

Definition of the Practice of Law*

Rule 24. Rules Governing the Unauthorized Practice of Law.

Section 1. Unauthorized Practice of Law Prohibited.

Only an individual admitted to the practice of law and in good standing under the Indiana Rules For Admission to the Bar and The Discipline of Attorneys is authorized to engage in the practice of law in Indiana.

Section 2. Practice of Law Defined.

(a) General Definition. The practice of law is ministering to the legal needs of another person¹ for consideration given. This includes but is not limited to the following provided to another person:

- (1) Advice on a legal right;²
- (2) Negotiation or settlement of a legal right;³
- (3) Representation in a legal proceeding;⁴
- (4) Selection, preparation or completion of a legal document;⁵
- (5) Management of a law practice;⁶ or
- (6) Any other conduct determined to be the practice of law by the Indiana Supreme Court.⁷

Comment. Sub-section 2(a) is not intended to cover every day commercial transactions whereby there is no reasonable expectation that a company representative, in explaining the meaning of contracts and terms to a customer, is representing or “ministering to the legal needs” of anyone other than the representative’s company. An example of such a situation would be where an apartment leasing agent explains the terms of a leasing agreement to a customer. Sub-section 2(a)(5) is not intended to include management supervision by non-lawyers in a law firm (such as a law firm administrator) that are carried out under the overall direction and supervision of a lawyer or a committee of lawyers in that law firm.

*Proposed as an amendment to Adm. & Disc. Rule 24.

¹ Miller v Vance, 463 N.E. 2d 250 (Ind. 1984); citing Matter of Perrello, 386 N.E. 2d 174 (Ind. 1979).

² Id., Pearson v Gould, 437 N.E. 2d 41 (Ind. 1982); and Fink v Peden, 17 N.E. 2d 95 (Ind. 1938).

³ Professional Adjusters, Inc. v Tandon, 433 N.E. 2d 779 (Ind. 1982); and Fink v Peden, supra.

⁴ Disciplinary Commission v Crofts, 500 N.E. 2d 753 (Ind. 1986); citing Fink v Peden, supra; which cited Eley v Miller, 34 N.E. 836 (Ind. 1893).

⁵ Stern v State Board of Law Examiners, 199 N.E. 2d 850 (Ind. 1964); citing State ex rel Indiana State Bar Association v Indiana Real Estate Association, Inc., 191 N.E. 2d 7111 (Ind. 1963); Gary Bar Association v Dudak, 127 N.E. 2d 522 (Ind. 1955); State ex rel Indiana State Bar Association v Osborne, 172 N.E. 2d 434 (Ind. 1961); Fink v Peden, supra; and Eley v Miller, supra

⁶ Matter of Thonert, 693 N.E. 2d 559 (Ind. 1998).

⁷ Matter of Contempt of Mittower, 693 N.E. 2d 555 (Ind. 1998).

(b) Permitted Non-lawyer Activity. Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law⁸, is permitted:

- (1) Sale of a legal document form previously approved by a lawyer in any format;
- (2) Selection of and/or completion of a legal document previously approved by a lawyer by filling in the blanks where that activity requires only common knowledge regarding the required information and general knowledge of the legal consequences;⁹

Comment. Sub-section 2(b) covers not only for-profit entities, but also non-profit and governmental entities such as county clerks and other governmental employees who as part of their official duties assist individuals with the selection and completion of various types of governmental and legal forms. In Sub-section 2(b)(1), the term “legal form document” also includes form books and interactive software and the term “approved by a lawyer” is meant to include not only forms drafted by a lawyer, but also forms prepared by a non-lawyer, but approved by a lawyer before their general use. In sub-section 2(b)(2), in selecting or completing any legal form for another, where consideration of significant legal refinement is involved or the legal consequences are of great significance to the parties involved, a lawyer is required.¹⁰

- (3) Representation of another person before an administrative agency if:
 - (i) the non-lawyer is authorized to provide representation pursuant to the administrative agency’s written rules;
 - (ii) the representation does not involve a claim that the agency action or action of another person is illegal as a matter of law or unconstitutional;
 - (iii) the representation does not involve any other practice of law;
 - (iv) the non-lawyer discloses in writing to the person represented that the non-lawyer is not a lawyer, can not present legal arguments, can not address legal issues and legal issues, if not raised properly, may not be raised at a later stage;
 - (v) the represented person signs the disclosure; and
 - (vi) the disclosure is filed with the administrative agency.¹¹
 - (vii) To the extent pre-empted by federal law on non-lawyer representation the disclosure requirements of subparagraphs (iv), (v) and (vi) above do not apply.

⁸ Matter of Contempt of Mittower, supra.

⁹ State ex rel Indiana State Bar Association v Indiana Real Estate Association, Inc., supra.

¹⁰ *Id.*

¹¹ State ex rel Indiana State Bar Association v Miller, v (Ind. 2002); Pearson v Gould, supra.,

- (4) Participation in a neutral capacity as a mediator, arbitrator, conciliator or facilitator;
- (5) Participation in a labor negotiation, arbitration or conciliation arising under a collective bargaining right or agreement;
- (6) Participation as a registered legislative lobbyist or requesting legislative change;
- (7) Activity by a paralegal, legal assistant or other employee of a lawyer pursuant to the Indiana Rules of Professional Conduct 5.3 and 9.1 to 9.10;
- (8) Activity by an employee for the exclusive benefit of the employer provided that the employee:
 - (i) does not engage in the “practice of law” as defined in this rule for persons or organizations other than the employee’s employer;
 - (ii) at all times in question, works exclusively for the employer on a permanent full time or permanent part-time basis;
 - (iii) does not select, prepare or complete a legal document for the employer except as provided in Section 2(b)(2) of this rule;
 - (iv) does not represent the employer in a legal proceeding except as provided for in Section 2(b)(3) of this rule or by any rule of this court;

Comment. Sub-section 2(b)(8) is intended to cover both employees of private entities including businesses and private and public organizations and associations and governmental entities.

(9) Activity determined by the Indiana Supreme Court to be permissible activity for a non-lawyer.

(c) Definition of Specific Terms.

(1) Administrative Agency. “Administrative Agency” includes local, state and federal agencies.

(2) Consideration. “Consideration” means any direct payment of money or indirect payment by way of an exchange of goods or services. Consideration does not include the payment of dues or fees to organizations or associations unless the payment of dues or fees is principally used to carry out the practice of law as defined in Section 2(a).

(3) Lawyer. “Lawyer” means an individual admitted to the practice of law in Indiana and in good standing under the Indiana Rules for Admission to the Bar and The Discipline of Attorneys.

- (4) Legal Document. “Legal document” means a document, in any format, that affects a legal right of a person.
 - (5) Legal Proceeding. “Legal Proceeding” means a local, state or federal proceeding in a court, an alternative dispute resolution, an administrative agency, a tribunal, or any other formal or informal dispute resolution process.
 - (6) Legal Right. “Legal Right” means any right provided by law. It includes but is not limited to a legal duty, a legal responsibility, a legal remedy and the content of a legal document.
 - (7) Non-lawyer. “Non-lawyer” means a person not a lawyer.
 - (8) Person. “Person” means an individual, fiduciary, estate, trust, corporation, limited liability company, limited liability partnership, limited partnership, partnership, political subdivision or any private or public entity or organization.
- (d) Professional Standards. Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

Section 3. Enforcement.

- (a) Original actions, pursuant to enforcement of this Rule or under I.C. 33.2-3-1, to restrain or enjoin the unauthorized practice of law in this state may be brought:
 - (1) in this court by the attorney general, the Indiana Supreme Court Disciplinary Commission, the Indiana State Bar Association or any duly authorized committee thereof, or
 - (2) in a Circuit Court of this state by any duly organized local bar association.
- (b) The action against any person, firm, association or corporation, shall be brought by verified petition, in the name of the state of Indiana, on the relation of the authorized person or association or committee, and shall charge specifically the acts constituting the unauthorized practice.
- (c) Within time allowed, a respondent may file a verified return showing any reason in law or fact why an injunction should not issue. No other pleading in behalf of a respondent will be entertained. All allegations of fact in the petition and return shall be specific and not by way of ultimate fact or conclusion. The return shall specifically deny or admit each allegation of fact in the petition, and it may allege new facts in mitigation or avoidance of the causes alleged in the petition.
- (d) The parties shall file an original and five [5] copies of all pleadings, including exhibits, plus an additional copy for each adverse party. If any exhibit shall be a matter of public record one [1] certified copy thereof shall be filed with the original petition or return. No

pleading or exhibit thereto will be considered which has words or figures on both sides of the same sheet of paper.

- (e) No restraining order will issue without notice except upon the filing of an undertaking with conditions and surety to the approval of the court. Notice of the filing of the petition will be given and served upon any respondent as may be directed by the court, such notice to be accompanied by a copy of the petition. The clerk will mail a copy of any return to the relator.
- (f) The verified petition and return shall constitute the evidence upon which the issues are decided, unless the court shall deem it necessary to, and shall appoint, a commissioner, in which event such commissioner, who shall have full authority to subpoena witnesses and records, shall hear the evidence and report his findings of fact to the court.
- (g) Any duly authorized party filing an original action pursuant to this Rule shall be immune from civil suit for any statements or allegations made in conjunction with the filing of an original action.
- (h) Appeals taken from any Circuit Court decision shall be filed in this court.
- (i) Briefs filed in this court need not conform to requirements of [Appellate Rules 43- 48](#). Arguments will not be heard as of right.
- (j) The costs and expenses incurred by such hearing shall be borne by the losing party.

Section 4. Immunity.

Entities and their representatives and employees duly authorized to enforce this Rule pursuant to Section 3(a) are absolutely immune from suit for all conduct, including statements made, in the course of their investigations and enforcement of this Rule.