

## UNAUTHORIZED PRACTICE OF LAW

*Megan E. Kelly, chair*

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

So far this year, 66 complaint investigations were closed; these included 24 resulting in signed letter agreements; 3 referred to the Office of the Attorney General for civil prosecution; 3 referred to commonwealth's attorneys for criminal prosecution; and 6 referred to the U.S. Attorneys Office. Fifty complaints were carried over from previous years, and 57 new complaints were opened. Since the beginning of fiscal year 2007, out of 107 cases (50 carried over and 57 newly opened), the committee concluded 53 percent of the docket.

The committee received two new opinion requests in fiscal 2007 and issued UPL Opinions 211 and 212 responding to these requests.

UPL Opinion 211 asked: Can a corporate counsel who is a licensed Virginia attorney provide pro bono legal services through a community-based nonprofit legal services entity? The attorney's corporate employer would allow him time off to do this and would provide access to administrative support, including secretarial, telephone, and photocopy services. The committee considered the findings in UPL Opinions 57 and 167, as well as Supreme Court of Virginia opinion *Richmond Ass'n of Credit Men v. Bar Assoc.*, 167 Va. 327, — S.E.2d — (1937), and concluded that the activity described in the opinion request would not be the unauthorized practice of law. The attorney would be working through a community-based legal services entity which has no connection with the attorney's corporate employer and over which the employer has no authority, control or influence. The lay corporation would not be the entity offering legal services and the legal services agency would be a "separate practice" through which the attorney would be working. This opinion was published for comment for the requisite period; no comments were received and the opinion was issued for publication.

UPL Opinion 212 asked: Is it the unauthorized practice of law for a nonlawyer settlement agent to negotiate with a creditor, on behalf of a debtor, a lower payoff of a judgment lien discovered in the course of a refinance. The requestor also asked whether such negotiation is appropriate if the debt has not been reduced to judgment or if the property is commercial, rather than residential. The committee determined that this activity would not be the unauthorized practice of law. The committee does not believe that "negotiation" alone is per se the unauthorized practice of law. The dispositive question, applying the definition of the practice of law, is whether there is an exercise of legal judgment within the context of the negotiation by a nonlawyer on behalf of another. So long as the settlement agent is only negotiating "numbers" and not offering the customer legal advice, not making a legal argument on the person's behalf to the creditor, and not holding out as qualified to practice law or attempting to represent the debtor within the context of a matter before a tribunal, the negotiation is not unauthorized practice. The committee approved this opinion on June 12, 2007, and it has been published for comment.

There were no opinions carried over or any requests pending at the end of the fiscal year.

I would like to thank the committee members — Vice Chair Robert V. Ward, David P. Bogardus, William H. Chandler Jr., Gary M. Coates, Joseph C. Fleig, Steven B. Novey, Sean C. Workowski, and Wells Huntington Byrnes Sr. for their hard work and dedication to the mission of the UPL Committee during the past year.

