

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
AL	Yes	Statute	No	Statute	State Bar Committee	Attorney General; County Prosecutor	Membership on the UPL Committee is voluntary	N/A
AK	Yes	Rule	Yes	Rule	Statute	Local or State Prosecutor	State, if any case is prosecuted as a criminal offense.	Unknown
AZ	Yes	Rule; Statute	Yes	Rule	Rule	ⁱ See below	ⁱⁱ See Below	ⁱⁱⁱ See Below
AR ¹	No	N/A	No	N/A	Rule	Supreme Court Committee/Commission	Funded by the Bar of Arkansas through the Arkansas Supreme Court	\$5900
CA	No	N/A	No	N/A	Statute	County Prosecutor	To extent the State Bar investigates UPL Bar dues. To he extent the county prosecutor prosecutes	The State Bar does not have a separate or special budget for UPL enforcement. The

ⁱ State Bar Counsel; Bd. of Certified Legal Document Preparers is also authorized to enforce the Certified Legal Document Preparer Regulations.

ⁱⁱ The cost for UPL enforcement is budgeted and assumed by the State Bar of Arizona. The cost for regulating the document preparers is paid for from certified legal document preparers fees.

ⁱⁱⁱ This is being recalculated at this time; our authority to enforce court rules regarding UPL is very new so we are adjusting our budget to reflect the type of activity we anticipate after the first year of rule being effected.

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
							those engaged in UPL, tax revenues.	budget is the general disciplinary budget.
CO	Yes	Advisory Opinion	No	There is case law on unauthorized practice, but no all-encompassing definitions of what is and isn't authorized.	Rule	Supreme Bar Committee/Commission; Colorado Supreme Court Office of Attorney Regulation	Attorney Regulation Fees.	\$3,500
CT ²	No – case law only – fact driven	Case Law	Yes	Statute; Case Law; Advisory Opinion	Rule; Statute	County Prosecutor; Disciplinary Counsel Judicial Branch	Judicial Branch for criminal enforcement	Not specifically budgeted

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
DE	No ^{iv}	N/A	No	N/A	Rule	Supreme Court ^v Committee/ Commission	Annual Registration fees paid by DE Supreme Court by lawyers	N/A
DC ³	Yes	Rule; Advisory Opinion	Yes	Rule; Advisory Opinion	Rule	Supreme Court Committee/ Commission	^{vi} See Below	The Court of Appeals does not have a budget for UPL enforcement.
FL ⁴	No definition perse but test established by case law	N/A	No definition perse but “defined” by case law	N/A	Rule; Statute	State Bar Counsel; State Bar Committee; State Attorney’s Office	Bar dues cover bar’s UPL program. State Attorney funding is from taxes	1.4M for Bar program
GA	-	-	-	-	-	-	-	-
HI ⁵	Yes	N/A	Yes	Rule;	Statue	Attorney General;	State General Fund	No specific annual budget, part of

^{iv} But UPL Board Rule 4© lists “types of conduct” for “general guidelines for evaluation” run by ODC and not as definitions of the unauthorized practice of law.
^v Board on the UPL – ODC is “intake agency” (UPL Rule 4a) and does “investigations” as UPL appropriate (rule 5a)
^{vi} The Court of Appeals has no budget for UPL enforcement. The members of the Committee on UPL serve as volunteers and they contribute their time and pay expenses such as postage and copying costs.

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
				Statute; Case Law		HI State Bar Association		budget- part of State Attorney General annual budget
ID ⁶	Yes	Rule; Statute; Case Law	Yes	Rule; Statute; Case Law	Rule; Statute	State Bar Committee of County Prosecutor	Idaho State Bar or County Prosecutor	N/A
IL	-	-	-	-	-	-	-	
IN ⁷	No	Case Law	No – except via Case Law	Case Law	Rule; Statute	^{vii} See Below	Budget & Prosecuting entity	Not available
IA ⁸	No	N/A	No	N/A	Rule	Supreme Court Committee/ Commission	Lawyers via Assessment for Client Security/Discipline Fund.	\$17,471
KS	-	-	-	-	-	-	-	-
KY ⁹	Yes	Rule	No	N/A	Rule	State Bar Counsel	Bar Association Dues	Not available

^{vii} State Bar Counsel; State Bar Committee; Attorney General; County Prosecutor

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
LA	Yes	Rule; Statue; Case Law	No	N/A	Statute	County Prosecutor	It is a criminal offense under La. R.S. 37:213	N/A
ME ¹⁰	Yes	Case Law	Yes	Statute	Statute	Attorney General	General Fund	^{viii} See Below
MD ¹¹	Yes	Statute; Case Law	Yes	Case Law; Many opinions of State Bar Assn Ethics Committee	Statute	State Bar Counsel; Attorney General	Grievance Commission	Not specified, Just part of duties of Bar Counsel
MD ¹²	Yes	Rule; Statute; Case Law	Yes	Rule; Statute; Case Law; A.G. Advisory Opinions	Statute	State Bar Counsel; Attorney General; By State Bar Counsel	State of Maryland	No Specific budget.
MA	-	-	-	-	-	-	-	-
MI ¹³	Yes	^{ix} See Below	No	N/A	Rule	State Bar Counsel	State Bar of Michigan – mandatory bar financed by attorney’s dues	\$29,115

^{viii} No dollar earmarked- overlaps with consumer protection and white collar crime

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
MN ¹⁴	Yes	Statute; Case Law	Yes	Statute; Case Law	Statute	Attorney General; County Prosecutor	Taxpayers; General budgets of offices of the county attorneys and/or State Attorney General	No specific budget
MS ¹⁵	Yes	Rule Statute Case Law	Yes	Rule; Statute; Case Law; and Advisory Opinion	Rule; Statute	^x See Below	The Mississippi Bar, with fees and expenses assessed against the defendant and collected when possible	None
MO ¹⁶	Yes	Case Law; Advisory Opinion	No	N/A	Rule; Statute; Advisory Opinion	State Bar Counsel; Attorney General; County Prosecutor	Entity enforcing the statute	\$0
MT	-	-	-	-	-	-	-	-

^{ix} Case Law; Dressel v. Ameribank A person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion or profound legal knowledge.

^x Attorney General; County Prosecutor; The MS Bar, through its appointed Committee on UPL, under the auspices of the Supreme Court

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
NE ¹⁷	Yes	Rule; Statute; Case Law	Yes	Rule; Statute; Case Law	Statute	Attorney General; County Prosecutor	County or State	Unknown
NV	-	-	-	-	-	-	-	-
NH	-	-	-	-	-	-	-	-
NJ	No	N/A	No	N/A	Rule; Statute	Supreme Court Committee/ Commission; Attorney General	Court or Law Enforcement Budget	Unknown
NM ¹⁸	No	Case Law ^{xi}	Yes	Rule; Statute; Case Law	Statute	Supreme Court Committee/ Commission; County Prosecutor	Currently there is little to no enforcement	N/A
NY ¹⁹	No	N/A	Yes	Statute	Statute	Attorney General; County Prosecutor	N/A	N/A
NC ²⁰	Yes	Statute	Yes	Statute	Statute	State Bar Committee	The North Carolina State Bar	\$98,839

^{xi} Case law indicates definition is fact specific on a case by case basis: See in re Chavez, 129 NM 35, 1P.3d 417 (2000).

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
						Committee; County Prosecutor	State Bar	
ND	-	-	-	-	-	-	-	-
OH	-	-	-	-	-	-	-	-
OK ²¹	Yes	Advisory Opinion (R.J. Edwards v. Hert, 504 P.2d 407, TP 20(OK. 1972)	No	N/A	Rule	State Bar Counsel	Bar Association	Subsumed generally within office budget
OR ²²	Yes	Case Law	Yes	Statute	Statute	State Bar Counsel; State Bar Committee; Attorney General; County Prosecutor	N/A	N/A

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
PA ²³	Yes	Case Law	Yes	Statute; Case Law	Statute; Case Law	Attorney General; County Prosecutor; bar associations & private individuals by private civil lawsuit without immunity.	The organization/ individual who prosecutes.	N/A
RI	-	-	-	-	-	-	-	-
SC ²⁴	Yes	Statute; Case Law	See Below ^{xii}	Statute; Case Law	Statute – S.C. Code §40-5-310 & 40-5-320	Attorney General; County Prosecutor	See Below ^{xiii}	This would be part of the general budgets of the agencies responsible for enforcement

^{xii} - not really – statute which makes it a felony to practice law without being sworn and admitted in this state – Our Court has determined that the “better course is to decide what is and what is not the unauthorized practice of law in the context of an actual case or controversy.” *(In Re Unauthorized Practice of Law, 309 S.C. 304, 422 S.E. 2d 123 (1992))*.

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
SD	-	-	-	-	-	-	-	-
TN	-	-	-	-	-	-	-	-
TX	-	-	-	-	-	-	-	-
UT ²⁵	Yes	Case Law; Supreme Court rule pending	No	N/A	Rule; Formerly Legislative	State Bar Counsel; State Bar Committee; In conjunction with governing board approval	The Bar	Varies – as reasonably determined
VT	-	-	-	-	-	-	-	-

^{xiii} Good question. The AG and local prosecutors are the enforcement agencies, if their budgets permit; they cover the costs associated with criminal enforcement. The Supreme Court has encouraged interested parties to bring actions in their original jurisdiction to determine if an activity is UPL. In most cases, those actions are funded by the individual who feels that they have been harmed. Criminal enforcement can be brought by the AG or the local solicitor (prosecutor), but their budgets are dictated by state and county funding issues. The Bar has recently proposed to the Court the creation of a Supreme Court Commission on UPL which would have the authority to seek civil, injunctive relief on behalf of the citizens of South Carolina who have been victims of UPL. In addition, the Office of Disciplinary Counsel of the Supreme Court Commission on Lawyer conduct maintains jurisdiction over lawyers who have been suspended or disbarred and who continue to handle matters that are considered the practice of law.

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

STATE	Does your jurisdiction have a definition of practice law?	Source of Definition	Does your jurisdiction have a definition of the <u>unauthorized</u> practice of law	Source of Definition	<u>Enforcement Against UPL</u> Source of Enforcement Authority	Regulatory entity authorized to enforce the UPL Regulations	Who pays for UPL Enforcement	Annual Budget for UPL Enforcement
VA ²⁶	Yes	Rule	No	N/A	Rule; Statute	State Bar Committee; Attorney General; City/County Prosecutor	The Virginia Bar	\$5000
WA ²⁷	Yes	Rule; Advisory Opinion	Yes	Statute	Rule; Statute	Supreme Court Committee / Commission; County Prosecutor	WSBA pays for non-criminal enforcement	\$75,000
WV	Yes	Rule	Yes	Rule of Professional Conduct	State Bar by-law – Approved by supreme court.	State Bar Committee	State Bar – Budget Item	Part of “committees” line item
WI	-	-	-	-	-	-	-	-
WY ²⁸	Yes	Rule	No	N/A	Rule; Statute	State Bar Committee	Wyoming State Bar	\$100

¹ Supreme Court of Arkansas UPL Committee

² Office Disciplinary Counsel

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

-
- ³ DC Court of Appeals Committee on UPL
 - ⁴ The Florida Bar
 - ⁵ Consumer Protection Committee, Hawaii State Bar Association
 - ⁶ Idaho State Bar
 - ⁷ Indiana Supreme Court Disciplinary Commission
 - ⁸ Supreme Court Commission on the UPL
 - ⁹ Kentucky Bar Association
 - ¹⁰ Main Attorney General 's Office
 - ¹¹ Attorney Grievance Commission of Maryland
 - ¹² The Maryland Bar Center
 - ¹³ State Bar of Michigan
 - ¹⁴ Office of the Director of Lawyers Professional Responsibility (St. Paul, MN)
 - ¹⁵ The Mississippi Bar
 - ¹⁶ Missouri Office of Chief Disciplinary Counsel
 - ¹⁷ UPL Committee of Nebraska
 - ¹⁸ New Mexico State Bar, CAAP
 - ¹⁹ New York State Bar Association
 - ²⁰ Authorized Practice Committee of the North Carolina State Bar
 - ²¹ Oklahoma Bar Association
 - ²² Oregon State Bar
 - ²³ Pennsylvania Bar Association
 - ²⁴ South Carolina Bar
 - ²⁵ Utah State Bar
 - ²⁶ The Virginia State Bar
 - ²⁷ Washington State Bar Association
 - ²⁸ Wyoming State Bar

Copyright © 2004 American Bar Association. All rights reserved. Nothing contained in these charts is to be considered the rendering of legal advice. The charts are intended for educational and informational purposes only. We make every attempt to keep these charts as accurate as

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART I

possible. If you are aware of any inaccuracies in the charts, please send your corrections or additions and the source of that information to John Holtaway, (312) 988-5298, jholtaway@staff.abanet.org.