

**STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW**

*Jon C. Poulson, chair*

The Standing Committee on Unauthorized Practice of Law (UPL Committee) is charged with two duties. It investigates complaints alleging that individuals or business entities are engaged in the unauthorized practice of law, and it renders opinions to Virginia-licensed attorneys on whether specific conduct constitutes the unauthorized practice of law.

During the past year, eighty-two new investigations were opened in addition to the thirty-seven investigations remaining on the UPL Committee's docket from previous years. Of those open investigations, ninety-three were closed during the year. During the fiscal year ending 2005, twenty-nine investigations were referred to a commonwealth's attorney for prosecution. The UPL Committee also has the option of referring matters to the attorney general, and five files were referred to that office.

UPL Opinion 209 was requested this fiscal year. It addresses the issue of whether it is the unauthorized practice of law for an attorney licensed in a jurisdiction other than Virginia to represent a client in the state before the Virginia Gas and Oil Board (the Board). Relying upon the definition of a nonlawyer found in Part 6, § I(C) of the Rules of the Virginia Supreme Court of Virginia, UPR 1-101(A) (which prohibits a nonlawyer from representing another before a tribunal) and UPC 1-1 (which defines "tribunal") as well as UPL Opinions 158, 195 and 201 (which address the scope of practice by a foreign attorney in Virginia), the UPL Committee determined that it would be the unauthorized practice of law for an attorney licensed in a jurisdiction other than Virginia to represent a client before the Virginia Gas and Oil Board. This conclusion is based primarily upon the determination that the Virginia Gas and Oil Board is a "tribunal." The Board was created by the Virginia Gas and Oil Act, § 45.1-361.1 *et seq.* of the *Code of Virginia* (1950, as amended). A review of the provisions of the act indicates that the Board does more than simply "promulgate rules and regulations of general applicability." It does determine the rights and responsibilities of the parties before it. It must conduct its hearings pursuant to the "formal litigated issues hearing provisions" of the Administrative Process Act (§ 2.2-4000 *et seq.*), which makes no allowance for appearance by a nonlawyer to represent a party in such a hearing. Without such authority, and the Board being a "tribunal," any representation must be by a licensed Virginia attorney. Based on this authority the UPL Committee finds that representation by a nonlawyer (which includes a lawyer licensed outside Virginia) before the Virginia Gas and Oil Board is not appropriate and would be the unauthorized practice of law. This opinion just completed the initial comment stage and will be distributed by press release for comment before its consideration by the Virginia State Bar Council at the October 2005 meeting.

UPL Opinion 207 was carried over from the prior fiscal year and is currently pending approval at the Supreme Court of Virginia. This opinion addresses whether an attorney may train a nonattorney social worker to assist members of the general public in filling out warrants in debt and other forms necessary for *pro se* representation in a small claims court in Virginia. The Standing Committee on Legal Ethics referred this inquiry to the UPL Committee for a determination of whether it is the unauthorized practice of law for a nonlawyer to assist in the activities described. The applicable authority is found in Virginia's definition of the practice of law, in UPL Opinion 73, and also in five of the nine existing Unauthorized Practice Rules (UPRs) regarding the preparation of legal documents. Based upon this authority, the opinion finds that the preparation of warrants in debt and other forms necessary for *pro se* representation in a small claims court by a nonattorney worker would be the unauthorized practice of law. In addition, the UPL Committee notes that persons proceeding in a small claims court are required to represent themselves, which raises a question of whether such limited assistance by a social worker under the direction of an attorney is permissible. However, the opinion finds that this issue is beyond the purview of the committee.

I would like to thank the committee members—Megan E. Kelly, vice chair; Timothy P. Chinaris; Gary M. Coates; Joseph C. Fleig; Olin V. Hyde; Steven B. Novey; and Robert V. Ward for their hard work and dedication to the mission of the UPL Committee. I also wish to thank a particularly dedicated and hardworking staff at the VSB, who have made the work on the committee as streamlined as possible.

