Approved by the Supreme Court
Of Virginia, September 9, 1983
Effective December 1, 1983

UPL Opinion No. 48.

Activities of a Layman Inmate in a Correctional Facility, on Behalf of Fellow Inmates in Pending Civil Litigation.

Inquiry: May a non-lawyer inmate of a correctional facility represent a fellow inmate by way of in-court oral argument and out-of-court settlement negotiations in pending civil litigation?

Opinion: The activities of a non-lawyer and self-styled "paralegal," in attempting to represent in-court oral argument and to negotiate out-of-court settlement on behalf of a fellow inmate in a pending civil suit, fall squarely within the Supreme Court's definition of the practice of law. One is deemed to be practicing law whenever.

(1) One undertakes for compensation, direct or indirect, to advise another not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.

(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contract incident to regular course of conducting a licensed business

(3) One undertakes, with or without compensation, to represent the interest of another before [a tribunal, as hereinafter defined in UPC 1-1,] otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly … employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such presentation by such employee or expert does not involve the examination of witnesses or preparation of pleadings. Rules of Court, Part 6:§IV: ¶ 10 Appendix, 221 Va. 381, 382 (1980). See Rules 6: §I, 216 Va. 941, 1062 (1976).

The applicable provisions of UPL Rule 6.1-1, Unauthorized Practice Rule (UPR)1-101 (A) state as follows:

(A) A non-lawyer , with or without compensation, shall not represent the interest of another before a tribunal, judicial, administrative or executive, established under the Constitution or laws of the Commonwealth of Virginia, otherwise than in the presentation of facts, figures or factual conclusions, as distinguished from legal conclusions, …Rules, 221 Va. 381, 386.

Again, the rationale expressed above can be found in two Rules of Court specifically addressing the performance of activities such as those attempted by the "paralegal" in this matter. Rule 6.1-1 (Unauthorized Practice of Law Advisory Opinion, Practice Before Tribunals) and Rule 6.1-2 (Unauthorized Practice of Law Advisory Opinion, Lay Adjusters), respectively prohibit the non-lawyer from representing the interest of another before a judicial tribunal and from advising another as to matters of liability or non-liability or negotiating settlement of pending civil litigation, subject to several well-defined exceptions. The pertinent exception in Rule 6.1-1, UPR 1-101(A)(1) reads as follows:

> A non-lawyer under the supervision of a lawyer who is a regular employee of a legal aid society approved by the Virginia State Bar in accordance with its rules and regulations adopted under § 54-52.1 of the Code of Virginia may represent an indigent patron of such society before such a tribunal when authorized to do so by the governing body of such society and when such representation is permitted by the rules of practice of such tribunal. The supervising attorney shall assume personal professional responsibility for any work undertaken by the non-lawyer. Rules, 221 Va. 381, 386.

The pertinent exception in Rule 6.1-2, UPR 2-102(A), reads as follows:

> (1) A lay adjuster may secure and convey factual data and information transmit settlement offers made by either party, determine and express his opinion on the extent of damage or injury and its monetary value, deliver releases or other documents, and assist the lawyer for his principal in the efficient performance of ministerial acts arising out of the settlement of negotiations. *Id.*, 389.

In the absence of information to the contrary, it is assumed herein that neither of the above exceptions encompasses the activities of the non-lawyer in this matter. That it, there is no indication that the non-lawyer is under the supervision of a lawyer who is a regular employee of a legal aid society or that he is assisting the lawyer for his principal. Nevertheless, this inquiry must give due consideration to the holdings of the Supreme Court of the United States concerning the Constitutional right of meaningful access to the courts accorded to prisoners. Beginning with Johnson v. Avery, 393 U.S. 493 (1969), and continuing through Bounds v. Smith, 430 U.S. 817 (1977), to the present, the Supreme Court has outlined the essential requirements of "meaningful access." As set forth in *Bounds, supra:*

> > "It should be noted that while adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts, our decision here, as in *Gilmore*, does not foreclose alternative means to achieve that goal. Nearly half the states and

> the District of Columbia provide some degree of professional or quasi-professional legal assistance to prisoners … Such programs take many imaginative forms and may have a number of advantages over libraries alone. Among the alternatives are the training of inmates as paralegal assistants to work under lawyers' supervision, the use of paraprofessionals and law students, either as volunteers or in formal clinical programs, the organization of volunteer attorneys through bar associations or other groups, the hiring of lawyers on a part-time consultant basis, and the use of full-time staff attorneys, working either in new prison legal assistance organizations or as part of public defender or legal services offices … [A] legal access program need not include any particular element we have discussed, and we encourage local experimentation. Any plan, however, must be evaluated as a whole to ascertain its compliance with constitutional standards." 430 U.S. at 830-32.

The Virginia General Assembly has recognized its constitutional responsibility for providing meaningful access to the courts by its enactment of § 53.1-40 of the Code of Virginia. That section provides for appointment of attorneys-at-law to counsel or assist indigent prisoners regarding any legal matters relating to the prisoner's incarceration. Such attorneys legal assistance is a constitutionally approved method of providing meaningful access to the courts. Almond v. Davis, 639 F.2d 1086 (4th Cir., 1981). Significantly, the Virginia General Assembly did not see fit to remove the prohibition contained Virginia General Assembly did not see fit to remove the prohibition contained in § 54-42 and § 54-44 proscribing non-lawyers from practicing law.

Summary: The Rules of Court set forth in this Advisory Opinion clearly define and proscribe the activities of the "paralegal" assisting a fellow inmate in the correctional facility as the unauthorized practice of law.

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