page that violates Florida's rules of professional conduct. Assume also that the firm advertises to attract clients in Florida because the firm maintains a satellite office in Florida with attorneys admitted to practice there. Does the law firm's activity in maintaining the Web site have its "predominant effect" in Florida, or do the Virginia rules apply since Virginia is the state where the firm "principally practices?" It would seem that the law firm's Web site has its "predominant effect" in Virginia, if Virginia is the jurisdiction in which the firm principally practices and draws most of its clients. The Pennsylvania Bar maintains that it can regulate a law firm's Web site if the firm maintains an office in that state.[5] The Arizona and Iowa Bars maintain that they can regulate a law firm's Web space if the firm has lawyers licensed to practice in that jurisdiction or maintains a branch office in their state.[6]

What if the firm has no lawyers admitted in Florida and has no intention of practicing law in Florida or accepting cases that involve the application of Florida law? Does the fact that the prospective client in Florida may visit the law firm's Web site and inquire about the firm's services give Florida jurisdiction to regulate the Virginia law firm's Web site? For that matter, must a law firm ensure that its Web site complies with the rules in all 50 states—even those states in which it does not intend to solicit business?

Florida's approach to this problem seems reasonable. Florida's Advertising Rule 4-7.1 (b) provides:

> (b) Advertisements Not Disseminated in Florida. These rules shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Florida.

Therefore, in our hypothetical, if the law firm's Web page complies with Virginia's rules, and is not intended for broadcast or dissemination in Florida, the Florida Bar will not enforce its rules. But how does a regulator know whether a law firm *intends* to broadcast or disseminate in a particular state?

The Florida approach suggests that it is wise for the law firm to specifically limit on its Web site those jurisdictions in which it intends to attract clients and disclaim any attempt to advertise elsewhere, especially in jurisdictions where no one in the firm is admitted to practice. Not all states have adopted Florida's approach, however, leaving open the possibility that a law firm is subject to regulation in another state where they do not intend to practice, simply because their Web page is viewed in that state. The Florida advertising rules also require a law firm's Web site to disclose all jurisdictions in which members are licensed to practice law and one or more "bona fide office locations." Florida Rule 4 -7.6 (1), (2).

Courts generally hold that a "passive" Web site is an insufficient basis for a state to exercise personal jurisdiction over a non-resident defendant unless there is additional evidence that the non-resident defendant intended to solicit or conduct business in the forum state. *See* Ellen S. Moore, "Cyber-Jurisdiction," 50 *Virginia Lawyer* 28, 29 (Apr. 2002). The ethical rules are still evolving as to whether a lawyer's or law firm's home page on the Internet is, by itself, an attempt to advertise legal services, solicit clients or transact business in a particular state, particularly states in which the lawyer is not admitted to practice. Until the dust settles, appropriate disclaimers and designations of jurisdictional limitations are good precautionary measures.

This state of regulatory chaos leaves a lawyer or law firm advertising on the Internet with two viable alternatives. The first approach is to ensure that the firm's Web page complies with all the advertising rules in every jurisdiction in which the firm intends to do business. For a large, multi-jurisdictional law firm, this can be a daunting task. There is little uniformity among the states when it comes to lawyer advertising.[7] Alternatively, lawyers can make it clear on their Web pages that they are not advertising in other jurisdictions. At least one state, South Carolina, has stated that it is misleading for a lawyer or firm to allow advertising to reach potential clients in a jurisdiction where they are not authorized to practice unless the notice or advertisement discloses the geographic limitation of the lawyers' practice.[8] There is no sure-fire method that guarantees that an attorney's Web site will not be found to be an advertisement or constitute "holding oneself out as practicing law" in another jurisdiction. However, lawyers may want to consider including on the Web page: (1) an explanation of where the attorney is admitted to practice law; (2) a description of where the attorney maintains offices and actually practices law; (3) an explanation of any limitation on the courts in which the attorney is willing to appear; (4) a statement that the attorney does not seek to practice in jurisdictions where he is not admitted to practice; and (5) an attorney-client relationship will not be established solely on the basis of a visit to the attorney's Web site.

How Does a Law Firm Comply With Rule 7.1 (b)'s Requirement that Copies of Internet Advertising be Kept and Maintained for a Year?

Most states have rules similar to Virginia Rule 7.1(b) which requires lawyers to retain for one year (and make available to the bar upon request) any "public communication" disseminated "by use of electronic media." Other states' bar rules either require lawyers to seek pre-publica-

tion approval of advertisements or allow lawyers to seek such approval to avoid later bar discipline. Law firm Web sites present nearly insoluble problems to lawyers attempting to comply with these rules. Most bars seem not to have addressed many of these difficulties, including the following: Do law firms have to seek bar approval of every change in their Web site? If so, it could be a logistical nightmare if bars are swamped with hundreds of minute changes in a law firm's Web site every month.[9] Do law firms have to retain every page of their Web site in case they make even minor changes?[10] The Virginia State Bar has adopted this approach, but has not provided much of an explanation.[11] Bars will clearly have to deal with these and other issues as firms increasingly use on-line advertising.

Is it Ethical for Lawyers to Participate in On-line Bidding for Legal Work?

Yes, lawyers may respond to an invitation to bid on legal work through a Web site[12] provided that the potential client's invitation is not initiated by the lawyer, where only the prospective client is charged a fee, no legal fees are shared with the nonlawyer service provider, and the participating lawyers are not pre-screened, pre-approved or otherwise controlled by the nonlawyer service.[13] These Web sites permit prospective clients to post legal projects to solicit bids. An attorney wishing to bid may post his or her profile, including the attorney's experience in the subject matter, an estimated completion date and the legal fees to be charged. The Web site provider charges a fee to the prospective client for obtaining access to this information. This business model is not functionally different from the practice of some courts presiding over class actions to conduct "auctions" by inviting lawyers to submit qualifications and bids.[14] One concern that has been raised is that the lawyer's participation in an Internet bidding service is like participating in a for-profit lawyer referral service, which some states (not Virginia) prohibit under rules similar to ABA Rule 7.2 (c)(2). However, since the prospective client, not the participating lawyer, pays the fee to the provider, there is no violation of Rule 7.2(c)(2). The lawyer is not paying another person a fee to recommend employment.[15]

However, a lawyer posting a response to a prospective client's invitation to bid must be mindful of unauthorized practice of law (UPL) issues. Rule 5.5(a) states that "a lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Whether there is a UPL violation will depend upon the particular legal services to be provided, where the lawyer is actually located when providing the legal services, and what the foreign jurisdiction's rules are governing UPL.

May a Lawyer Conduct a Law Practice Over the Internet?

An increasing number of law firms are using their Web sites for intake, case evaluation and client interaction.[16] Nothing in the Rules of Professional Conduct explicitly addresses practicing law over the Internet. A New York State Bar Opinion held that under New York's Code of Professional Responsibility an attorney may advertise and operate a trademark practice over the Internet so long as the lawyer: (1) developed a system to screen for conflicts; (2) preserved client confidences and secrets; and (3) complied with the advertising rules of New York and other jurisdictions in which the lawyer intended to conduct business.[17] The attorney's practice consisted of conducting trademark searches, rendering legal opinions on the availability of trademarks, and filing and prosecuting applications to register trademarks. The Web site would have the capability of accepting orders from clients all over the country on the Internet and charge their credit card a pre-determined fee for specific services. The attorney would speak to clients on the telephone but otherwise would rely on unencrypted e-mail to communicate with them.

The Ethics Committee found the proposed practice analogous to conducting an office practice using the telephone and facsimile machine.[18] In addressing the conflicts issue, the Committee opined that the Internet lawyer must implement a system to check for conflicts before undertaking a new representation.[19] However, a conflicts check would not be necessary if the lawyer's interaction were limited to providing only general legal information and not specific advice tailored to a client's particular circumstances and provided no confidential information is obtained.[20]

As to the lawyer's use of unencrypted e-mail to communicate with clients, the Committee concluded that unless the lawyer is made aware of some heightened risk that e-mail will be intercepted or that the information at issue is of such an extraordinarily sensitive nature that more precautions are needed, the lawyer may select Internet e-mail as a means for communicating with clients.[21]

The Rules of Professional Conduct do not require it, but a lawyer should advise a client concerning the risks associated with the use of e-mail and obtain the client's consent orally or in writing. In addition, although not required, a lawyer should consider placing a notice on the e-mail that it is a privileged and confidential communication and provide instructions in the event the communication is misdirected to a person other than the intended recipient.[22]

The Committee also concluded that the ethics rules permit a lawyer to accept a credit card payment of legal fees. Virginia reached this conclusion quite some time ago.[23] The lawyer must assure that the privacy of the client's credit card information will be protected.[24]

What Ethics Issues Govern a Lawyer's Participation in Internet Lawyer Referral Services and Directories?

The Internet is quickly and fundamentally changing the way people hire and work with legal professionals, including lawyers and other legal providers, such as legal document preparers and independent paralegals. Lawyer directories, many of which are enhanced with helpful information for folks shopping for a lawyer, are common on the Web. Sites such as the Martindale-Hubbell Lawyer Locator

(**http://lawyers.martindale.com/marhub**), West Legal Directory (**http://www.lawoffice.com**) and **FindLaw.com** are some of the most popular.[25] Lawyers and law firms now market their services through on-line directories and Internet lawyer referral plans. For example, West Group offers an extensive Internet directory for consumers and businesses which profiles more than one million lawyers and law firms.[26]

Some state bars prohibit a lawyer from participating in commercial or Internet lawyer referral plans.[27] The states that prohibit lawyers from participating in such referral plans do so because of the prohibitions against fee sharing with nonlawyers,[28] improper reward or compensation for referrals,[29] and aiding and abetting the unauthorized practice of law.[30] Arizona's position imposes high standards, based upon its definition of a "lawyer referral service":

> The Committee has previously found the defining characteristic of a lawyer referral service to be "[t]he process of ascertaining the caller's legal needs and then matching them to a member having the appropriate 'area of expertise'." *Arizona State Bar Committee on the Rules of Professional Conduct*, Op. 95-13, p.4. Likewise, a report of the ABA Standing Committee on Lawyer Referral and Information Services notes that the primary purpose of lawyer referral services "is to provide the client with an unbiased referral to an attorney who has expertise in the area of law appropriate to the client's need . . . [The service] is expected to be able to match the consumer's particular legal, economic, geographic, language and other needs with an attorney who is competent to handle the matter referred . . . ." *Alabama State Bar Ass'n v. R.W. Lynch, Inc.*, 655 so.2d 982 (Ala. 1995).

Many of the so-called profit-making referral services are little more than joint marketing arrangements that are deceptive and do not match client needs with the attorney to whom a referral is made. Rather, calls are simply forwarded to the next attorney in the rotation. *See e.g.*, Va. Legal Ethics Op. 1014 (1988). Such arrangements are not proper and likely to result in the lawyers breaching a number of ethics rules.

The Virginia State Bar, however, permits lawyers to participate in private "for-profit" lawyer referral programs, not sponsored or approved by any bar association, subject to certain requirements and restrictions.[31] However, such a referral service should limit membership based on specific criteria for the purpose of determining competence and should publish the specific criteria in the area where the service is intended to operate.[32] The service may charge membership fees to the participating attorneys.[33] Statements or claims made by the lay corporation or organization about the participating attorneys or their services that are false, fraudulent, deceptive or misleading may be treated as disciplinary rule violations by the participating attorneys. Thus, participating attorneys have a duty to ensure that the legal referral service complies with the bar's advertising rules.[34] Finally, although a lawyer may pay the referral service an administrative or membership fee, it is improper for a lawyer to split legal fees with a lay corporation for the referral of a client.[35]

While no opinion has yet been issued specifically addressing Internet lawyer referral services, based on the prior opinions concerning traditional referral services, it seems clear that a Virginia attorney may ethically participate in a legal services plan that markets, advertises and operates over the Internet. However, if a Virginia lawyer participates in an Internet legal referral service, he or she must consider that the service's Web site can be accessed in all 50 states. Consequently, the Virginia lawyer may need to be mindful of how the bars in other states view or regulate such services. If another state, like Arizona or Nebraska prohibits for-profit lawyer referral services, the service's Web site should include a disclaimer or warning that the service is not soliciting business from clients in those states.

Moreover, the lawyer should only accept referrals of clients from those states in which the lawyer is authorized to practice; otherwise, the lawyer may face a charge of unauthorized practice of law. In addition, the lawyer needs to ensure that any content on the service's Web site complies with each state's advertising and solicitation rules. This would include statements or claims regarding specialization, the regulation of which varies from state to state. See Rule 7.4(d) (lawyer holding himself out as a recognized or certified specialist by a named organization must include disclaimer that there is no procedure in Virginia for approving certifying[36] organizations). As with legal directories, the listings for each lawyer should indicate those jurisdictions where the lawyer is admitted to practice. The prospective client should be directed so as to choose only those lawyers who are authorized or licensed to handle that client's legal matter or issue. A law firm listing must include the full name and office address of an attorney licensed in Virginia who is responsible for its content. Rule 7.1 (e).

If Lawyers Use Web Sites to Advertise and Provide Information to the Public, is There a Risk of Unauthorized Practice of Law?

Yes, there is an increased risk for the "cyberlawyer" that he or she may be engaging in the unauthorized practice of law. A lawyer violates Rule 5.5(a) and risks discipline if he or she engages in unauthorized practice of law (UPL) in another state. Lawyers who maintain a Web site are at greater risk of being charged with UPL. If a state bar finds that an out-of-state lawyer's Web site does not comply with that state's particular ethics rules on advertising, or that it implies that a lawyer or law firm is authorized to practice in that state, then it is possible that in either case, the state could seek to sanction the out-of-state lawyer. At least two bar ethics opinions have given such a warning. A lawyer has been disciplined for advertising in another state where the lawyer was not admitted, because the advertising failed to provide the public notice that the lawyer was not licensed in that jurisdiction.[37] A more recent decision, *Birbrower, Montalbano, Condon & Frank P.C. v. Superior Court* indicates that this UPL issue is not merely theoretical.[38]

In this decision, the California Supreme Court ruled that an out-of-state law firm could not recover under its written agreement fees owed by a California company because the law firm engaged in unauthorized practice of law in the State of California. It its opinion, the *Birbrower* Court stated:

> Our definition [of unauthorized practice of law] does not necessarily depend on or require the unlicenced lawyer's physical presence in the state. Physical presence here is one factor we may consider . . . but it is by no means exclusive. For example, one may practice law in the state in violation of Section 5125 although not physically present here by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer or other modern technological means.[39]

Birbrower was a New York law firm. The firm undertook representation of a California affiliate of a New York client in an intellectual property dispute that appeared bound for arbitration. At the New York client's request, Birbrower's lawyers went to California to represent the affiliate in the arbitration. Displeased with the law firm's services, the client refused to pay the firm's legal fees on the ground that lawyers not licensed in California cannot recover attorney's fees for work done there—an illegal contract cannot be enforced. The *Birbrower* court agreed. *Birbrower* demonstrates, as a Pennsylvania Bar Ethics Committee observes,[40] that a court may consider a lawyer's *virtual presence* and not merely a *physical presence* in the enforcing state when evaluating unauthorized practice claims. This decision, if followed by other states, will raise specific concerns for virtual law firms practicing law over the Internet.

What Can Be Done About Enforcement of UPL Rules Against Non-lawyers Providing Legal Services Over the Internet?

The answer to this question is that effective enforcement of the prohibition against UPL cannot occur unless and until the states reexamine their UPL laws and rewrite them in view of the Internet and new technology. There are two primary issues challenging UPL enforcement: (1) enforcing the rules against persons engaged in activity outside of the enforcing jurisdiction; and (2) defining what constitutes the "practice of law."

Notwithstanding *Birbrower*, most states that enforce prohibitions against UPL require that the unlicensed defendant be *physically* present in their state when performing an activity that constitutes the practice of law. Persons providing legal services over the Internet may never have been *physically* present in a state which is considering enforcement. A provider in Kansas can sell a drafted will and give legal advice to a purchaser in Pennsylvania over the Internet. Is the provider "practicing law" in Pennsylvania or Kansas? Most UPL enforcers would say that the provider is not practicing law in Pennsylvania, despite the fact that the legal services were provided to a Pennsylvania customer and the work involved the application of Pennsylvania law. The rules or laws prohibiting UPL in most states say, generally, that it is unlawful for an unlicensed person to engage in the practice of law *in* that state.

Thus, where the UPL defendant is physically located when the legal services are rendered becomes critical.[42] Arguably a state can enforce its UPL laws and exercise personal jurisdiction over a non-resident defendant if they are "transacting business" in the enforcing state, in the same manner a court exercises personal jurisdiction, under the Long Arm Statute[43] in civil actions. In Virginia, for example, the state can enjoin a defendant from engaging in UPL in Virginia by seeking a *writ quo warranto* which is a form of civil action.[44] Nevertheless, the defendant has a defense, based upon the UPL rules and definitions,[45] as interpreted and applied in several UPL advisory opinions,[46] that his or her conduct was not the practice of law in Virginia, if he or she never set foot in Virginia. As stated by Professor Gillers, in regard to UPL enforcement, "geography is destiny."[47]

Revision of the UPL rules to remove the "physical situs" requirement may actually backfire, though, by impeding the organized bar's attempt to address multi-jurisdictional practice by lawyers. In most states, foreign attorneys are treated as nonlawyers and cannot practice in a state where they are not licensed. If the states were to adopt the standard used in *Birbrower*, lawyers could not use the Internet (or telephone and fax machine) to provide legal services to a client located in a state where they are not licensed to practice. Many believe that the states' UPL rules that prohibit transactional and non-litigation legal services by foreign attorneys are unduly restrictive and need to be changed.[48] Indeed, out of necessity, many lawyers are thought to have violated the UPL rules, either knowingly or unknowingly.[49] Also critical to the discussion of multi-jurisdictional practice is the fact that nonlawyers and lawyers alike may represent clients before many federal agencies without regard to where or if they are admitted to practice.[50] Under the federal supremacy doctrine, persons qualified to represent clients and practice before federal agencies cannot be successfully prosecuted for UPL by a state.[51]

The second enforcement problem involves defining what is the practice of law. A nonlawyer is permitted to engage in the business of providing general legal information to the public.[52] Distinguishing "legal information" from "legal advice" is not easy. In a recent decision, an Ohio court struggled with the distinction. In *Office of Disciplinary Counsel v. Palmer*[53] a UPL action was brought against David Palmer, a vocal critic of lawyers and judges, and Chairman of the Committee to Expose Dishonest and Incompetent Attorneys and Judges. Palmer, a nonlawyer was prosecuted because his Web site, "amoralethics.com," purported to offer "free legal advice" and he used the title "J.D." after his name. Although his Web site was primarily a forum to express his views concerning lawyers and judges he regarded as corrupt, Palmer also had this language on his Web site:

> We are all led to believe that whenever we are faced with some legal matter that we automatically

> are required to employ an attorney. There are many matters of a legal nature that we can and should resolve on our own without incurring the unnecessary expenses of an attorney. Although I am not an attorney, I can assure you that it is not necessary to be a lawyer in order to provide some guidance and/or advice on how to deal with your legal problems.
>
> Below you will find a brief history of my prior experience in the legal field and brief summaries of various legal issues that I invite you to submit to me for review and advice. If I feel that you do in fact require the services of an attorney, I will advise you and attempt to provide you with the names of attorneys in your area that are competent to handle the matter and who I believe are ethical and honest.[54]

Typical of the legal issues Palmer summarized on his Web site was a general monograph on the state's no-fault insurance laws. The court found that Palmer's site offered a type of general advice on legal matters, but observed that his comments "are little different from what can be found in any number of publications on the newsstands everyday."[55] Books and articles written by authors who are not lawyers are commonplace and have never been found to be the unauthorized practice of law. The court observed:

> One key element of the practice of law is missing in published advice offered to the general public: the tailoring of that advice to the needs of a specific person. The practice of law involves the giving of legal advice to an individual. Legal publications offering general advice or opinions do not purport to customize the advice to the particularized needs of the reader.[56]

The court noted its concern, however, with Palmer's offer to provide legal advice and stated that if Palmer had actually given legal advice in response to a question from one of his readers, he would have engaged in UPL.[57] The state produced evidence that Palmer advised a Web site visitor, in response to an e-mail inquiry, to complain to a judge and the bar association about a lawyer's conduct, but held that advice did not rise to the level of legal advice.[58] As to the use of the letters "J.D." after his name, the court held that this designation indicated the possession of a Juris Doctor Degree—which Palmer never earned—but did not establish that Palmer was holding himself out to the public as an attorney authorized to practice law.[59]

Another case illustrating the conflict between computer technology and the UPL laws is *Unauthorized Practice of Law Committee v. Parsons Technology.*[60] A Texas federal district court enjoined the sale of *Quicken Family Lawyer*, a software program using a "decision tree" technology that prepared legal documents for the software user based on responses to questions generated by the software. The Court found that the software constituted the unauthorized practice of law. The Court explained that the software "is far more than a static form with instructions on how to fill in the blanks." Instead, the software "adapts the content of the form to the responses given by the user" and, among other things, "purports to select the appropriate health care document for an individual based upon the state in which she lives." *Id.* The Court granted summary judgment for the Texas Bar's UPL Committee.

The Fifth Circuit reversed the District Court's ruling after the Texas legislature passed a law excluding such software from the definition of the "practice of law." *Unauthorized Practice of Law Comm. v. Parsons Technology, Inc.*, 179 F.3d 956 (5th Cir. 1999). Parsons demonstrates clearly how a state bar can "win the battle, but lose the war" in its effort to stop encroachment by nonlawyers.

Here in Virginia, the Virginia State Bar, through its issuance of UPL Op. 183, declared that nonlawyers could not conduct real estate settlements. After the opinion was approved by the Virginia Supreme Court on January 1, 1997, the bankers, title companies and realtors moved quickly, and the legislature enacted the Consumer Real Estate Settlement Protection Act (CRESPA),[61] effectively overruling UPL Op. 183 and authorizing lay persons to register and conduct real estate settlements if the person is a licensed title agent or real estate broker.

In conclusion, amidst the hue and cry of many bar members to step up UPL enforcement, UPL enforcers need to "pick their battles wisely" and remember that UPL enforcement is about "public protection" not "turf protection."

ENDNOTES

1 The Virginia State Bar's Web site is located at **http://www.vsb.org**.

2 INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 Communications And Advertising Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading or deceptive statement or claim. For example, a communication or advertisement violates this Rule if it:

(1) contains misleading fee information;

(2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merits;

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(4) contains an endorsement by a celebrity or public figure who is not a client of the firm without disclosure (i) of the fact that the speaker is not a client of the lawyer or the firm, and (ii) whether the speaker is being paid for the appearance or endorsement; or

(5) contains a portrayal of a client by a nonclient without a disclosure that the depiction is a dramatization.

In the determination of whether a communication or advertisement violates this Rule, the communication or advertisement shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

3 Missouri Bar Office of Chief Disciplinary Counsel, Informal Op. 970161 (1997) ("In the course of Internet communications regarding Attorney's

services, Attorney is required to comply with the Supreme Court Rule 4, including Rules 7.1 through 7.5, relating to advertising."); Illinois State Bar Ass'n, Advisory Op. on Prof'l Conduct 96-10, 1997 WL 317367, at 5 (May 16, 1997) ("For example, the Committee views an Internet home page as the electronic equivalent of a telephone directory *Yellow Pages* entry and other material included in the Web site to be the functional equivalent of the firm brochures and similar materials that lawyers commonly prepare for clients and prospective clients. An Internet user who has gained access to a lawyer's home page, like a *Yellow Pages* user, has chosen to view the lawyer's message from all the messages available in that medium. Under these circumstances, such materials are not a 'communication directed to a specific recipient' that would implicate Rule 7.3 and its provisions governing direct contact with prospective clients. Thus, with respect to a Web site, Rule 7.1, prohibiting false or misleading statements concerning a lawyer's services, and Rule 7.2, regulating advertising in the public media, are sufficient to guide lawyers and to protect the public."); State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Formal Op. 97-04 (1997) ("A lawyer's web site is a 'communication' about the lawyer or the lawyer's services that is subject to the ethics rules."); Vermont Bar Ass'n Comm. on Prof'l Responsibility, Op. 97-5 (1998) ("As long as the Web Page is equivalent to a *Yellow Page* advertisement or a magazine article, the general rules of truth in advertising and limitations on indirect solicitation should apply to a lawyer's use of Web Pages."); Maryland State Bar Ass'n Comm. on Ethics, Op. 97-26 ("The Committee's opinion is that a Web page constitutes advertising under Rule 7.2(a) as it is plainly a communication 'not involving in-person contact.' Therefore, the Rules allow such advertising . . . . Such advertising creates another potential problem under the Rules. Rule 5.5(a) prohibits you from practicing law in a jurisdiction where you are not licensed to practice. Rule 7.1 prohibits the making of misleading communications about one's services. Because your Web page may be accessed by persons outside Maryland, you need to be very careful to make sure that your Web page makes clear the states in which you are licensed to practice.") (citations omitted); North Carolina State Bar, Ethics Op. RPC 241, 1996 WL 875832, at 1 (Jan. 23, 1997) ("[A] lawyer may participate in a directory of lawyers on the Internet if the information about the lawyer in the directory is truthful"); North Carolina State Bar, Ethics Op. RPC 239, 1996 WL 875828, at 1 (Oct. 16, 1996) ("[A] lawyer may display truthful information about the lawyer's legal services on a World Wide Web site on the Internet"); Iowa State Bar Ass'n, Formal Op. 96-1 (1996) ("The Board is of the opinion that such law firms' (and lawyers') home page or Web sites are generally designed to promote the firm and to sell legal services of the firm and constitute advertising. Therefore it is the opinion of the Board that they must conform to the Iowa Code of Professional Responsibility for Lawyers provisions governing advertising."); Pennsylvania Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Informal Op. 96-17, 1996 WL 928126, at 1 (May 3, 1996) ("Thus, if the Web site contains communications about the lawyer or the lawyer's services, it is my opinion that it is lawyer advertising subject to the Rules of Professional Conduct."); State Bar of Mich. Standing Comm. on Prof'l & Judicial Ethics, Op. RI-276, 1996 WL 909975, at 1 (July 11, 1996) ("A lawyer may post information about available legal services on the Internet which may be accessed by users of the technology as long as ethics rules governing the content of the posted information are observed.").

4 Virginia State Bar Lawyer Advertising Opinion A-0110 (4/14/98) ("It is the Committee's opinion that a Virginia lawyer advertising on the Internet is subject to applicable disciplinary rules in the Virginia Code of Professional Responsibility. Thus, for example, DR 2-101(A)'s prohibition of advertising which is false, fraudulent, deceptive or misleading applies to all 'public communications' including communications over the Internet.").

5 Pennsylvania Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Informal Op. 96-17, 1996 WL 928126, at 3 (May 3, 1996) ("I do not believe there is any question that a Web site created and maintained by a Pennsylvania law firm is subject to the applicable provisions of Pennsylvania Rules of Professional Conduct. Whether other jurisdictions may impose their rules governing lawyer advertising is an open question.").

6 State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Formal Op. 97-04 (1997) ("if you are a member of the State Bar of Arizona, you must follow the Arizona Model Rules of Professional Conduct, even if your advertisement will appear, electronically, both inside and outside of the state."). Iowa Formal Op. 96-14 (an out-of-state law firm must meet all the requirements of the Iowa rules if it advertises that it has a branch office in Iowa or that certain members of the firm are licensed to practice in Iowa).

7 The task of undertaking to comply with each state's lawyer advertising rules is challenging. Each state has different rules, some requiring retention of hard copies of all advertising by electronic media, mandatory disclaimers, prohibitions of client testimonials, dramatizations, animations and advertising specific case results. In addition, the advertising rules governing lawyers go to considerable lengths to prohibit misleading or deceptive statements which the business world would regard as permissible "puffing." For example, a statement or listing that suggests that a lawyer or law firm serves a geographical area in which no office is maintained and in which no clients are yet represented would be regarded as misleading. Statements such as "you pay nothing unless we win" are similarly misleading if they fail to warn that the client remains responsible for costs. Lawyers who hold themselves out as "specialists" in an area of practice may also be in violation of Rule 7.1. Rule 7.1(a)(3) prohibits a lawyer from comparing his services with other lawyers' services unless they can be factually substantiated. Lawyers will need to monitor their Web sites frequently to assure that the content is not fraudulent, deceptive or misleading in violation of Rule 7.1 and implement security measures designed to control and limit unauthorized access or modifications.

In addition to complying with the different states' interpretations of Rule 7.1 as to what statements are false, fraudulent, misleading or deceptive, lawyers must also be concerned about particular rules regulating specialization and solicitation. Some states prohibit claims of specialization unless that particular state has certified the specialization or has approved the certifying organization. Some states, like Virginia, have no certification process at all, and may or may not allow lawyers to say they are a specialist in a practice area. Some states disallow in-person solicitation for pecuniary gain in all areas of practice (i.e., Maryland) whereas Virginia prohibits in-person solicitation only in personal injury or wrongful death cases. The District of Columbia Bar, on the other hand, does not prohibit in-person solicitation in personal injury or wrongful death cases. In Virginia, in-person solicitation includes communications by telephone. Therefore, lawyers who communicate in Internet chat rooms and solicit a prospective client may be engaging in in-person solicitation. A lawyer's participation in bulletin boards or chat groups may implicate a state's anti-solicitation rules if the lawyer initiates an unrequested communication with a specific person. Ill. St. Bar Ass'n Op. 96-10 (1996).

Another issue is whether targeted solicitation messages sent to persons by Internet e-mail must be identified in the headers as "advertising material" so that the recipient can chose to delete the message without reading, as a consumer might choose to disregard "junk mail." Virginia's version of Rule 7.1 (c) is out of date and would not impose such a requirement for e-mail solicitation messages as it applies only to "a written communication that is contained in an envelope." Other states have addressed this issue and would require e-mail messages and messages posted to bulletin boards to be identified as "advertising material." Ill. St. Bar Ass'n Op. 96-10, *supra*.

8 South Carolina Ethics Op. 94-27 (1995).

9 Supreme Ct. of Tenn., Bd. of Prof. Responsibility, Advisory Ethics Op. 95-A-570 (1995) ("The posting on the World Wide Web must comply with all ethical rules regarding publicity. For instance, if there is an area of practice listed the appropriate certification disclaimer should be utilized. DR 2-101(C). The statement: 'This Is An Advertisement' must also be utilized on the posting. DR 2-101(N). The Board must be furnished a copy of the communication three days before it is placed on the World Wide Web. DR 2-101(F). The information contained in the posting must be truthful and not a misrepresentation. DR 2-101(A)."); *but see*, State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Formal Op. 97-04 (1997) ("*Do lawyers need to submit a copy of their Web sites to the State Bar and the Supreme Court pursuant to ER 7.3*? Probably not. Web sites probably will not fall within the requirements of ER 7.3, which requires lawyers to submit a copy of all direct mail solicitation letters to the State Bar and the Supreme Court. Lawyers only need to send copies of direct mail correspondence to the Bar and the Court when the solicitation is sent to a prospective client who has a known need for legal services for a particular matter. Presumably Web sites are designed to provide general information about a law firm and are not sent directly to certain prospective clients and thus do not need to follow ER 7.3.") (emphasis omitted).

10 One bar has indicated that lawyers must retain "material" changes in their Web site. State Bar of Ariz. Comm. on the Rules of Prof'l Conduct, Formal Op. 97-04 (1997) ("Do lawyers need to keep a copy of their Web sites and any changes that they make to their Web sites pursuant to ER 7.1(o)? Yes. Lawyers need to keep a copy of their Web sites in some retrievable format for three years after dissemination along with a record of when and where the Web site was used. Additionally, if there is a material substantive change to the Web site, the lawyer should retain a copy of all material changes as well.") (emphasis omitted).

Some states seem to be softening the application of their bar rules' literal language. For instance, Florida only requires approval and retention of a home page rather than an entire Web site.

11 Virginia State Bar Lawyer Advertising Opinion A-110 (4/14/98) (the Committee observes that a lawyer's communications over the Internet are "disseminated to the public by use of electronic media" for which the lawyer has given value and therefore are subject to the requirements of DR 2-101(B) [which now appears in Rule 7.1(b)]. This means that a lawyer or law firm that advertises on the Internet must make and preserve for at least one year a hard copy of any advertisement posted on the Internet. This includes advertisements in the form of home pages, postings to bulletin boards, news groups, usenets, telnets, etc. The Committee observes that not all of

the disciplinary rules which apply to lawyer advertising via other media will apply to lawyer advertising over the Internet, and therefore it may be necessary for the Committee to issue further opinions on this subject as new questions arise").

12 Some Web sites that offer bidding/matching services include: AttorneysBid, Casematch, eLawForum, rfpMarket, FeeBid and Firmseek.

13 New York City Ethics Op. 2000-1 (2000).

14 *See, e.g., In re Cendant Corp. Litig.*, 128 F.R.D. 144, 150 (D.N.J. 1998)("There is an emerging trend in common fund class actions for courts to simulate the free market in the selection of class counsel."); *In re Auction Houses Antitrust Litig*., Civil Action No. 00 Civ. 0648 (LAK), 2000 WL 460355 (S.D.N.Y. 2000).

15 Virginia's prohibition of a lawyer paying a fee to another to recommend employment is set out in Rule 7.3(d) and such conduct may also constitute the offense of "running and capping" prohibited by Va. Code § 54.1-3939, *et seq*. which is punishable as a Class 1 misdemeanor.

16 The Venable law firm features, for amusement purposes, an interactive "Law Quiz." **http://www.venable.com/lawquiz/lawquiz.pl.** Satterlee Stephens Burke & Burke L.L.P., has a CyBarrister Quiz which invites the visitor to test his or her knowledge of Internet and electronic media law. **http://www.ssbb.com/quiz.html.** Other law firm web sites include: Tax Prophet (Independent Contractor Quiz); Merritt & Hagen (Bankruptcy test); Merriman & White (fill in intake form); Jacoby & Meyers (Instant Interview); Truckerlawyers (intake/screening); Bornstein & Naylor (Case Evaluator); Phillips & Cohen (False Claims Act).

17 New York Ethics Op. 709 (1998).

18 *Id*.

19 *Id*.

20 *Id*.

21 The clear and overwhelming consensus of the regulatory bars is that unencrypted e-mail is a permissible method for a lawyer to communicate with a client. Peter Krakaur's Web site, "LegalEthics.com" has collected all state bar and American Bar Association opinions having to do with the Internet and the ethical issues which arise out of lawyers using the Internet for e-mail, advertising and solicitation, participation in Internet lawyer referral and legal advice lines and other related topics. The URL is **http://www.legalethics.com.** Ethics opinions holding that neither DR 4-101 nor Rule 1.6 requires that an attorney encode or encrypt e-mail messages to communicate with a client include: ABA Formal Op. 99-413 (1999), Alaska Bar Op. 98-2)(1998), D.C. Bar Op. 281 (1998) (certain situations may warrant additional security), Iowa Bar Op. 97-01 (1997) (amending prior opinion requiring encryption but still need client consent after disclosure of risks of interception of e-mail), Ky. Bar Op. E-403 (1998), Mass. Bar Op. 00-01 (2000), Minn. Bar Op. 19 (1999), Mo. Bar Op. 99-07 (1999) (lawyers encouraged to discuss with clients the risks associated with e-mail communication and storage), N.Y. Bar Ass'n Op. 709 (1998), N.D. Bar Op. 97-09 (1997), Tenn. Bar Op. 98-A-650 (a) (1998).

22 Pa. Bar Ass'n Ethics Op. 97-130.

23 *See* Va. Legal Ethics Opinions 186-A and 999. In LEO 186-A the Committee noted:

> It should be noted that a retainer fee may be paid by the use of a credit card, but amounts received by the attorney from the credit card institution, in the same manner as all fees received in advance of the rendering of services, must be deposited and preserved in escrow in the trust account maintained by the attorney for his clients to the extent that such fees remain unearned. *See* DR9-102, 216 Va. 941, 1130 (1976). We note further that charges made by any lawyer or law firm shall be only for the reasonable value of the services actually rendered regardless of whether a credit card is used. No higher fee should be imposed by reason of a lawyer's or law firm's participation in a charge plan. Recognizing that the impetus for Council to reverse its former position lies in the belief that use of credit cards may make legal services more widely available to the public at no additional cost, it is imperative that a lawyer resist the temptation to pass through to his clients charges imposed upon the lawyer by the credit card company whether by means of a discount or by other means.

Credit cards should only be used in situations where clients have the ability to pay reasonable fees. When an attorney agrees to take a case where a client is under financial hardship and unable to pay reasonable fees, the fact that a credit card is available should not deter the attorney from his obligation to perform *pro bono* work. (EC:2-27, EC:2-28, 220 Va. 616, 623-24).

24 New York Ethics Op. 709 (1998). *See also* Virginia Rule 1.6.

25 Other on-line directories include: AttorneyPages, AttorneyPractice, Lawyers.com (Martindale affiliate); Prairielaw; Maine Lawyers' Network.

26 The West Group directory is called "Lawoffice.com" and can be found at **http://www.lawoffice.com** Other law firm Web sites include: Tax Prophet (Independent Contractor Quiz); Merritt & Hagen (Bankruptcy test); Merriman & White (fill in intake form); Jacoby & Meyers (Instant Interview); Truckerlawyers (intake/screening); Bornstein & Naylor (Case Evaluator); Phillips & Cohen (False Claims Act).

27 Arizona Bar Op. 99-06 (1999) ("for-profit" Internet lawyer referral service not approved or operated by any bar association is not an appropriate plan for lawyers to join); Nebraska State Bar Ass'n Op. 95-3 (1995) (lawyers may not participate in a "for-profit" Internet lawyer referral program); and S.D. Bar Ass'n Op. 98-10 (1999) (lawyer may not participate in an Internet referral service taking an advertising fee and a share of legal fees for referring clients to South Dakota lawyer but providing no legal services).

28 Va. R. Prof. Cond. 5.4(a) [formerly DR 3-102 (A)(1)].

29 Va. R. Prof. Cond. 7.3 (d) [formerly DR 2-103 (D)].

30 Va. R. Prof. Cond. 5.5 (a)(2) [formerly DR 3-101 (A)].

31 Va. Legal Ethics Op. 926 (1987) (not improper for lawyer to participate in a lawyer referral service that is a profit-making lay organization or corporation provided other requirements are met).

32 Va. Legal Ethics Op. 738 (1985).

33 *Id*.

34 Va. Legal Ethics Op. 910 (1987).

35 Va. Legal Ethics Op. 1676 (1996); Virginia Rule of Professional Conduct 7.3 (d) [formerly DR 2-103 (D)].

36 *See* New York Ethics Opinion 709 (1998); Utah Ethics Opinion 97-10 (1997).

37 *See Florida Bar v. Kaiser*, 397 So.2d 1132 (Fla. 1981).

38 70 Cal. Rptr. 2d 304, 306 (Cal. 1998)

39 *Id*.

40 Comm. on Legal Ethics and Prof. Resp. of the Penn. Bar Assoc., Opinion 98-85 at 5.

41 The prohibition is based upon the foreign attorney being "physically present" in Virginia, since neither the Virginia State Bar nor the Virginia Supreme Court has jurisdiction to regulate activity occurring outside of the state. *See, e.g.*, UPL Op. No. 122 (June 9, 1988) (holding that a Pennsylvania lawyer, not admitted in Virginia, may render legal advice *from* Pennsylvania to clients in Virginia, because there is no jurisdiction over activity performed outside of Virginia). *See also*, UPL Op. No. 99 (December 19, 1986) (D.C. lawyer, not admitted in Virginia, may prepare legal documents for Virginia residents and conduct closing in D.C. office affecting Virginia property because no activity occurred in Virginia) *and* UPL Op. No. 93 (May 2, 1986) (it is not UPL for non-Virginia attorney to prepare recordable documents, conduct settlement or give legal advice on Virginia law, all from his office outside of Virginia).

42 *See, e.g.*, Charles Wolfram, Modern Legal Ethics (1986) at 847; Stephen Gillers, *Real-World Rules for Interstate Regulation of Practice*, 79 A.B.A.J. 111 (April 1993) ("Gillers").

43 Va. Code §8.01-328.1.

44 A *writ quo warranto* may be issued and prosecuted by the Commonwealth against any person engaged in the practice of a profession without being licensed or authorized to do so. Va. Code §8.01-636 (2a).

45 The UPL Rules and the definition of the practice of law can be found in Part 6, Section I of the Rules of the Supreme Court of Virginia.

46 *See* n.41, *supra*.

47 *See* Gillers, n.42, *supra*.

48 *See* Gillers, *supra* at n.42. For a thorough discussion regarding UPL reform and multi-jurisdictional practice *see* the reports of the ABA's Commission on Multi-Jurisdictional Practice at **http://www.abanet.org/cpr/mjp-home.html.** Some states seem to be softening the application of their bar rules' literal language. For instance, Florida only requires approval and retention of a home page rather than an entire Web site. Virginia State Bar Lawyer Advertising Opinion A-110 (4/14/98) (the Committee observes that a lawyer's communications over the Internet are "disseminated to the public by use of electronic media" for which the lawyer has given value and therefore are subject to the requirements of DR 2-101(B) [which now appears in Rule 7.1(b)]. This means that a lawyer or law firm that advertises on the Internet must make and preserve for at least one year a hard copy of any advertisement posted on the Internet. This includes advertisements in the form of home pages, postings to bulletin boards, news groups, usenets, telnets, etc. The Committee observes that not all of the disciplinary rules which apply to lawyer advertising via other media will apply to lawyer advertising over the Internet, and therefore it may be necessary for the Committee to issue further opinions on this subject as new questions arise").

See Sperry v. The Florida Bar, 373 U.S. 379 (1963) (holding that Florida's UPL enforcement action against nonlawyer patent agent violated supremacy clause and therefore unconstitutional). As William Barker notes, the IRS and PTO admit nonlawyers. The SEC and other federal agencies by rule or regulation permit lawyers in any state to practice before that agency. Federal Supremacy requires the states to permit those practitioners to engage in their activity, even though that person's activity would otherwise constitute UPL under state law. *See* Barker, *supra* at n.49. *See also* Va. S. Ct. R., Pt. 6, § I, UPR 9-102 (permitting nonlawyer practice before state or federal agency).

49 *See* William T. Barker, *Extrajurisdictional Practice by Lawyers*, 56 Bus. Law 1501(2001).

50 A partial list of some federal agencies allowing "qualified representatives" (nonlawyers) to act on behalf of a party before that agency includes:

a. Department of Treasury, Internal Revenue Service and Tax Court – 31 U.S.C.§ 330; 5 U.S.C. § 500; 31 C.F.R. §§ 10.32-33 (1997); IRC § 7452 and Tax Court Rule of Practice and Procedure 200.
b. Immigration and Naturalization Service – 8 C.F.R. § 3.1(d)(3) (extremely limited).
c. Department of Energy – 10 C.F.R. § 205.3.
d. Social Security Administration – 20 C.F.R. § 416.1400
e. Drug Enforcement Agency – 21 C.F.R. § 1316.50
f. National Labor Relations Board – 29 C.F.R. § 102.38
g. Equal Employment Opportunity Commission – 29 C.F.R. § 1601.7
h. Health and Human Services – 45 C.F.R. § 205.10 (a)(3)(iii).

51 *See Sperry v. The Florida Bar*, 373 U.S. 379 (1963) (holding that Florida's UPL enforcement action against nonlawyer patent agent violated supremacy clause and therefore unconstitutional). As William Barker notes, the IRS and PTO admit nonlawyers. The SEC and other federal agencies by rule or regulation permit lawyers in any state to practice before that agency. Federal Supremacy requires the states to permit those practitioners to engage in their activity, even though that person's activity would otherwise constitute UPL under state law. *See* Barker, *supra* at n.49. *See also* Va. S. Ct. R., Pt. 6, § I, UPR 9-102 (permitting nonlawyer practice before state or federal agency).

52 The UPL Committee in Virginia has opined that a lay corporation can provide consulting services and provide "legal information" as opposed to "legal advice." UPL Op. 192 (1998) (consulting firm providing information on international law); UPL Op. 185 (1995) (legal information hotline using "900" number providing recorded legal information from scripts prepared by lawyer).

53 115 Ohio Misc.2d 70, 761 N.E.2d 716 (2001).

54 761 N.E.2d at 718-19.

55 *Id*. at 719.

56 *Id*.

57 *Id*.

58 *Id*. at 720.

59 *Id*. at 721.

60 1999 WL 47235 (N.D. Tex. 1999).

61 Va. Code §§ 6.1-2.19 *et seq.*