

August 1, 2008

Understanding “Practice of Law” Issues

Overview

Q: What is the “practice of law” in Colorado?

A: The Colorado Supreme Court has defined the “practice of law” as “act[ing] in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting [another] in connection with these rights and duties.”¹ The Court’s words make clear that providing legal advice to another person constitutes the practice of law, as does the selection and drafting of legal documents for use by another person.^{2 3}

Thus, a non-lawyer generally cannot:

- 1) Provide legal advice to another person;
- 2) Select legal documents on behalf of another person;
- 3) Draft legal documents on behalf of another person;
- 4) Interpret the law as it may apply to another person’s situation;
- 5) Represent another person in any legal transaction or matter;
- 6) Prepare another person’s case for trial.

Q. Who may practice law in the state of Colorado?

A. Generally speaking, only licensed attorneys in good standing with the Colorado Supreme Court are allowed to practice law in Colorado.⁴ Qualifications for a Colorado law license include graduation from an accredited law school, passage of an extensive bar examination, and determinations of character and fitness by the Colorado State Board of Law Examiners.⁵

However, when it can be sufficiently established that Colorado consumers are protected, other individuals (even non-attorneys, in some cases) may be authorized under certain limited circumstances, to perform services that would constitute the practice of law.

¹ *People v. Shell*, 148 P.3d 162, 167 (Colo. 2006); *Denver Bar Ass’n v. Pub. Util. Comm’n*, 391 P.2d 467, 471 (Colo. 1964).

² *Shell*, 148 P.3d at 167 (explaining that the Court attempted to avoid any doubt about the activities that constitute the “practice of law” by enacting [C.R.C.P. 201.3](#), which provides a thorough “definition of what constitutes the practice of law which is supported by long-standing case authority...”). *See also*, *Denver Bar Ass’n*, 391 P.2d at 471 (holding that “there is no wholly satisfactory definition as to what constitutes the practice of law; it is not easy to give an all-inclusive definition...”).

³ *See C.R.C.P.* 201.3.

⁴ *People v. Shell*, 148 P.3d 162 (Colo. 2006).

⁵ *See C.R.C.P.* 201, *et seq.*

Q. What is the purpose of having rules that regulate the unauthorized practice of law?

- A. The primary purpose for regulating the practice of law is to protect the public from harm that may result from the activities of dishonest, unethical and incompetent providers of legal services,⁶ and to ensure that certain ethical duties to the client, the courts and the public, are adhered to (these duties include loyalty, competence, diligence and candor). Because the Colorado Supreme Court does not hesitate to suspend or revoke the license of an attorney who abuses the rules governing the practice of law in Colorado, the Court will likewise not permit an unlicensed person to commit acts that are likely to injure a legal client, are unethical or that prejudice the administration of justice.⁸

Q. As an out-of-state attorney, can I practice law in Colorado?

- A. Yes. See **C.R.C.P. 220** for the conditions in which an out-of-state attorney may practice law in Colorado. The primary conditions are that 1) the attorney must be licensed and on active status in another state; 2) the attorney must be a member in good standing of the bar of all courts and jurisdictions in which he or she is admitted to practice; 3) the attorney has not established domicile in Colorado; and 4) the attorney has not established a place for the regular practice of law in Colorado from which the attorney holds himself or herself out to the public as practicing Colorado law or solicits or accepts Colorado clients.

If the above conditions are met, then the out-of-state attorney may practice law in Colorado, except that the out-of-state attorney who wishes to appear in any state court of record must comply with **C.R.C.P. 221** concerning *pro hac vice* admission and an out-of-state attorney who wishes to appear before any administrative tribunal must comply with **C.R.C.P. 221.1** concerning *pro hac vice* admission before state agencies.

In addition, an attorney who is not licensed to practice law in Colorado may be certified to act as counsel for a single client upon application to and approval by the Colorado Supreme court if certain conditions are met. These conditions and other requirements for a single-client certification can be found in **C.R.C.P. 222**.

- A. An out-of-state attorney practicing law under these rules is subject to the Colorado Rules of Professional Conduct and rules of procedure regarding attorney discipline and disability. Failure to abide by these rules will subject the

⁶ See *People v. Grimes*, 654 P.2d 822, 826 (Colo. 1988); Colorado Rules of Professional Conduct, Preamble and Scope; and ABA *Standards for Imposing Lawyer Sanctions* (1991), 1.1.

⁸ *Conway-Bogue v. Denver Bar Ass'n*, 135 Colo. 398, 407, 312 P.2d 998, 1002-03 (1957).

out-of-state attorney to discipline in Colorado, and in the state in which the attorney is licensed.^{9 10}

Q. Can a paralegal handle my legal matters for me? (i.e., are paralegals authorized to practice law in Colorado?)

- A. No. Paralegals (and legal assistants) cannot practice law in Colorado. Thus, a paralegal cannot provide direct legal services to a consumer. A paralegal can only act under the direction and supervision of a licensed attorney, and that attorney is ultimately responsible to the client. While law firms most often hire paralegals as employees, a paralegal can also work for an attorney on a contract basis. Paralegals cannot advertise or otherwise hold themselves out to the general public as being able to provide paralegal services for anyone but a licensed attorney. See the Colorado Bar Association Paralegal Committee homepage, <http://www.cobar.org/index.cfm/ID/20101/CLAS/Paralegal/>, which provides guidelines for paralegals.

Q. Can a law student represent me in court?

- A. Sometimes, and only with statutory authorization, lawyer supervision, and court approval. A Colorado statute provides that students of any law school that maintains a legal-aid service where poor persons receive legal advice and services may be authorized to appear in court when representing one such person.¹² In order for a law student intern to be eligible to appear in a court proceeding, the law student must be enrolled in or a graduate of an accredited law school, must have finished a minimum of two years of legal studies, and must be introduced to the court under the supervision of a lawyer authorized to practice law in the state of Colorado.¹³ The Colorado Rules of Civil Procedure grant discretion to district, county, and municipal courts in determining whether a certified law student intern may appear in particular proceedings in such courts.¹⁴

Q. Can a suspended or disbarred attorney represent me in a legal matter?

- A. No. Suspended and disbarred attorneys cannot practice law in Colorado under any circumstance. Even though a statute, rule or agreement may authorize a non-lawyer to engage in the practice of law under a particular circumstance, a suspended or disbarred attorney is not entitled to “practice law” in any manner due to the specific order of discipline that applies to that disciplined attorney. Suspended or disbarred attorneys who do engage in any act that constitutes the practice of law while under an order of discipline shall be subject to further

⁹ See C.R.C.P. 220.3, 221.1, 221.7, and 251.1(b).

¹⁰ A separate petition is required for each action in which an out-of-state attorney appears in Colorado.

¹² See C.R.S.A. §12-5-116.

¹³ C.R.S.A. § 12-5-116.2. Eligibility requirements for law student intern practice

¹⁴ C.R.C.P. Rule 226.

discipline or contempt proceedings for violation of the order of discipline. Such contempt proceedings may result in additional discipline, fines and/or imprisonment.

With the above understanding, Colorado Rule of Professional Conduct 5.5 (2008) does allow a licensed Colorado attorney to hire a suspended / disbarred attorney to work for the licensed attorney in the capacity of a paralegal or law clerk, but only under carefully monitored conditions. (let's create a link to Colo. RPC 5.5 here).¹⁶

Q. If I am not an attorney, may I represent myself in a court proceeding?

A. Yes. Individuals can represent themselves, without the aid of an attorney, in court proceedings. When an individual chooses to represent him/herself, it is known as proceeding *pro se*. It is important to note, however, that although *pro se* representation does not violate the rules concerning unauthorized practice of law, the *pro se* litigant may not at any time undertake the representation of another. The right to file a lawsuit and represent oneself does not extend to filing a lawsuit on behalf of another,¹⁹ including family members. With one statutory exception,²⁰ corporations and other legal entities are not allowed to represent their own interests in a state court proceeding. For more information on representing yourself in a court matter, go to the Colorado Supreme Court's Self-Help Center website, which can be found at <http://www.courts.state.co.us/chs/court/forms/selfhelpcenter.htm>. There is a specific brochure on this topic and other information to assist you.

Q. When may other licensed professionals, such as real estate agents, practice law in Colorado?

A. Other professionals who are licensed by the State of Colorado may be given leeway to "practice law" in limited situations due to their specialized training and licensing requirements. For example, real estate brokers are licensed in accordance with a Colorado statute.²¹ Brokers must pass an examination that demonstrates their competency and must satisfy Colorado Real Estate Commission fitness and character requirements. Brokers must also comply with rules established by the Real Estate Commission or be subject to discipline. The

¹⁶ See C.R.P.C. 5.5 (effective January 1, 2008, a lawyer is permitted to employ, associate professionally with, allow or aid a disbarred or suspended attorney (whose suspension is partially or fully served), or an attorney on disability inactive status to perform research, drafting or clerical activities, subject to certain limitations described in the Rule.

¹⁹ See *People v. Shell*, 148 P.3d 162 (Colo. 2006).

²⁰ See C.R.S. 13-1-127

²¹ See C.R.S. 12-61-101, et seq.

Colorado Supreme Court has ruled that although the selection and preparation of legal documents in the real estate context²² is the practice of law, licensed Colorado real estate brokers may select and complete forms that are 1) pre-approved by the Colorado Real Estate Commission²³ if used in the regular course of business, 2) at the request of their customers, and 3) only in connection with transactions involving sales of real estate, loans on real estate or the leasing of real estate, which transactions are being handled by them.²⁵ All of the above requirements must be met in order for the real estate broker to be authorized to select or prepare real estate legal forms.

Q. Are there other instances where a state or federal statute permits a non-lawyer to represent me in certain proceedings?

- A.** Yes. While the Colorado Supreme Court maintains exclusive jurisdiction to regulate the practice of law in Colorado,²⁶ the Court has agreed to some statutory exceptions to the requirement that the practice of law only be engaged in by licensed attorneys. For example:

Unemployment compensation hearings. The Colorado Supreme Court held constitutional a statute that permits the practice of law by a layperson (including a labor union) representing an employer or employee before the Department of Labor and Employment.²⁷

In addition, business and labor unions may represent employers or employees in employment matters before the state civil rights division.

Public Utilities Commission matters. A separate Colorado case established that the Public Utilities Commission may be authorized by statute to allow a layman to engage in certain activities that would otherwise constitute the practice of law.²⁸

Closely held entities in small claims matters. Additionally, as discussed in a separate Q/A, there are statutory exceptions that allow an officer of a closely held entity, empowered by a resolution from that entity, to represent the entity's interests in certain matters.

²² Documents include receipts and options, deeds, promissory notes, deeds of trust, mortgages, releases of encumbrances, leases, notice terminating tenancies, and demands to pay rent or vacate by completing standard and approved printed forms.

²³ See <http://www.dora.state.co.us/REAL-ESTATE/contracts/contracts.htm>.

²⁵ *Id.* at 2006.

²⁶ Colo. Const. art. III.

²⁷ *Unauthorized Practice of Law Committee v. Employers Unity, Inc.*, 716 P.2d 460, (Colo. 1986) (holding that C.R.S. 8-74-106(1)(e) is constitutional).

²⁸ *Denver Bar Association v. Public Utilities Commission*, 391 P.2d 467 (Colo. 1964) (These activities include: 1) the completion of forms which do not require any knowledge and skill beyond that possessed by the ordinarily experienced and intelligent layman; 2) Performing the services of engineers, experts, accountants and clerks;... 4) Acting in an agency proceeding involving the adoption of a rule of future action which affects a group and where no vested rights of liberty or property are at stake.

Immigration matters. For an example of federal authorization, accredited representatives working for recognized agencies, and certain law students, law graduates and “reputable individuals” (*i.e.*, someone the affected person knows, like a friend, family member, or clergyman, and not someone who routinely assists other persons in this area of law) may be authorized to represent persons in immigration law matters.²⁹

Federal tax matters. In addition, federal statutes may authorize accreditation of certain non-lawyers for tax matters.

Some local government issues. Local government authorities may also allow engineers or development planners to participate and represent others in county commissioner and land use planning matters.

Some alternative dispute resolution matters. Similarly, the parties may agree to an alternative dispute resolution process that involves the use of non-lawyers. Assuming adequate protections are in place, and such procedure does not run afoul of public policy and due process protections, then such participation that would otherwise be considered the practice of law will likely be allowed.

Please note that the above list is not meant to be all-inclusive. There may be other circumstances in which a local, state or federal authority allows an individual to represent another’s interests in a particular proceeding. The common thread to each court, statutory or administrative authorization includes minimum qualification requirements, competence, accountability and access of participants to justice.

Always check with the local, state or federal governmental authority before appearing before it in a proceeding with a non-lawyer representative in order to determine whether such form of representation is allowed.

Q. Are immigration consultants, or “notarios” authorized to provide legal advice in immigration matters?

A. No. Only attorneys, and properly accredited representatives who have been granted official recognition by the U.S. Board of Immigration Appeals (U.S. B.I.A.), are authorized to provide legal advice in immigration matters.

Those people who hold themselves out to the public as “immigration consultants” or “notarios” are not attorneys or accredited representatives, and thus cannot provide legal advice, and cannot select or prepare immigration forms for others. If you have paid money to a “notario” or “immigration consultant” for immigration services, you may be entitled to a refund of that money. Go to:

²⁹ See 8 CFR 292.1

http://coloradosupremecourt.com/Regulation/Immigration_Notice.htm for more information.

To find an immigration attorney who is a member of the Colorado Bar Association, you can go to www.cobar.org/directory. To find an immigration attorney who is a member of the Colorado American Immigration Lawyers Association (“AILA”), go to www.aillacolorado.org. For a current list of U.S. B.I.A. accredited agencies, go to www.uscis.gov/legaladvice.

Q. What kind of financial advice from a non-lawyer, including my accountant or a “certified senior advisor,” constitutes the unauthorized practice of law?

A. Although this list is not exhaustive, the creation and sale of trust documents by non-lawyers, including by accountants and certified senior advisors, constitutes the unauthorized practice of law.³⁰ Similarly, preparing a will for another person constitutes the unauthorized practice of law.³¹

Q. Can a non-lawyer help me select or prepare pleadings in my divorce case or in any other state court matter?

A. No. Non-lawyers cannot provide legal advice to others, and inherent in the selection and preparation of court pleadings is the provision of legal advice. Nevertheless, many district courts in Colorado now offer self-help programs in which volunteer lawyers assist you with your pleadings. In addition, the Colorado Supreme Court makes available to the public a set of forms and instructions for most actions and filings related to the dissolution of marriage, post-dissolution matters and other court proceedings. These forms, related checklists, instructions, and informational brochures are available for free at: <http://www.courts.state.co.us/chs/court/forms/selfhelpcenter.htm>.

Q. Can a non-lawyer represent a corporation or other legal entity?

A. Generally, corporations and other legal entities must appear in court proceedings only through a licensed attorney, and any proceedings that are commenced or prosecuted or pleadings filed by a corporation without a licensed attorney are a nullity and will be stricken.³³ There are two statutorily created exceptions to this rule. The first allows a corporate officer to represent a closely held corporation in

³⁰ See *People v. Volk*, 805 P.2d 1116, 1118 (Colo.1991). See also *People ex rel. Dunbar v. Schmitt*, 251 P.2d 915, 920 (Colo. 1952) (the creation and sale of trust documents by nonlawyers constitutes the unauthorized practice of law).

³¹ *People ex rel. Atty. Gen. v. Newer*, 242 P.2d 615 (Colo. 1952).

³³ See *Bennie v. Triangle Ranch Co.*, 73 Colo. 586 (1923); See also § 12-5-101, C.R.S.1997.

actions where the amount in controversy is less than \$10,000.³⁴ The second exception applies only to actions brought in small claims court.³⁵

Q. What if I can't afford a lawyer to represent me?

- A.** In recent years, the Colorado Supreme Court has amended the Colorado Rules of Civil Procedure and the Rules of Professional Conduct to allow an attorney to provide limited and discrete legal services to a party who cannot afford full representation and will otherwise be representing him/herself *pro se*.³⁶ Known as the “unbundling of legal services,” an individual of limited means can now ask a licensed attorney for help on specific legal questions without asking the attorney for representation on all issues that may arise in the course of the proceedings.³⁷

Furthermore, Colorado Rule of Professional Conduct 6.1 (2008) provides that “every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of pro bono public legal services per year.”³⁸ Although providing pro bono legal services is not mandatory for Colorado lawyers, you may be able to find an attorney who is willing to take your case for no fee or for a substantially reduced one. Go to the Colorado Supreme Court’s Pro Bono Services Recognition Program website, which can be found at <http://www.courts.state.co.us/supct/probono.htm>, for more information.

See also the Denver Bar Association’s Legal Services Directory, located at <http://www.denbar.org/repository/DBA/LegalDirectory2008.pdf>, for more contact information concerning pro bono or reduced fee legal services. Colorado Legal Services website, <http://www.coloradolegalservices.org/CO/StateDirectory.cfm/> or the Colorado American Immigration Lawyer Association (Colorado AILA) Pro Bono/Reduced fee listing: <http://www.aialacolorado.org/probonolegalservice.php>, for information on pro bono or reduced fee legal services.

Regulation of UPL in Colorado

Q. Who oversees and regulates the unauthorized practice of law (UPL) in Colorado?

- A.** The Colorado State Constitution gives the Colorado Supreme Court the exclusive jurisdiction to regulate the practice of law in Colorado. Through this constitutional grant of authority, the Colorado Supreme Court has the inherent authority to

³⁴ See § 13-1-127, C.R.S. (1987 Repl.Vol. 6A).

³⁵ See § 13-6-407, C.R.S. (1987 Repl.Vol. 6A).

³⁶ See Colo. R. Civ. P. 11; Colo. R. Civ. P. 311; Colo. Rules of Prof'l Conduct R. 12.

³⁷ Marcus J. Lock, “Increasing Access to Justice: Expanding the Role of Non-Lawyers in the Delivery of Legal Services to Low-Income Coloradan,” 72 U. Colo. L. Rev. 459 (2001).

³⁸ Colo. R. Prof'l Conduct R. 6.1.

define what constitutes the practice of law; to regulate and prevent the practice of law by individuals who are not licensed to practice law in Colorado; and to determine who can practice law before administrative agencies.³⁹ Accordingly, the Colorado Supreme Court has enacted rules to regulate unauthorized practice of law in Colorado, in which they established the Unauthorized Practice of Law (UPL) Committee.

The Supreme Court's UPL Committee, comprised of both lawyers and non-lawyers appointed by the Supreme Court, is authorized to inquire into and consider complaints or reports made by any person or entity alleging UPL.⁴⁰ The UPL Committee may request that the Office of Attorney Regulation Counsel ("OARC") assist with the investigation, and in cases where the UPL Committee or the OARC determines that the individual did engage in the unauthorized practice of law, the OARC may formally prosecute that individual.⁴¹

Q. What are the consequences when a person violates the unauthorized practice of law rules?

A. Colorado Rules of Civil Procedure 228-240 govern the unauthorized practice of law ("UPL") and set forth the remedies available to protect against those engaging in UPL. The UPL Committee of the Colorado Supreme Court can prevent an individual from continuing to engage in the unauthorized practice of law in a number of ways:

- 1) Written Agreements to No Longer Engage in UPL:** If the UPL Committee finds that a non-lawyer has engaged in UPL, it first may request that the individual sign an agreement to refrain from further unauthorized practice. In the written agreement, the non-lawyer agrees to refrain from further unauthorized practice of law, to refund **any** and all fees collected (regardless of whether the non-lawyer actually performed substantial work), and to make restitution or pay a fine. The fines may range from \$100 to \$250 **per incident**. In exchange, the UPL Committee and the Office of Attorney Regulation Counsel (OARC) will agree not to take any further injunctive or other legal action on the matter.⁴²
- 2) Injunctive Proceedings:** If an individual refuses to enter into a written agreement, or if the individual violates a prior agreement, or if the misconduct was serious, then the UPL Committee may authorize the OARC to initiate injunctive proceedings against that individual. The proceedings are filed with the Colorado Supreme Court, which then assigns the matter to

³⁹ *Unauthorized Practice of Law Committee v. Employers Unity, Inc.*, 716 P.2d 460, 463 (Colo. 1986).

⁴⁰ See C.R.C.P. 228 and 229

⁴¹ See C.R.C.P. 231.

⁴² See C.R.C.P. 232.5 ("C.R.C.P. 232.5(d)(3) encourages the use of such informal written agreements for first-time offenders).

a hearing master to make findings of fact and recommendations.⁴³ In addition to an injunction against the further unauthorized practice of law, the OARC may also seek other relief that includes a client refund, restitution to the client and any affected third parties for damages, a fine ranging from \$250 to \$1,000, and an assessment of costs of the proceeding.⁴⁴

3) Contempt Proceedings: Individuals who violate a Colorado Supreme Court order of injunction are subject to contempt proceedings.⁴⁵ In contempt proceedings, four things must be shown to prove punitive contempt: 1) the existence of a lawful order of the court, 2) the contemnor's knowledge of the order, 3) the contemnor's ability to comply with the order, and 4) the contemnor's willful refusal to comply with the order.⁴⁶ If a contempt citation is issued, a fine of not less than \$2000 per **incident** or imprisonment may be imposed to vindicate the dignity of the Supreme Court.^{47 48} If the hearing master makes a finding of contempt but does not recommend imprisonment, then a fine shall be imposed for **each** incident of contempt for a minimum of \$2000 and not more than \$5000.⁴⁹

4) Other Sanctions (Not imposed by the Colorado Supreme Court):

- a) Other professional license sanctions, such as those contained in the notaries public statutes (C.R.S. §12-55-110.3), the real estate broker statutes (C.R.S. §12-61-101, *et. seq*), or any other certification or licensing regulation scheme, may be imposed on a non-lawyer who violates the UPL rules.
- b) A person who engages in the unauthorized practice of law may also be subject to criminal prosecution for fraud, theft, official misconduct, and/or criminal impersonation etc., as contained in C.R.S. Title 18 or the U.S. Code.
- c) A person who engages in the unauthorized practice of law may also violate the Colorado Deceptive Trade Practice Act (C.R.S. §6-1-105) and other consumer protection laws.

⁴³ C.R.C.P. 234-237 apply to such proceedings, and other rules only apply if not inconsistent. *See* C.R.C.P. 235(d). As the unauthorized practice of law rules do not provide for a different burden of proof in such an injunctive proceeding, the burden is "by a preponderance of the evidence." *See* C.R.S. § 13-25-127(1).

⁴⁴ *See* C.R.C.P. 234(b) and 237(a)). Pursuant to C.R.C.P. 234-237, the people need only establish facts that demonstrate that an individual has engaged in the unauthorized practice of law in order to seek an order of injunction against that individual.

⁴⁵ C.R.C.P. 238-39, and 107(c)-(d) (when not inconsistent with 238-39), governs contempt proceedings concerning unauthorized practice of law.

⁴⁶ *In re Boyer*, 988 P.2d 625 (Colo. 1999); and *In re Marriage of Nussbeck*, 974 P.2d 493, 497 (Colo. 1999).

⁴⁷ C.R.C.P. 107.

⁴⁸ Imprisonment is appropriate in circumstances when the respondent has repeatedly violated a court order and had notice of the inappropriateness of such conduct.

⁴⁹ *See* C.R.C.P. 239

Q. How do I find out if a person has been enjoined from engaging in the unauthorized practice of law in Colorado?

- A. A list of those individuals who have been enjoined from the unauthorized practice of law in Colorado is posted at the following location:

http://www.coloradosupremecourt.com/Regulation/UPL_Injunction_Listing.htm

For more information about how to file an unauthorized practice of law complaint, see: http://coloradosupremecourt.com/Regulation/UPL_FAQ.htm and <http://coloradosupremecourt.com/Regulation/UPL.htm>

For more information regarding the Colorado Supreme Court's Self Help website that provides free legal forms, go to <http://courts.state.co.us/chs/court/forms>

For more information on pro bono or reduced fee legal services for state court matters, go to:

http://www.denbar.org/repository/DBA/LegalDirectory_2008.pdf

For more information on pro bono or reduced fee legal services in immigration matters, go to:

http://www.ailacolorado.org/Pro_Bono_Legal_Service.php