

American Bar Association
Standing Committee on Client Protection

2004 Survey of Unlicensed Practice of Law Committees

INTRODUCTION

Results of the 2004 Unlicensed Practice of Law Survey

The ABA Standing Committee on Client Protection sponsored a survey on unlicensed practice of law during 2004. Questionnaires were sent to all jurisdictions in the United States. The following 36 jurisdictions responded: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Virginia, Washington, West Virginia and Wyoming. Several jurisdictions have more than one entity responsible for UPL enforcement.

Current Enforcement Activity

Twenty-three jurisdictions actively enforce UPL regulations, although some jurisdictions indicate that insufficient funding makes enforcement difficult. Ten jurisdictions stated that enforcement is inactive or non-existent. For example, because of limited resources, California reported that it only investigates a few UPL cases per year.

The majority of responding jurisdictions has definitions for both the “practice of law” and “unauthorized practice of law”. “Practice of law” definitions are established by court rule in thirteen jurisdictions, by statute in five, through case law in six, and through advisory opinions in two jurisdictions. Some jurisdictions have definitions in more than one resource, such as Idaho, which has practice definitions in a court rule, case law, and in an advisory opinion. “Unauthorized practice of law” definitions usually are found either in statutes (seven jurisdictions) or through a court rule (ten jurisdictions).

Enforcement *authority* against UPL is established by court rule in 11 jurisdictions, by statute in 14 and by a statute and court rule in ten jurisdictions. In many jurisdictions there are two or more authorities authorized to enforce UPL regulations, including states attorneys general, private individuals (PA), state bar committees/counsel, 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. Most jurisdictions either do not have a specific annual expenditure for UPL enforcement or were unaware of the exact amount. The Florida Bar leads the country in funding UPL enforcement, spending approximately \$1.4 million annually.

The penalties/sanctions for UPL violations that are available to enforcement authorities include (by number of responding jurisdictions): civil injunctions (30), criminal fines (25), prison sentence (22), civil contempt (20), restitution (15), civil fines (8), and cease and desist orders (3). Most jurisdictions have several remedies.

Fifteen jurisdictions prosecute UPL cases through state bar committees or bar counsel, while other jurisdictions (17) use attorney generals, county attorneys, or district attorneys. Ten jurisdictions have supreme court committees/commissions established to enforce UPL regulations. Many jurisdictions prosecute UPL cases through multiple entities.

Authorized Nonlawyer Practice

Twenty-one jurisdictions authorize nonlawyers to perform some legal services in limited areas. Sixteen permit legal assistants to perform some legal services under the supervision of a lawyer, seven jurisdictions permit nonlawyers to draft legal documents, eight jurisdictions allow real estate agents/brokers to draft documents for property transactions, one allows law students to perform some legal services and at least twelve jurisdictions permit nonlawyers to attend (and in some states *participate* in) administrative proceedings. However, of the jurisdictions that permit nonlawyer practice, fifteen do not regulate or license the nonlawyers.

Disbarred/Suspended Lawyers

The survey also asked questions regarding the law-related activities of disbarred lawyers. Sixteen 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 define the supervision necessary for the disbarred lawyer working for a lawyer.

The Future: What's on the Horizon?

Nineteen jurisdictions responded that they expect changes in UPL in the coming year. Those jurisdictions contemplate more active enforcement, an increased budget for enforcement, hiring more staff and changes in the procedures for enforcement. Six jurisdictions responded that they are in the process of adopting a definition of the unlicensed practice of law.

Robert D. Welden, Chair
Standing Committee on Client Protection
December 2004



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.

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							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

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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 per se but test established by case law	N/A	No definition per se 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.

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				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

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LA	Yes	Rule; Statute; 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

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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

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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).

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						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

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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))*.

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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.

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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

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- 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

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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.



2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART II

STATE	Amount includes	Remedies /Sanctions available against someone engaged in the UPL?	How active is jurisdiction in enforcing the UPL regulations?	Does your jurisdiction permit any nonlawyer practice?	If nonlawyer practice is permitted, is it regulated/licensed? By?	Nonlawyers may engaged in the following:	May disbarred or suspended lawyers engage in a law related activity?	Source of jurisdictions position on disbarred/suspended lawyer practice?	Is your jurisdiction contemplating any change in it's UPL regulations, enforcement activity or authority?
AL	N/A	Civil injunction; Civil contempt; Civil fine; Criminal fine	Active	No	N/A	ⁱ See Below	No	Rule	No
AK	N/A	Criminal fine; prison sentence	Non-existent	Yes	No	Attend administrative proceedings; Give legal advice; Negotiate legal matters.	Yes – But very limited, see bar rule 15(b) and (c).	Rule	Yes – Alaska will attempt another effort to have the supreme court adopt a UPL definition for injunctive purposes.
AZ	Salaries/benefits; equipment/supplies; travel/education /training	Civil injunction; civil contempt; restitution	Active- Our ability to enforce UPL rules is relatively new; we began to file cases in April 2004.	Yes –Legal Asst./Paralegals under supervision of an attorney; Document preparers.	Yes. State Bar; Supreme Court; Other regulatory Entity/Board.	ⁱⁱ See Below	Yes	Rule	No- Because the UPL regulatory procedure is relatively new, the Bar is continuing to monitor its effectiveness and will probably offer changes as required.

ⁱ Attend administrative proceedings; Attend real estate closings; Participate in state administrative proceedings; Participate in alternative dispute resolution proceedings.

ⁱⁱ There are exceptions to Arizona Supreme Court Rule 31 that provides only that persons who are members of the State Bar of Arizona may practice law. These exceptions permit limited types of conduct and appearances by nonlawyers in certain administrative or ADR proceedings under special limited circumstances.

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AR ¹	Equipment/Supplies; Travel/Education/ Training	Civil Injunction; Civil Contempt; Cease and Desist order	Active	ⁱⁱⁱ See Below	No	Participate in state administrative proceedings.	No	Rule	The Committee is considering complete revision of its operating procedures.
CA	Yes – Salaries; space; equipment/ supplies; travel/education/ training.	Civil Injunction; Criminal Fine; Prison; Restitution	^{iv} See Below	Yes – Legal Assistants/ Paralegals under the supervision of an attorney; Document preparers;	No	^v See Below	Yes	Rule	No
CO	No	Civil Injunction; Civil Contempt; Civil Fine; Criminal Fine; Prison; Restitution	Active	Yes – Legal Assistants/ Paralegals under the supervision of an attorney	No	See Below ^{vi}	Yes	Rule; Advisory Opinion	Yes – We are considering a rule definition of practice of law revisions to enforce, other ideas

ⁱⁱⁱ Yes – Legal Assistants/Paralegals under the supervision of an attorney; Document preparers - only in bankruptcy through federal court sanctioned activity

^{iv} Not Active – we are limited to investigating UPL at the State Bar and turning the investigation over to law enforcement for prosecution. Because of resource limitations we investigate only a few cases each year.

^v Attend administrative proceedings; Attend real estate closings; Participate in state administrative proceedings; Participate in alternative dispute resolution proceedings.

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CT ²	N/A	^{vii} See Below	Active	^{viii} See Below	No – except foreign legal consultants who are licensed by bar examining committee of judicial branch	^{ix} See Below	Yes	As it is not expressly forbidden they have same rights as any other member of the public.	Bar association is beginning to discuss whether some rules/statutes should be changed- but bar is split - 1/2 are against expansion, 1/2 want it wide open.

^{vi} Attend administrative proceedings; Attend real estate closings; Participate in state administrative proceedings; Participate in alternative dispute resolution proceedings.

If authorized by the administrative Agency or ADR rules.

^{vii} Civil Injunction; Civil Contempt; Criminal Fine; Prison; Often includes other criminal charges – larceny fraud.

^{viii} Yes – Legal Technicians; Legal Assistants/ Paralegals under the supervision of an attorney; Document preparers; Bank trust officers, accountants, foreign legal aid.

^{ix} Attend administrative proceedings; Participate in state administrative proceedings; Participate in alternative dispute resolution proceedings; bank trust officers can prepare tax returns, probate paperwork.

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DE	N/A	Other ^x	N/A	No – not for “practice of law” – law related activities permitted with preference for direct supervision by lawyer.	No	No	Yes- but frequently Supreme Court sanctions order prohibits contact with clients/witness as paralegal or law clerk and even if not explicit, such contact is discouraged.	Case Law	Yes – Ongoing review/consideration re: definition of UPL; remedies and procedures for enforcement.
DC ³	N/A	Civil Injunction; Restitution	^{xi} See Below	Yes – Document preparers; Exceptions for nonlawyers to the general rule that only lawyers can engage in the practice of law are set forth in Rule 49(c).	Yes – Federal and D.C. agencies to extent they permit nonlawyers to practice before them; Other Regulatory Entity/Board	^{xii} See Below	The D.C. disciplinary system, not the Committee on UPL enforces restrictions on activity by disbarred and suspended lawyers.	The D.C. disciplinary system enforces restrictions on activity by disbarred and suspended lawyers.	Yes – The D.C. Bar has established on multijurisdictional practice to consider changes to Rule 49 in light of the changes to the ABA Model Rules relating to multijurisdictional practice.

^x Supreme court order of voluntary compliance (UPL Rule 14) or determining UPL has occurred plus costs. Order is enforceable thru contempt proceeding before Supreme Court UPL (Rule 19)

^{xi} Active- The Committee of UPL regularly investigates individuals who may have engaged in the unauthorized practice of law. Most investigations are resolved by consent agreements.

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FL ⁴	Salaries/benefits; Space; Equipment/supplies; Travel/education /training; All functions of bar UPL staff and committees	Civil Injunction; Civil Contempt; Civil Fine; Criminal Fine; Prison; Restitution	Active	^{xiii} See Below	Yes – (Regulated) State Bar; Supreme Court.	^{xiv} See Below	Yes – law type activities only	Rule; Case Law	No – Criminal penalty recently raised to felony – if bill signed, becomes effective Oct. 1, 2004.
GA	-	-	-	-	-	-	-	-	-
HI ⁵	N/A	Civil Injunction; Civil Contempt; Civil Fine; Criminal Fine; Prison; Restitution	Active – State Attorney General's office has, in recent years actively investigated and prosecuted UPL cases	See Hawaii Revised Statutes 605-13 and 633-28	No	N/A	No	Rule	Yes –The Hawaii State Legislature. Hawaii State Bar Assn and Hawaii Supreme Court Ethics 2000 Committee are all addressing UPL Issues as well as the need for a practice of law definition.

^{xii} Attend administrative hearing; Pretrial activities; Give legal advice; Negotiate legal matters; Appear in court; Participate in state administrative proceedings; Participate in alternative dispute resolution proceedings; The scope of permitted practice by nonlawyers (for example, by employees, or before federal and local administrative agencies) is set forth in the exceptions in Rule 49(c).

^{xiii} Yes – (to a limited extent) Yes -Legal technicians; Legal Assistants/ Paralegals under the supervision of an attorney; Certain licensed individuals may engage in certain activities

^{xiv} Attend administrative proceedings (if qualified by hearing officer); Attend real estate closings; Participate in state administrative proceedings.

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ID ⁶	Salaries/Benefits; Space; Equipment/supplies; Travel/education/training	Civil Injunction; Civil Contempt; Criminal Fine; Prison; Restitution	Active – Not as active as other disciplinary actions.	Legal technicians; Legal Assistants/ Paralegals under the supervision of an attorney; Document prepareres; Depends on extent of work done	No	Attend administrative proceedings; Participate in alternative dispute resolution proceedings;	No – They cannot practice law	N/A	Yes – Idaho Rules of Professional Conduct 5.5 was revised and the revision will be effective on July 1, 2004.
IL	-	-	-	-	-	-	-	-	-
IN ⁷	N/A	Civil Injunction; Civil Contempt; Criminal Fine; Prison; Restitution	State Bar has filed a few cases. Disciplinary Commission has filed a few or resolved	No – unless authorized by federal law.	N/A	Attend real estate closings	No	Rule	Yes – State bar proposal pending (or soon to be submitted) to state submitted court.

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART II

STATE	Amount includes	Remedies /Sanctions available against someone engaged in the UPL?	How active is jurisdiction in enforcing the UPL regulations?	Does your jurisdiction permit any nonlawyer practice?	If nonlawyer practice is permitted, is it regulated/licensed? By?	Nonlawyers may engaged in the following:	May disbarred or suspended lawyers engage in a law related activity?	Source of jurisdictions position on disbarred/suspended lawyer practice?	Is your jurisdiction contemplating any change in it's UPL regulations, enforcement activity or authority?
IA ⁸	Salaries/Benefits; Equipment/ Supplies Travel/education/ Training; Investigation and Prosecution.	Civil Injunction	informally. ^{xv} See Below	Yes – Legal Assistants/ Paralegals under the supervision of an attorney; Document preparers;	No	Attend administrative proceedings; Attend real estate closings; Participate in state administrative proceedings.	No	Case Law; Advisory Opinion	We are in the process of hiring a ¼ time investigator.
KS	-	-	-	-	-	-	-	-	-
KY ⁹	N/A	Civil Contempt	Active – We actively investigate the UPL and routinely send out cease and desist letters.	No	N/A	N/A	No	Advisory Opinion	No
LA	N/A	Criminal Fine; Prison	The Bar does not enforce UPL unless by a suspended or disbarred	No	No	N/A	No	Rule; S.Ct. Rule 19	No

^{xv} Active – we have a commission of 25, meet 6x yearly, open approx. 3 dozen files per year, obtain “cease and desist” agreements in most cases and prosecute otherwise w/ assistance of Attorney General who provides one attorney on an as needed basis.

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			lawyers						
ME ¹⁰	N/A	Criminal Fine; Prison	Active	^{xvi} See Below	No	^{xvii} See Below	No	Rule	No
MD ¹¹	N/A	^{xviii} See Below	Active	No	N/A	N/A	No	Rule; Case Law	No
MD ¹²	N/A	Civil Injunction; Criminal Fine; Prison; Civil Suit for misrepresentation/deceit.	Active; Bar Counsel	Yes – Legal Assistants/ Paralegals under the supervision of an attorney.	Yes. Court of Appeals.	N/A	No	Statute	Contemplating but no direct action underway.
MA	-	-	-	-	-	-	-	-	-
MI ¹³	Equipment/supplies; Travel/education/ training	Civil Injunction; Civil Contempt	Active	^{xix} See Below	No	^{xx} See Below	Yes	N/A	Yes – The State Bar of Michigan plans on directing more resources to educational / outreach efforts to address UPL problems.

^{xvi} Yes – Maine’s statute makes general exceptions especially for persons represent; State agencies in certain circumstance

^{xvii} Attend administrative proceedings; Appear in court; Participate in state administrative proceedings.

^{xviii} Civil injunction; Criminal fine; Prison (if prosecuted by local state’s attorney

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART II

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MN ¹⁴	N/A	Civil Injunction; Criminal Fine; Prison; Restitution	Not Active	^{xxi} See Below	No	Prepare pleadings/wills /other legal documents	Yes	Rule; Case Law	Yes – Possible changes to Rule 5.5 as part of MJP review
MS ¹⁵	N/A	Civil Injunction; Criminal Fine; Prison; Restitution	^{xxii} See Below	No	N/A	N/A	No	Rule; Statute; Case Law; Advisory Opinion; See website for Advisory Opinions www.msbar.org	No
MO ¹⁶	N/A	Civil Injunction; Criminal Fine	Not Active	Yes – Legal Assistants/ Paralegals under the supervision of an attorney	No	^{xxiii} See Below	Yes	Case Law	^{xxiv} See Below

^{xix} Yes – Legal Assistants/ Paralegals under the supervision of an attorney; Non-lawyer representation in certain administrative agency proceedings

^{xx} Attend administrative proceedings; Participate in state administrative proceedings; Non-lawyers may appear on behalf of third parties in administrative agency proceedings if the legislature has so authorized. Under the new Dressel decision, non-lawyers may complete or draft documents that do not require the use of legal discretion or profound legal knowledge.

^{xxi} Yes – Legal Assistants/ Paralegals under the supervision of an attorney; law student practice inder supervision of licensed attorney.

^{xxii} The UPL Committee for the Mississippi Bar investigates claims and if it is determined the UPL has occurred, will issue a Cease and Desist Order and notify the appropriate District or County attorney of the activity for that office to prosecute under their Statutory Authority if they so choose.

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART II

STATE	Amount includes	Remedies /Sanctions available against someone engaged in the UPL?	How active is jurisdiction in enforcing the UPL regulations?	Does your jurisdiction permit any nonlawyer practice?	If nonlawyer practice is permitted, is it regulated/licensed? By?	Nonlawyers may engaged in the following:	May disbarred or suspended lawyers engage in a law related activity?	Source of jurisdictions position on disbarred/suspended lawyer practice?	Is your jurisdiction contemplating any change in it's UPL regulations, enforcement activity or authority?
MT	-	-	-	-	-	-	-	-	-
NE ¹⁷	N/A	^{xxv} See Below	^{xxvi} See Below	No	N/A	^{xxvii} See Below	No	Rule; Case Law	Yes – We are making a concise definition.
NV	-	-	-	-	-	-	-	-	-
NH	-	-	-	-	-	-	-	-	-
NJ	N/A	Civil Injunction; Criminal Fine; Prison; Cease and desist agreements	Active	Yes – Legal Assistants/ Paralegals under the supervision of an attorney	Yes – Supreme Court	Attend administrative proceedings; Appear in court; Participate in state administrative proceedings; Participate in alternative dispute resolution	No	Rule	No

^{xxiii} Attend administrative proceedings; Participate in state administrative proceedings; Participate in alternative dispute resolution proceedings.

^{xxiv} Yes – We would like to take enforcement actions, but currently lack the funds to do so. We have recently proposed a fee increase that would allow us to direct a portion of our budget to the prosecution of the UPL and would allow us to hire additional staff for investigation of these matters.

^{xxv} Civil Injunction; Civil contempt; Civil fine; Criminal fine.

^{xxvi} We have been slack in Nebraska but that is changing to being more active

^{xxvii} Attend Administrative proceedings; Attend real estate closings; Participate in State administrative proceedings; Participate in alternative dispute resolution proceedings.

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART II

STATE	Amount includes	Remedies /Sanctions available against someone engaged in the UPL?	How active is jurisdiction in enforcing the UPL regulations?	Does your jurisdiction permit any nonlawyer practice?	If nonlawyer practice is permitted, is it regulated/licensed? By?	Nonlawyers may engaged in the following:	May disbarred or suspended lawyers engage in a law related activity?	Source of jurisdictions position on disbarred/suspended lawyer practice?	Is your jurisdiction contemplating any change in it's UPL regulations, enforcement activity or authority?
NM ¹⁸	N/A	Civil Injunction; Criminal Fine; Prison; possible disciplinary action taken against attorneys who are not licensed to practice in NM.	Not Active ^{xxviii}	No	Yes- Supreme Court	Attend administrative proceedings; Attend real estate closings Participate in state administrative proceedings; Participate in alternative dispute resolution proceedings.	No	Rule	Yes - Currently our State Bar is in the process of drafting a definition of "practicing law" and also reviewing enforcement practices and how to make the rules/statute more effective.
NY ¹⁹	N/A	Civil Injunction; Criminal Fine; Prison	Not Active	Yes – Legal Assistants/ Paralegals under the supervision of a lawyer	No	N/A	No	Rule; Statute; Case Law	No
NC ²⁰	^{xxix} See Below	^{xxx} See Below	Active	^{xxxi} See Below	No	Attend real estate closings	Yes	Rule; Statute	No

^{xxviii} The NM State Bar does investigate UPL complaints through its Client Attorney Assistance Program (CAAP). CAAP investigates & if appropriate, sends "cease and desist letters.

^{xxix} Salaries/Benefits; Space; Equipment/ supplies; Travel/ education/training;

^{xxx} Civil Injunction; Civil Contempt; Criminal Fine; Prison; Restitution

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART II

STATE	Amount includes	Remedies /Sanctions available against someone engaged in the UPL?	How active is jurisdiction in enforcing the UPL regulations?	Does your jurisdiction permit any nonlawyer practice?	If nonlawyer practice is permitted, is it regulated/licensed? By?	Nonlawyers may engaged in the following:	May disbarred or suspended lawyers engage in a law related activity?	Source of jurisdictions position on disbarred/suspended lawyer practice?	Is your jurisdiction contemplating any change in it's UPL regulations, enforcement activity or authority?
ND	-	-	-	-	-	-	-	-	-
OH	-	-	-	-	-	-	-	-	-
OK ²¹	N/A	Civil Injunction; Civil Contempt	Not Active	No	No	Attend administrative proceedings	Yes – as a clerk or paralegal	Case Law; Advisory Opinion	Perhaps – We contemplate greater enforcement of UPL but it's not a priority given budgetary and personnel constraints.
OR ²²	N/A	Civil Injunction; Civil Contempt; Civil Fine; Criminal Fine; Prison; Restitution	Active	Yes – Legal Assistants/ Paralegals under the supervision of a lawyer	Yes – Bankruptcy court regulates document preparers.	Participate in alternative dispute resolution proceedings	Yes – But only to the same extent a non-lawyer could, i.e. acting under the direction of a licensed lawyer or without supervision as a scrivener.	Case Law	No
PA ²³	-	Civil Injunction;	Attorney General's	No	-	-	Yes – under supervision of a	Rule	No

^{xxx} Yes – Legal Assistants/ Paralegals under the supervision of an attorney

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		Civil Contempt; Civil Fine; Criminal Fine; Prison; Restitution	Office, various D.A.'s various County Bar Associations, private individuals				licensed lawyer (not with anyone previously associated with); must be "non-attorney" work		
RI	-	-	-	-	-	-	-	-	-
SC ²⁴	N/A	Civil Injunction; Civil Contempt; Civil Fine; Criminal Fine; Prison; Restitution	^{xxxii} See Below	No. UPL Rules, lists some exceptions to UPL regulations	N/A	^{xxxiii} See Below			
SD	-	-	-	-	-	-	-	-	-
TN	-	-	-	-	-	-	-	-	-

^{xxxii} Not Active- sporadic. There have been some UPL actions brought by either the AG or local solicitors Office(and one recent disciplinary action), but they are probably the exception rather than the rule. Enforcement is somewhat limited

^{xxxiii} Participate in state administrative proceedings – if allowed by agency; Participate in alternative dispute resolution proceedings – Court annexed ADR program rules specify that non-lawyers who are certified may serve as mediators in family court; certification is set by ADR rule and requires licensing in another profession as well as training – limited number of non-lawyer professions eligible for certification for court annexed ADR program – community mediation centers may use non-lawyers for their programs.

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TX	-	-	-	-	-	-	-	-	-
UT ²⁵	No	Civil Injunction; Civil Contempt only if repeated offenses	Active	No	N/A	Attend administrative proceedings ; Attend real estate closings; Participate in state administrative proceedings; participate in alternative dispute resolution proceedings	Yes	Policy	Massive change on horizon by mid-summer. Utah Supreme Court Rule setting for the definition for what constitutes the practice of law and a list of exceptions for permitted conduct.
VT	-	-	-	-	-	-	-	-	-

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VA ²⁶	This amount is for expenses of the Standing Committee on the UPL . These expenses include miscellaneous and travel expenses for committee members for meetings.	Civil Injunction; Criminal fine; Prison	Active	No	N/A	Attend real estate closings; participate in state administrative proceedings; participate in alternative dispute resolution proceedings	Yes	Rule	Yes – The Bar is organizing a task force to study multijurisdictional practice. As part of this stud, the task force will be reviewing UPL rules and enforcement as part of this study.
WA ²⁷	Salaries/benefits; space; Equipment/supplies; Travel/education/ Training; Board expenses.	Civil Injunction; Civil Contempt; Civil Fine; Criminal Fine; Prison; Restitution; Cease and	Active – Practice of law board actively investigates complaints seeks cease and desist agreements,	Yes – Document prepares; Limited license to practice law by real estate closing officers	Yes- Other Regulatory entity Board	Attend administrative proceedings; Attend real estate closings; Participate in alternative dispute resolution proceedings	No	Rule; Case Law	No

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		desist agreements	refers cases to prosecuting attorneys.						
WV	No	Civil injunction	Active	Yes – Legal Assistants/Paralegal under supervision of an attorney.	Yes – regulated; State Bar.	Participate in alternative dispute resolution proceedings.	No	Rule; Case law.	No
WI	-	-	-	-	-	-	-	-	-
WY ²⁸	Equipment/supplies; phone cells	Civil Injunction; Civil Contempt	Active	No	N/A	N/A	No	Rule	No

¹ Supreme Court of Arkansas UPL Committee

² Office of Disciplinary Counsel - Connecticut

³ Office Disciplinary Counsel

⁴ The Florida Bar

⁵ Consumer Protection Committee, Hawaii State Bar Association

⁶ Idaho State Bar

⁷ Indiana Supreme Court Disciplinary Commission

2004 SURVEY OF UNLICENSED PRACTICE OF LAW COMMITTEES CHART II

- 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

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