

UPL Opinion No. 53.

Lay Employees Obtaining Warrants and Testifying in Court.

Inquiry: Whether UPL Opinion No. 28, adopted May 9, 1957, and subsequently revoked, has changed in view of Unauthorized Practice of Law Opinion (UPL) 6.1-1 and Unauthorized Practice Considerations (UPC) 1-3, and the amendment of Rules of Court, Rules 3D:5 and 3D:6 adopted by the Supreme Court on August 2, 1982, to become effective in October 1, 1982.

Opinion: The philosophy of the Supreme Court as to the rights of individuals to represent themselves and the relationship of attorney and client is set forth in the Introduction to the Advisory Opinions on the Unauthorized Practice of Law as follows:

The right of individuals to represent themselves is an inalienable right common to all natural persons. But no one has the right to represent another: it is a privilege to be granted and regulated by law for the protection of the public ...

Generally, the relation of attorney and client exists, and one is deemed to be practicing law, whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill.

Specifically, the relation of attorney and client exists, and 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 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 specifically 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.

The relevant Supreme Court's amendments to Rules 3D:5(a) and 3D:6(c) changed the words "motions" to "request" and added the language "... or plaintiff's agent...." These sections now read as follows:

Rule 3D:5. Appearance by Plaintiff.

- (a) No judgment for plaintiff shall be granted in any case except on request of the plaintiff, plaintiff's attorney, or plaintiff's agent made in person in court.

Rule 3D:6 Failure of Defendant to Appear.

Except as may be provided by statute, a defendant who fails to appear in person or by counsel is in default and : ...

- (c) On Request of the plaintiff, plaintiff's attorney, or plaintiff's agent, made in person in court, judgment shall be entered for the amount appearing to the judge to be due. If the relief demanded is unliquidated damages, the court shall hear evidence and fix the amount thereof.

The applicable provisions of UPL Rule 6:1-1, Unauthorized Practice Rule (UPR) 101 (A) and (B) 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,
- (B) A non-lawyer regularly employed on a salary basis by a corporation appearing on behalf of his employer before a tribunal, judicial, administrative or executive, established under the Constitution or laws of the Commonwealth of Virginia shall not engage in activities involving the examination of witnesses, the preparation and filing of briefs or pleading or the presenting of legal conclusions.

The reasoning of the prior UPL Opinion No. 28 is persuasive on this issue, especially when it is considered in light of the amendments of the foregoing authorities. There is nothing that is inconsistent with these authorities that would indicate any inconsistency with the practice of an agent who is an employee regularly employed on a salary basis by his principal and not employed for the sole purpose of appearing for his employer to request the granting of judgment for his employer. This language is consistent with that language involving lay adjusters found in Rule 6:1-2.

In view of this rationale it is our opinion that the conclusion of former UPL Opinion 28 should govern this issue when it states as follows:

It is our opinion, therefore, that it is not the unauthorized practice of law for a regular and bona fide employee, of either an individual or corporation, private or municipal, to have warrants issued, testify as to facts, and have judgment rendered as a matter of course by the trial justice [judge]. His functions must of course be limited solely to the presentation of facts and cannot extend to the examination of witnesses.