

Collaboration Necessary for Successful Investigation and Prosecution of Unauthorized Practice of Law

by Christine Lockhart Poarch

Unauthorized practice of law (UPL) plagues inner-city ethnic communities and rural hamlets. It masquerades with myriad faces: the community do-gooder, the disbarred attorney, or the unapologetic purveyor of outright fraud. The Virginia State Bar Standing Committee on the Unauthorized Practice of Law is charged with the statewide investigation of UPL. But in recent years, the committee's work has required that we stretch our proverbial legs a bit and seek out unique forms of collaboration with community partners and law enforcement and implement alternative methods of investigating UPL around the commonwealth.

The Work of the UPL Committee

It bears clarifying what our committee can and cannot do. We can investigate whether an individual has committed UPL and make a finding that the complaint is founded, but we cannot prosecute the offender. With the authorization of covert investigations by the Standing Committee on Legal Ethics in LEO 1845 (2009), our staff attorneys can send in investigators as "clients" to gather additional information and avoid the possibility that the individual suspected of UPL will simply disappear.

We can dissuade and discourage UPL through direct engagement of the offender by use of letter agreements, and we routinely refer founded cases of UPL for prosecution to local commonwealth's attorneys and occasionally federal investigative agencies like the Department of Homeland Security Investigations. We also refer cases to the Office of the Attorney General of Virginia to pursue injunctive relief.

In any case in which we find that UPL has occurred, we report the individual to Consumer Sentinel, a federal

consumer fraud database hosted by the Federal Trade Commission. At a minimum, reporting ensures that law enforcement with authority to access the database will have the information from our investigation at their disposal. This is particularly important because purveyors of UPL are mobile, moving their commercial enterprises from jurisdiction to jurisdiction or disappearing when their fraud is discovered, only to reappear years later.

Collaboration in Action

A few well-publicized examples will demonstrate the importance of collaboration in our investigations.

Luis Ramirez offered "legal services," often holding himself out as an immigration attorney, through a McLean-based office. In addition to soliciting cases and charging thousands of dollars for legal services he was not authorized to provide, he also doled out advice on a radio talk show and in print media. While claiming to be an advocate, championing the cause of undocumented students and victims of crime, Ramirez pilfered thousands of dollars from clients to fill out paperwork or represent them in criminal, bond, and deportation proceedings. His representation normally consisted of little more than appearing as a "friend" in court and liaising with public defenders and other attorneys. In one reported case, he commanded a \$2,200 fee for his services and when the client demanded that the money be returned, he used intimidation and threats to keep her quiet.

The Virginia State Bar received at least five complaints about Ramirez and Ramirez and Associates in late 2011. Soon after an investigation was opened, a Fairfax police detective contacted the bar to advise us that he was involved in a

criminal investigation of Ramirez. He asked that the Virginia State Bar not notify Ramirez of the pending UPL complaints against him, as any such notification would thwart the agency's undercover investigation. The UPL committee forwarded all of its complaint information to the detective and suspended its investigations. By the end of January 2012, five felony warrants were obtained and served on Ramirez. Ramirez later pleaded guilty to three felony counts of obtaining money under false pretenses and was sentenced early this year. Bryan Cave, a Washington, D.C., law firm, later filed a civil suit against Ramirez and received a settled judgment of \$25,000 and an injunction barring Ramirez and Associates from marketing or advertising legal services. This was one of a number of pro bono efforts by David A. Zetony at that firm to combat notario fraud with the tools of *pro bono* consumer fraud advocacy. Another collaborative effort involved Howard Shmuckler, who in 2009 was the subject of twenty-four complaints stemming from his operation of a mortgage-rescue business. He falsely held himself out as a Virginia-licensed attorney and offered legal services to customers related to mortgage loan modifications. Shmuckler was never licensed to practice law in Virginia. His license to practice law in the District of Columbia was under suspension during the period in which the activity alleged in these complaints occurred. In the course of the bar's investigation of Shmuckler, the investigator discovered that the Federal Bureau of Investigation and the U.S. Attorney's Office were also investigating his activities. The Virginia State Bar investigator worked closely with the FBI and the U.S. Attorney's Office and shared witnesses and other information

regarding Shmuckler's conduct. As a result, in April 2012, Shmuckler pled guilty in federal court in Virginia to six counts of wire fraud and was sentenced to seven and a half years in prison.

Not all cases involve opportunistic fortune-hunters. Some UPL respondents are simply disbarred lawyers who seek to operate outside the rules (which is why they were disbarred in the first place) and without the oversight the various state bar associations provide to the practice of law. In one such case, Howard Deiner, a suspended D.C. attorney, held himself out to provide legal services to families of special needs children in administrative actions involving the school system. Between 2007 and 2009, the UPL committee received multiple complaints and worked in collaboration with the commonwealth attorney of Arlington County, the District of Columbia Bar Association, and law enforcement agencies to share information and collaborate on solutions. In 2009, the Arlington County commonwealth's attorney charged Deiner with multiple counts of felony fraud and misdemeanor practicing law without a license. He was convicted in January 2011 and sentenced to a year in prison. Deiner also consented to disbarment with the District of Columbia Bar.

Consumer Protection, Not Protectionism

In all its forms, the VSB's initiatives to combat unauthorized practice of law are directed at consumer protection, not professional protectionism. The reason for this is simple: it is rare that those who practice law without authorization are truly infringing upon the honest day's work of another lawyer. In many cases, UPL creates work for licensed attorneys who must undo the actions of the unauthorized practitioner. In other cases, a licensed attorney would never have been retained in the first place. In all cases, it's public education and consumer protection, not professional protectionism, that drives the committee's efforts.

For example, in 2009–2010 the committee launched a statewide public education campaign to put information on reporting UPL in the hands of the legitimate practitioners who are on the front lines of consumer fraud in legal services. These materials are available for easy printing from any office, do not require special formatting, and are available in English, Spanish, Korean, and Vietnamese. During the initial roll-out, these materials were printed and distributed to an exhaustive list of pro bono and private legal service providers to specifically combat fraud in ethnic communities.

The committee also actively collaborates with the American Bar Association, local, and specialty bar associations in educating about and determining appropriate policy toward the unauthorized practice of law. Most recently, the committee has been asked to cooperate with a number of effective local task forces—some organized by community services providers, others by the federal government—in the hopes of combatting this particular form of consumer fraud.

The Importance of Collaboration with the Private Bar

Our committee's most important collaborative partner is the private bar and the public. If the private bar does not report the unauthorized practice of law or encourage the public to report unauthorized practice, then we cannot pursue any of the nuanced collaboration described above.

We would like nothing more than to publicly credit the great work the Virginia State Bar investigators and ethics counsel do pursuing and fleshing out the very complex, often sophisticated system of unauthorized practice in our community. Unfortunately, while our committee's work is public record, other concerns govern our ability to advertise a "who's who" of legal services fraud and unauthorized practice. That being said, the fact that we can't always notch our belts to mark the latest bad actor we've helped take off the streets should not lure the lawful practitioner of law into

thinking that the report of unauthorized practice falls on deaf ears. Each complaint is investigated and either considered founded or dismissed. Ancillary investigations are referred and information shared to assist with those investigations. While there is much to be done in this area of state bar oversight, much has been done, effectively, and for years, to combat unauthorized practice of law.

Conclusion

Our profession is self-policing, but those that would prey upon the vulnerable in our community have no one to cry foul except you and me. We know who the bad actors are in our community. They are the individuals who cause severe harm in one case or many. They act with impunity because they take advantage of populations that are easily manipulated and silenced with threats. We hear their names again and again until a pattern starts to emerge that we cannot ignore. The UPL committee relies on the private bar to come to us with complaints as much as we rely on the State Bar investigators to inquire about the substance of the complaint your client brings. You are an indispensable partner in our work, and we are, as always, grateful for your advocacy on your client's behalf.



Christine Lockhart Poarch is the chair of the Virginia State Bar's Standing Committee on Unauthorized Practice of Law and manages Poarch Law, a boutique immigration law practice in Salem that assists businesses, families, and individuals with affirmative visa applications, immigration removal proceedings, international adoption, and various other visa processes.