INTRODUCTION

The ABA Standing Committee on Client Protection conducted a survey on unlicensed practice of law programs in United States jurisdictions in 2011-12. This is the fourth survey the Committee has undertaken on the unauthorized or unlicensed practice of law since it published the 1994 Survey and Related Materials on the Unauthorized Practice of Law/Nonlawyer Practice. Previous surveys were completed in 1999, 2004, and 2009. The results of the survey are provided to courts, bar associations, lawyers, and members of the public and news media nationwide. Questionnaires were sent electronically to all jurisdictions in the United States.

The Committee received responses from twenty-nine jurisdictions. Where available, responses from the 2009 Survey were incorporated for those jurisdictions that failed to respond to the 2012 questionnaire. The following jurisdictions did not submit responses in 2009 or 2012: Georgia, Kansas, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, Rhode Island, and South Carolina.

RESULTS OF THE 2012 UNLICENSED PRACTICE OF LAW SURVEY

Current Enforcement Activity

Several jurisdictions have more than one entity responsible for UPL enforcement. Twenty-three jurisdictions actively enforce UPL regulations, although some jurisdictions indicate that insufficient funding or resources make enforcement challenging. Nine jurisdictions stated that enforcement is inactive or non-existent.

The majority of responding jurisdictions have definitions for both the “practice of law” and the “unauthorized practice of law”. “Practice of law” definitions are established by court rule in sixteen jurisdictions, by statute in fourteen, through case law in twenty-three, and through advisory opinions in three jurisdictions. Many jurisdictions have definitions in more than one resource, such as Illinois, which has practice definitions in case law, statute, and advisory opinion. “Unauthorized practice of law” definitions usually are found either in statutes (seventeen jurisdictions), through a court rule (fifteen jurisdictions) or some combination of statute, rule, case law and advisory opinion.

Enforcement authority against UPL is established by court rule in twenty-three jurisdictions, by statute in twenty-nine. Most responding jurisdictions report enforcement authority by both statute and court rule. In most jurisdictions there are two or more authorities authorized to enforce UPL regulations, including states attorneys general, state bar committees/counsel, state supreme court committees/commissions, and local and county attorneys. UPL enforcement in the majority of the responding jurisdictions is
funded through bar association dues or lawyer assessments or the state supreme court. Most jurisdictions either do not have a specific annual expenditure for UPL enforcement or were unaware of the exact amount. The Florida Bar continues to lead the country in funding UPL enforcement, spending approximately $1.6 million annually. Other jurisdictions providing a significant budget for enforcement are Ohio, Nebraska, and Texas.

The penalties/sanctions for UPL violations that are available to enforcement authorities include (by number of responding jurisdictions): civil injunctions (32), criminal fines (24), prison sentence (20), civil contempt (22), restitution (16), and civil fines (13). Other remedies may be available. Most jurisdictions have several available remedies.

**Authorized Nonlawyer Practice**

Twenty-one jurisdictions authorize nonlawyers to perform some legal services in limited areas. Sixteen permit legal assistants, legal technicians or paralegals to perform some legal services under the supervision of a lawyer; six jurisdictions permit nonlawyers to draft legal documents. Other allowable nonlawyer activities include: real estate agents/brokers may draft documents for property transactions or attend real estate closings; nonlawyers may attend (and in some states *participate* in) administrative proceedings; and participate in alternative dispute resolution proceedings. Many of these jurisdictions do not classify these activities as the practice of law.

**Disbarred/Suspended Lawyers**

The survey also asked questions regarding the law-related activities of disbarred lawyers. Twenty-two responding jurisdictions permit disbarred lawyers to engage in law-related activities while disbarred. Usually the disbarred lawyer’s conduct is regulated by court rules or case law that defines the supervision necessary for the disbarred lawyer working for a lawyer.

**The Future: What’s on the Horizon?**

Ten jurisdictions (of those responding to the 2012 questionnaire) responded that they expect changes in UPL in the coming year. Those jurisdictions contemplate adopting additional rules, changes to pro hac vice rules, more active enforcement, dedicated investigative staff, issuing advisory opinions, changes in the procedures for enforcement, and increasing penalties.

If you have any questions regarding the 2012 Survey of UPL Committees, please contact Selina Thomas at [selina.thomas@americanbar.org](mailto:selina.thomas@americanbar.org) or 312/988-6721.

Janet Green Marbley, Chair  
Standing Committee on Client Protection  
March 2012