



Legal Staff: Avoiding UPL May Be Harder Than You Think

What is the [unlawful practice of law](#) and why should legal staff care?

First and foremost, UPL is an actionable offense. Only active members of the [bar](#) may practice law or hold themselves out as qualified to practice law. The [bar](#) takes UPL accusations very seriously and will pursue appropriate civil and criminal remedies to stop it.

But how does this affect staff? Isn't it fairly easy to avoid crossing the line if you are a law office professional working for a lawyer in a traditional brick and mortar firm? Hmmm – - – maybe yes, maybe no.

The [National Association of Legal Assistants](#) and [National Federal of Paralegal Associations](#) do provide some guidance on the subject. *But the answer lies in knowing what your jurisdiction considers “the practice of law.”* Here are the do's and don'ts for Oregon which I shared recently with the [NALS of Oregon Mid-Willamette Valley Chapter](#):

What is the “Unlawful Practice of Law” in Oregon?

- Appearing in court or before administrative agencies
- Giving legal advice or a legal opinion
- Telling clients their “rights,” including the time limits of their claim
- Answering “why” when the client seeks the reasoning behind a particular outcome
- Interpreting documents or information for a client
- Making a judgment call
- Drafting legal documents for another person without supervision
- Selecting legal documents for another person without supervision
- Giving answers based on rules, statutes, or case law
- Setting fees
- Accepting a case
- Declining a case

What Can Staff Say and Do?

Convey Facts or Simple Statements

- A lawyer may properly instruct her legal assistant to telephone a client to say that the lawyer has researched the client's question and the answer is “no.”
- The lawyer may also ask the legal assistant to perform the legal research and suggest the answer; after reviewing the research and confirming the assistant's conclusions, the lawyer may then instruct the assistant to relay the lawyer's conclusion.
- The lawyer may not, however, authorize the assistant to research the question and answer the client's question on her own.

- When in doubt, trust your gut instinct and say nothing.
- Do *Not*
 - Elaborate on your answer
 - Attempt to answer a different question

Draft Documents

- Generally speaking, documents must be reviewed and approved by the lawyer before they are sent out of the office or otherwise acted upon.
- However, transmittal letters that do not require any legal advice may be sent out without review and approval of the lawyer (provided the transmittal letter was initiated at the lawyer's request).

Tactful Responses to Insistent Clients

1. Know and stick to your boundaries.
2. Let the client know the lawyer's schedule. If the lawyer is in trial, deposition, or attending a settlement conference, provide this information to the client. Have a strategy in place to handle calls during extended lawyer absences: will the lawyer be able to call in for messages at the end of the day? Should you forward messages via e-mail? Obtain after-hours telephone numbers from clients? Plan ahead and keep the lines of communication open between lawyer and staff.
3. Offer to take a detailed message and relay it to the lawyer. This small gesture can be immensely useful: the client feels he is being heard, the lawyer will know what the client wants, and you may get information that will help you take the next step.
4. Get permission from the lawyer to relay the facts to the client or draft a transmittal letter/e-mail for the lawyer's review.
5. Call the client back if he or she is waiting for a return call from the lawyer and the lawyer is delayed.
6. Use your best client relations skills by exhibiting patience, understanding, and empathy. Language such as "I can help you by getting this information to Ms. Attorney" can make a big difference.

Preventative Medicine

- Introduce staff at the initial client meeting and explain their role.
- Provide staff with professional business cards.
- Give clients appropriate information about your staff on the firm Web site or in the firm brochure.

A Final Word

In sum, avoiding UPL is mostly about two things: [teamwork](#) and shaping client expectations. Both are within our control.

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