

UNAUTHORIZED PRACTICE OF LAW IN DOMESTIC VIOLENCE CASES

The Ohio General Assembly has prohibited persons from practicing law without a license. R.C. 4705.01. Therefore, the Supreme Court has established a Board of Commissioners on the Unauthorized Practice of Law and adopted rules for filing and considering complaints alleging the unauthorized practice of law. See Ohio Gov. Bar R. VI. Potential unauthorized practice of law (UPL) by nonlawyers (e.g., clerks of court and victim advocates) in domestic violence cases includes providing legal representation to a client, such as representing the client in court, preparing and filing legal pleadings, briefs, or other legal documents for a client, or negotiating on behalf of a client. More difficult questions arise as to when giving legal advice or information to other persons constitutes the unauthorized practice of law and what assistance can legitimately be provided to *pro se* petitioners with regard to the distribution and preparation of CPO petitions or other legal forms. The Ohio Supreme Court and its Board of Commissioners promulgate rules, issue opinions, and decide cases concerning the unauthorized practice of law in Ohio. The opinions of Supreme Court and the Board of Commissioners define “unauthorized practice of law” in Ohio and, conversely, what types of assistance by nonlawyers to persons seeking legal advice or information are permissible conduct in Ohio.

In the domestic violence context, the Ohio Supreme Court has cited a Maryland Attorney General’s Opinion on the proper role of victim advocates as providing guidance in this area. In addition, enforcing the domestic violence laws is a high priority for Ohio courts, as noted by the Ohio Supreme Court in a landmark decision: “[C]ourts have an obligation to carry out the legislative goals to protect the victims of domestic violence.” *Felton v. Felton* (1997), 79 Ohio St.3d 34, 44-45. The Ohio General Assembly has enacted strong and comprehensive domestic violence laws—providing for a wide range of both civil and criminal remedies and specifically acknowledging the roles of nonlawyer victim advocates and require the courts to provide court-mandated protection order forms to *pro se* petitioners. These laws reflect the legislative intent and Ohio’s public policy priority to assist victims of domestic violence. The UPL requirements should not be used to bar the types of routine assistance provided to victims by clerks of court and victim advocates, and UPL enforcement decisions should take into account the high priority Ohio law and public policy places on assisting domestic violence victims.

The critical factor in determining whether legal advice or other legal assistance constitutes the unauthorized practice of law is whether the legal advice or assistance is tailored to the needs of a specific person. Application of the law to a client’s particular situation or circumstances, providing a legal analysis of the strengths and weaknesses of a person’s legal case, or the recommendation of a course of action for a particular person are examples of conduct which clearly falls outside the scope of permissible conduct by nonlawyers and constitutes the unauthorized practice of law. By contrast, providing general legal information, copies of statutes, or copies of standard court forms is permissible conduct by nonlawyers and does not constitute the unauthorized practice of law.

A recent ruling by the Board of Commissioners on the Unauthorized Practice of Law illustrates this key point. *Office of Disciplinary Counsel v. Palmer* (2001), 115 Ohio Misc. 2870. This case concerned the operation of a computer website offering “free legal advice” by David Palmer, a nonlawyer and judicial gadfly. The Board ruled the site did not constitute practicing law without

a license. Although Mr. Palmer's site invited members of the general public to contact him to seek legal advice regarding "any questions or concerns regarding any legal matter," and Mr. Palmer included the initials "J.D." after his name on his letterhead, the Commission focused on the types of legal advice or information actually provided by Mr. Palmer and his website to persons who visited the website. Despite Mr. Palmer's invitation to persons seeking legal advice regarding their problems or concerns, the Board concluded that he had not actually responded to requests for legal advice tailored to those persons' specific problems or circumstances. The legal advice provided by the website was only general information and thus did not constitute the unauthorized practice of law by a nonlawyer.

Published advice offered to the general public, the Board explained, lacks one essential element of the practice of law: the tailoring of advice to the needs of a specific person. Mr. Palmer's remarks on the website did not prove that he engaged in unauthorized practice, the Board found, since not all advice rises to the level of legal advice that only a lawyer may give. Nonlawyers may give out general legal advice or information such as that provided in books, magazines articles, newsletters, and brochures without violating the legal prohibition against nonlawyers engaging in the practice of law.

Another important factor in UPL enforcement and determinations is whether the challenged conduct requires the exercise of professional judgment by a lawyer. For example, in a 1997 decision the Ohio Supreme Court ruled that the activities of real estate brokers in completing preprinted contracts with simple, factual information that does not require the skills of a lawyer to complete and does not require "legal knowledge not possessed by an ordinary layman" fall outside the scope of Ohio's UPL law. *Sharon Village Ltd. v. Licking Bd. of Revision* (1997), 78 Ohio St.3d 479, 482.

In light of *Palmer*, *Sharon Village*, and other UPL decisions of the Ohio Supreme Court and the Board of Commissioners on the Unauthorized Practice of Law, it is possible to develop a classification of permissible and non-permissible conduct by clerks of court, domestic violence victim advocates, and other nonlawyers. The following chart should prove useful to both clerks of court and victim advocates because it clearly sets forth what activities are permissible (not UPL) and impermissible (is UPL) in light of the current state of the law in Ohio. It should be kept in mind, however, that these guidelines may change in the future if and when the Supreme Court or the Board of Commissioners expands or otherwise changes the definition of "unauthorized practice of law" in Ohio.

NONLAWYER ROLES AND ACTIVITIES

CAN	CANNOT
<p>Provide information contained in docket reports, case files, indexes, and other reports</p> <p>Answer questions concerning court rules, procedures, ordinary practices, and the types of legal actions that DV victims can pursue. Such questions often contain the words “Can I” or “How Do I.”</p> <p>Provide examples of forms or pleadings for the guidance of parties or victims</p> <p>Explain how cases generally are managed</p> <p>Explain requirements to have CPO or TPO case considered by court</p> <p>Provide legal definitions</p> <p>Provide procedural definitions</p> <p>Provide guidance on how to compute due dates and deadlines</p> <p>Identify which court forms might meet person’s needs (warning: no guarantees and should seek attorney’s assistance)</p> <p>Provide guidance on how to complete court forms (where to write particular info)</p> <p>Tell people where they can get assistance filling out court forms or other legal documents, or assist persons in completing court forms or other legal documents by reading aloud the questions, defining unfamiliar terms, explaining where on a form the person is to provide certain information, and filling in the blanks in a court form (on paper or on a computer screen) as directed by the person (Write down person’s exact words.)</p> <p>Read court or lawyer-approved forms and instructions to a person</p> <p>Suggest that a person contact a lawyer and provide them with info about legal aid and referral resources</p>	<p>Disclose the outcome of a matter submitted to a judge for decision until the outcome is reflected in a journal entry</p> <p>Answer questions regarding the merits of a person’s case or regarding the types of legal actions that the persons should pursue based on their particular circumstances</p> <p>Draft or prepare forms or pleadings for parties or victims</p> <p>Explain how <i>this</i> case will be managed or give an opinion as to what will happen if you go to court</p> <p>Tell someone whether or not to bring action or recommend specific course of conduct</p> <p>Give legal interpretations</p> <p>Give procedural advice</p> <p>Speculate as to when a judge will make a decision on a particular matter</p> <p>Suggest that a person must use a particular form, unless it is a court-approved form (e.g., the standard DV protection order forms)</p> <p>Answer questions on how to phrase particular responses on forms</p> <p>Tell or suggest to people what specific answers they should give to fill in the blanks on a court form (on paper or on a computer screen) or interpret the meaning of court rules, laws, or ordinances</p> <p>Change the forms or instructions and give or read the modified forms or instructions to a person</p> <p>Suggest a specific attorney or refer a person to a specific attorney</p>

Provide copies of requested rules, laws, and ordinances, or show or tell people where copies of rules, laws, or ordinances may be found
Educate yourself on domestic violence law by researching rules, laws, or ordinances

Give someone the statutory definition of “domestic violence” or “family or household members”

Tell a party how the judge hearing the victim’s case has ruled in past cases

Educate oneself on domestic violence law by researching and reading cases

Do community education, operate a website, or otherwise provide general legal information on domestic violence laws and remedies to DV victims, the general public, etc.

Provide people with basic information about the existence of legal rights and remedies

Provide people with basic information about the manner in which judicial proceedings are conducted

Sit with a victim at trial table, if permitted by the court, and accompany the victim to court (victim advocates)

Engage in the general advocacy of the rights of battered women as a group

Courts must give copies of court-mandated DV forms to anyone who requests a copy. Other persons, such as victim advocates, **may** give copies of such forms to other people

Interpret the meaning of those rules, laws, or ordinances for a party or victim

Research which rules, laws, or ordinances apply in a particular person’s situation and explain those rules, laws, or ordinances to that person

Advise someone as to whether s/he falls within the definition of a “family or household member” or whether certain conduct falls within the definition of “domestic violence”

Tell a party or victim the likelihood of getting a civil protection order based upon the facts in their case

Research cases and interpret or explain those cases to a party or victim, or advise a party or victim as to how to apply those cases to that person’s facts

Give legal advice to a specific person that is tailored to that person’s needs

Provide any advice relating to a specific person’s rights or remedies

Provide information as to how to present a case, call witnesses, introduce evidence, and the like

Present oral or written arguments to the court

Engage in advocacy before any court or governmental representative on behalf of a specific person

Don’t tell parties what to do, tell them *how* to do it.

This chart may not provide definitive answers concerning UPL in Ohio. There may be borderline cases or particular nuances that affect the UPL determination. Nevertheless, this chart should enable nonlawyers such as clerks of court and victim advocates to determine in the vast majority of cases whether requested or contemplated activity constitutes the unauthorized practice of law. Furthermore, it is likely that the Supreme Court Domestic Violence Advisory

Committee will recommend to the Supreme Court that it adopt a more liberal and permissive definition of the “unauthorized practice of law” in the domestic violence arena. Therefore, clerks of court and victim advocates could in the future be afforded greater scope to assist victims of domestic violence in filing CPO petition or pursuing other legal remedies. A number of states have already moved in this direction or have mandated that clerks of court or other court staff provide assistance to *pro se* domestic violence petitioners. The Committee will review other states’ laws and experiences with those law, as well as obtaining feedback from clerks of court, victim advocates and other players, before issuing its final recommendations in this area.

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