

BIDEAU LAW OFFICES LLC
Attorneys at Law

18 NORTH FOREST
P. O. BOX 945

CHANUTE, KANSAS 66720-0945
www.bideaulaw.com

EDWIN H. BIDEAU III
DAVID J. BIDEAU

(620) 431-2720
FAX: (620) 431-2742

May 23, 2004

Board of Governors
Kansas Bar Association
1200 SW Harrison St.
Topeka, Kansas 66601

RE: Final Report of Unauthorized Practice of Law Committee.

Dear Board Members:

This report will serve to provide you with the final report and recommendation of the Unauthorized Practice of Law Committee and our recommendation on the charge given to us when the committee was formed. The charge to the committee was as follows:

Define UPL or conversely the practice of law.

Consider whether a proposed rule is necessary to adopt the definition.

Consider potential enforcement mechanisms and any rules or statutes necessary to implement.

Monitor legislation that touches on the issue and make recommendations to the KBA Legislative Committee.

Follow-up on the recommendations and intent of MDP report.

Consider the impact of multi-jurisdictional practice (MJP)

Our committee has held several lengthy meetings to study these issues since its original formation, including review of a mail survey of all the other states and conference calls with representatives from the states of Washington and Colorado to obtain information about their new systems as described below. After the investigation and fact finding meetings were completed we held subcommittee meetings on the definition and enforcement mechanism issues. The subcommittees completed their work over the past few months and their reports were considered by the full committee on May 11, 2004. During the full committee meeting on May 11, 2004 the subcommittee recommendations were considered and slightly amended by the full

committee and we are now ready to report to the Board of Governors with our final recommendations.

The committee has considered the issue of a definition of the practice of law or unauthorized practice and whether a proposed rule is necessary or advisable to adopt the definition. We have also considered and reviewed potential enforcement mechanisms and rules to implement them.

Although the issue of MDP is still present, the defeat of the measure at the level of the ABA House of Delegates and the Enron debacle has placed that issue on the back burner for the time being. However, the MDP issue has not been relegated to the cemetery and will need to be addressed in the future. Additional issues regarding the question of multi-jurisdiction practice and reciprocity are over the horizon and need to be addressed in the future as well.

The committee has conducted a very thorough review of the action taken in other states on the UPL issue and enforcement mechanisms used in those states. A letter request survey of all of the 50 states and the District of Columbia and their bar association UPL contact person was conducted by letter and the responses of those who replied have been considered by the full committee and are available for review in our files. The UPL issue is one that is moving forward in several states and some common experiences of those states that have moved forward has been very helpful to our consideration as described below.

Washington System

The committee conducted a very productive telephone meeting with Robert Welden, General Counsel of the Washington State Bar Association, regarding new rules adopted by the Washington State Supreme Court defining the practice of law and establishing a practice of law board. Washington now defines practice of law by court rule which was adopted at the same time as the rule which set up its practice of law board. This board will address issues regarding both unauthorized practice of law and regulation of authorized practice by non-lawyers.

The Washington system was implemented after a lengthy and detailed multiple-year study and it is now being considered and reviewed by several other states. Their system appears to have many favorable aspects, although some of their provisions are unique to conditions in that state. The Washington system adopts a court rule defining practice of law, puts in place a state board under their Supreme Court and gives the board investigatory, advisory opinion and hearing powers on UPL issues.

Colorado System

The committee also conducted a telephone meeting with John Gleason, Attorney Regulation Counsel for the Colorado Supreme Court. He briefed the committee about the Colorado experiences under a new system for UPL regulation

and enforcement recently adopted by the Colorado Supreme Court. Mr. Gleason reported very favorable results from their new system and the committee is considering this model as a possible recommendation for Kansas. Their system does not include a definition of practice of law by rule or statute, relying instead upon case law decisions. Their system does provide an effective means of investigating and handling complaints through a board appointed by their Supreme Court which can conduct hearings and issue advisory opinions.

Survey of States

Following these meetings the committee contacted all of the bar committees of other states dealing with unauthorized practice of law which were listed in the ABA directory. A letter inquiry was made to each of them requesting information on the UPL system in their state. Each committee was asked for information on the following:

1. Whether their state has a statutory or regulatory definition of practice of law, either through a statute, court rule or other regulation, or whether their state relies upon common law rules set forth by appellate court cases.

2. What agency or party is responsible for enforcement of UPL rules.

3. Whether the enforcement officer is a member of the judiciary or is an appointee or employee of an elected official.

4. Whether any other person or party may take action to enforce UPL rules in their state or seek civil damages for a violation.

Although not all of the states responded, we received replies from 32 states. Copies of those replies have been provided to all of the committee members and to the KBA office. A rough working outline summary of the replies as of the date of the survey question is also attached to this report.

Definition by Court Rule vs. Statute

From a review of the replies received by the committee, it appears that most of the states responding do not have a definition of either practice of law or unauthorized practice of law by rule or statute. Most of these states rely upon case law decisions by their highest appellate court. Several states do have definitions by either statute or court rule and more appear to be considering it. The states that have definitions fall into two types. One type has a fairly detailed definition with a list of activities and specific exemptions. The other type has a broad general definition that is not as detailed, as far as specific activity or incident, apparently relying upon case law for further definition or construction.

In several states which do have a definition by court rule, it is made clear that the definition is not all encompassing or limiting and that the definition is subject to

additional clarification or determination of activities that may in the future be determined by their highest court to constitute practice of law. There may be some merit to this approach to avoid getting boxed into a specific category limitation, to give the court flexibility, yet to allow additional clarity and notice to the public by definition. One state approaches this by listing or defining certain activities or conduct which, if alleged in a complaint, will result in an automatic investigation being conducted. The listed activities are similar to a finding of probable cause or a prima facie case for investigation on a presumptive basis.

Even though the majority of states surveyed did not have a court rule or statutory definition of practice of law, it is very clear that many of those states have the issue under serious study and are moving forward in that direction, particularly after the action taken by the ABA recommending that each state adopt its own definition.

Preservation of Judicial Branch Powers

It has been made fairly clear from many of the replies we have received that every effort should be made to zealously guard the inherent role of the Court in regulating the practice of law and that this power should not be ceded to the legislature.

The need to be diligent in this area is perhaps best exemplified by the experience of the State Bar of Utah as described by their General Counsel. She reports that the Utah legislature recently completely repealed all statutes regulating the practice of law in order to allow anyone so inclined to provide legal services to practice law without a license or regulation.

This radical action was reportedly taken by the legislature in frustration with what some members of the legislature perceived as the inability of the profession and the courts to meet the legal needs of middle class citizens. This action was eventually partially reversed, but only after considerable controversy and effort. Whether this action in Utah was in earnest or some sort of retaliatory turf battle is unknown, but it does serve as a strong warning that venturing into the legislative branch for a solution can have catastrophic results.

Both New York and California have attempted tighter regulation and enforcement for the protection of the public through legislative means and have met with poor results. An initiative by the California bar was withdrawn after it created very significant controversy. New York efforts have so far met with unfavorable progress.

Most of the replies we received indicated that action taken to adopt a definition of practice of law and for regulatory enforcement and rule making should, if at all possible, be kept solely within the province of the judicial branch and not the legislative branch. Attempts to address the issue through the legislative branch have either backfired or failed to progress.

Regulatory and Enforcement Methods

A common thread in the replies received from other states is that enforcement by criminal prosecution is rarely ever used and does not produce satisfactory results. Almost all of the states indicated that prosecutors do not give this type of case a high priority and the burden of proof beyond a reasonable doubt makes prosecution extremely difficult at best. Although some state prosecutors have the power to pursue injunctive relief, this is not often used due to high volume of other more pressing cases and insufficient background and staff support on UPL issues in those offices. Although the current Kansas Attorney General has indicated an interest in becoming more active in enforcement, the track record over the past ten to fifteen years in Kansas has been very similar to the experience in other states. Criminal prosecution, particularly with a burden of proof beyond reasonable doubt, does not seem to be an effective regulatory tool in all but the most clear cut cases.

The trend nationwide seems to be a realization that with the MDP and MJR issues over the horizon and the additional activities being conducted by non-lawyers which were traditionally considered practice of law, a better system of regulation and enforcement, directed toward protection of the public and consumers of legal services, must be implemented. The systems put in place by Washington and Colorado are now being considered by several states. It seems clear that reliance upon criminal prosecution has failed in almost every state which responded and that if regulation is to exist, the Court must either assume that role or face a strong risk of having its authority eroded by legislative action.

Proposed ABA Definition

Although the ABA originally adopted a proposed definition of practice of law and this was a step in the right direction, ABA has retreated from the original universal definition proposed and has now suggested that each state take its own action to adopt a definition of practice of law.

The committee studied the original proposed ABA definition and definitions adopted by other states and has included concepts from the original proposed ABA definition in its recommendations. We have recommended a definition containing a list of activities that would give notice to the public as to what type of activities require attorney licensure, but would still reserve to the Court the right to further define by case law should further consideration be necessary.

Committee Report and Recommendations

Definition of Practice of Law

The committee very strongly recommends the adoption of a definition of "practice of law" by the Kansas Supreme Court and recommends a definition and exemptions which are attached to this report. The committee feels that the old reliance

upon a common law definition, shaped by the Court in case law, does not give sufficient notice or warning to those who might venture into the practice of law on an unlicensed basis. However, the definition which we are recommending would not repeal any of the prior rulings made by the Court and would make it very clear that the Court retains the right to enforce and define the practice of law, either by Court rule or caselaw.

The committee recommends that the proposed definition should be adopted and that it should be done by the Court as a regulatory matter or rule. The committee recommends that legislation should not be used as a vehicle to implement the definition and that the Court should do so as a regulatory matter within the inherent powers of the Judicial Branch. Based upon the experiences of other states we feel that the Court should take every possible step to protect its inherent role and inherent powers in regulating the practice of law and that this should not be ceded to the legislature in any manner.

Enforcement or Regulatory Mechanism

The committee feels that adopting a definition of practice of law would be a positive step, but that alone is not enough to deal with the challenges facing the profession on the issue in the future. We can continue to expect challenges from non-lawyer service providers contending that the courts and the profession have failed to provide access to services at reasonable cost. The number of unlicensed service providers can be expected to expand without significant action and this can be expected to create risks and hazards to the consumers of legal services. Both the Court and the bar must be ready to enforce or implement regulation for the protection of the public. The most important goal should be to provide high quality and affordable legal services to the public and to protect the consumers of legal services.

Based on what we have seen in national trends and our review of the materials from other states, where the Court fails to act either the legislature will act or unlicensed parties will simply refuse to follow or obey common law rules regulating practice as is presently the case. If the Court fails to act to sufficiently regulate the practice of law, far less suitable alternatives can arise in which there is much more potential for harm to consumers of legal services and other member of the public.

The committee therefore recommends the adoption of an enforcement mechanism to provide for enforcement and regulation of the unauthorized practice of law via rules and definition to be adopted, and to be organized and implemented under the authority of the Kansas Supreme Court. The committee recommends the adoption of an enforcement procedure and adoption of proposed Supreme Court Rules to implement the procedure which is also attached to our report. It is based in large part upon a similar procedure adopted by Colorado which that state has had very favorable experience with to date. We acknowledge that implementation of an enforcement mechanism would require additional funding and we recommend that funding for enforcement come from the bar itself through an increase in the annual license fee for

Kansas attorneys. The committee feels that this would be supported by the vast majority of the bar if a meaningful and effective enforcement procedure is put in place. By this funding mechanism licensed attorneys would assume the cost of protecting consumers of legal services.

Conclusion

Our committee recommends the adoption of the proposed definition of "practice of law" and the enforcement mechanism which are attached to our report. We feel that this issue should be given a high priority and that a strong recommendation for action on this issue should be made to the Kansas Supreme Court. We feel strongly that this is an area in which action needs to be taken as soon as possible. If action is not taken unregulated legal services which present strong risks of harm to Kansas consumers will continue to grow. We feel that in order to properly assume its duty to regulate legal services the Court should adopt both a definition of practice of law and a formal enforcement or regulatory procedure.

When our committee was formed it originally was for the limited purpose of conducting the study and making the recommendations which were contained in the original charge to the committee. The committee grew out of the original MDP Task Force that was formed to consider that issue. Due to the fact that UPL is becoming an important issue nationwide and throughout the state and the fact that additional work will be required to implement our recommendations, I would recommend that the Board of Governors continue the UPL Committee as a standing committee of the KBA.

I would also like to personally thank all of the members of the committee for some very hard work that has been completed over a fairly long period of time and the extensive study that these issues have required. Each member of the committee has devoted a lot of time and effort to this issue and should be commended for it.

Respectfully Submitted,

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Edwin H. Bideau III, Chair
Unauthorized Practice of Law Committee

Zackery E. Reynolds, Member
Marvin Maydew, Member
David G. Shriver, Member
Timothy E. Keck, Member
J. Paul Maurin, Member
Joe B. Vise, Member
Linda Scott Skinner, Member
Edward D. Collister, Jr., Member
Jim Clark, KBA Ex Officio Member

**Kansas Bar Association
Unauthorized Practice of Law Committee**

**Committee Report Recommending Adoption
of Definition of Practice of Law.**

DEFINITION OF THE PRACTICE OF LAW

A. General Definition: The practice of law is ministering to the legal needs of another person and the application of legal principles and judgment with regard to the circumstances or objectives of another person which require knowledge of legal principles or the use of legal skill or knowledge. This includes but is not limited to:

- (1) Holding one's self out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents, or creates any perception, that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined
- (2) Giving advice, counseling or rendering services to any person concerning or with respect to their legal rights or any matter involving the application of legal principles to rights, duties, obligations or liabilities.
- (3) Selecting, drafting, or completing any legal document or agreement involving or affecting the legal rights of a person.
- (4) Representing of another person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
- (5) Negotiating or settling of a claim, legal right or responsibility on behalf of another person.
- (6) Engaging in an activity which has traditionally been performed exclusively by persons authorized to practice law, and
- (7) Engaging in any other act which may indicate an occurrence of the unauthorized practice of law in the State of Kansas as established by case law, statute, ruling, or other authority.

"Documents" includes, but is not limited to, contracts, deeds, easements, mortgages, notes, releases, satisfactions, leases, options, articles of incorporation and other corporate documents, articles of organization and other limited liability company documents, partnership agreements, affidavits, prenuptial agreements, wills, trusts, family settlement agreements, powers of attorney, notes and like or

similar instruments; and pleadings and any other papers incident to legal actions and special proceedings.

The term “person” includes a natural person, corporation, company, partnership, firm, association, organization, society, labor union, business trust, trust, financial institution, governmental unit and any other group, organization or entity of any nature, unless the context otherwise dictates.

The term “Kansas Lawyer” means a natural person who has been duly admitted to practice law in this State and whose privilege to do so is then current and in good standing as an active member of the bar of this State.

B. Exceptions. Whether or not it constitutes the practice of law, the following activity by a non-lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted:

- (1) Sale of a legal document form previously approved by a Kansas lawyer in any format.
- (2) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where:
 - (A) Such services are confined to representation before such forum and other conduct reasonably ancillary to such representation;
 - (B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice.
- (3) Serving in a neutral capacity as a mediator or arbitrator.
- (4) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.
- (5) Providing clerical assistance to another to complete a form provided by a court for protection under K.S.A. 60-3101 et seq. to provide protection from abuse when no fee is charged to do so.
- (6) Acting as a legislative lobbyist.
- (7) A real estate agent or broker, licensed by the State of Kansas, may complete forms previously approved by a Kansas lawyer including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

- (8) An abstractor or title insurance agent, licensed by the State of Kansas, issuing real estate title opinions and title reports and preparing deeds for their customers.
- (9) Financial institutions and securities brokers and dealers licensed by the State of Kansas may inform customers with respect to their options for titles of securities, bank accounts, annuities and other investments made through such institution and lessee relationships of safe deposit boxes and access thereto.
- (10) Insurance companies and agents, licensed by the State of Kansas, may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, naming of beneficiaries and may adjust claims under the company's insurance coverage outside of litigation.
- (11) Health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.
- (12) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.
- (13) Such other activities that the Kansas Supreme Court has determined by published opinion or rule do not constitute the unlicensed or unauthorized practice of law or that have been permitted under a regulatory system established by the Kansas Supreme Court.

**KANSAS BAR ASSOCIATION
UNAUTHORIZED PRACTICE OF LAW COMMITTEE**

**Committee Report Recommending
Adoption of Enforcement Rules by Kansas Supreme Court**

UNAUTHORIZED PRACTICE OF LAW RULES

Rule 1002

Jurisdiction

The Supreme Court of Kansas, in the exercise of its exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Kansas, adopts the following rules, which shall govern proceedings concerning the unauthorized practice of law.

Rule 1003

**Appointment and Organization of
Unauthorized Practice of Law Committee**

(a) There is hereby established a committee to be known as the Unauthorized Practice of Law Committee of the Supreme Court of the State of Kansas (Committee) and which shall be an adjunct to the Supreme Court. The Committee shall be composed of nine members, six of whom shall be members of the Bar of Kansas and three of whom shall be lay members. The members of the Committee shall be appointed by the Supreme Court for terms of three years, beginning on the 1st day of January, and the terms of three members shall commence each year, provided, that terms may be for shorter periods to accommodate changes in the size of the Committee by amendments to this rule. Membership on the Committee may be terminated by the Supreme Court at its pleasure, and members may resign at any time. Any vacancies shall be filled by appointment by the Supreme Court for the unexpired term. The Committee and members thereof shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties

(b) The Supreme Court shall designate a member of the Committee as Chair.

(c) The Committee may adopt rules providing for the time and place of its meetings, the selection of a Vice-Chair and other officers, and such other rules not in conflict with the rules of the Supreme Court as may be deemed necessary or expedient for the conduct of the Committee's business. The Clerk of the Appellate Courts shall have copies of the rules for interested persons

(d) The Committee may enlist the assistance of other duly licensed members of the Bar of Kansas in the performance of the activities of the Committee.

Rule 1004

Committee Jurisdiction

(a) The Committee shall have jurisdiction over and inquire into and consider complaints or reports made by any person, including Regulation Counsel, or other entities

alleging the unauthorized practice of law. Moreover, the Committee, on its own motion, may inquire into any matter pertaining to the unauthorized practice of law.

(b) Nothing contained in these rules shall be construed as a limitation upon the authority or jurisdiction of any court or judge thereof to punish for contempt any person or legal entity not having a license from this court who practices law or attempts or purports to practice law in any matter which comes within the jurisdiction of that court nor shall these rules be construed as a limitation upon any civil remedy or criminal proceeding which may otherwise exist with respect to the unauthorized practice of law.

Rule 1005

Regulation Counsel; Duties and Powers

Regulation Counsel, means counsel designated by the Commission, and shall have the following duties and powers:

(a) To investigate and to assist with the investigation of all matters within the jurisdiction of the Committee, upon the request and at the direction of members of the Committee.

(b) To maintain records in the office of the Committee, in an appropriately cataloged manner, of all matters coming within the jurisdiction of the Committee.

(c) To provide facilities for the administration of proceedings under these rules and for receiving and filing all requests of investigation and all complaints concerning matters within the jurisdiction of the Committee.

(d) To employ such staff, including investigative and clerical personnel, subject to approval of the Committee, as may be necessary to carry out his duties under these rules.

(e) To perform such other duties as the Chair or the Commission may require.

Rule 1006

Investigations; General Subpoenas

(a) All matters within the jurisdiction of the Committee shall be referred to the Regulation Counsel who shall either conduct an investigation or, with the concurrence of the Chair, refer the matter to a member of the Committee pursuant to this rule or to an enlisted member of the bar pursuant to Rule 1003(d) for investigation. Upon completion of such investigation, the person who investigated the matter shall submit a written report of the investigation, findings, and recommendations to the Committee.

(b) The Committee, or a panel thereof consisting of no fewer than three Committee members, shall act upon said reports, findings and recommendations, and determine whether the matter shall be dismissed or disposed of informally as provided in Rule 1007(e), or whether civil injunction proceedings or contempt proceedings, as provided by these rules, shall be instituted against a respondent.

(c) In connection with an investigation of the unauthorized practice of law, the Chair of the Committee or the Regulation Counsel may issue subpoenas to compel the attendance of respondents and other witnesses and the production of pertinent books, papers document, or other evidence. All such subpoenas shall be subject to applicable provisions of the Kansas Code of Civil Procedure, and may be enforced by a Supreme Court Justice, a Judge of the Court of

Appeals, or a Judge of the District Court in the Judicial District where the witness resides or has an office.

(d) Any person subpoenaed to appear and give testimony or to produce books and records, or any person having been sworn to testify and who refuses to answer any proper questions, may be cited for contempt as provided by statute or Court Rule.

(e) Each person who investigates a matter, acting pursuant to and in conformity with these rules, shall have the power to administer oaths and affirmations and to take and have transcribed the testimony and evidence of witnesses.

Rule 1007

Investigation; Procedure

(a) When a matter comes to the attention of the Committee by way of a complaint, the complainant may state the complaint in writing. The Committee on its own motion may initiate a complaint.

(b) Promptly after receipt or initiation of a request for investigation or complaint, the Regulation Counsel shall determine whether to proceed with an investigation. In making a determination whether to proceed, the Regulation Counsel may make such inquiry regarding the underlying facts as the Regulation Counsel deems appropriate.

(c) If the Regulation Counsel determines to proceed with an investigation or refers the matter to a member of the Committee or to an enlistee for investigation pursuant to Rule 1006(a), the respondent shall be notified that the investigation is being conducted, shall be provided with a copy of the complaint and of the rules governing the investigation, and shall be asked to file with the Regulation Counsel or the person conducting the investigation a written answer to the complaint within 20 days after notice of the investigation is given.

(d) If the Committee, acting upon a report pursuant to Rule 1006, determines that it believes that the conduct in question does not constitute the unauthorized practice of law, the Committee shall dismiss the case and notify the complainant, if any, and the respondent.

(e) If the Committee, acting pursuant to Rule 1006, determines that it believes that the conduct constitutes the unauthorized practice of law, the Committee, prior to determining whether further proceedings shall be instituted against the respondent, may offer the respondent an opportunity to enter into a written agreement to refrain from the conduct in question, to refund any fees collected, and to make restitution.

(f) Informal disposition of matters, as provided by this rule, is to be encouraged. All proceedings pursuant to these rules shall be expeditiously conducted.

(g) When a matter comes to the attention of the Committee by way of a request for investigation or a complaint, which is later dismissed, the complainant may pursue the matter further by filing a petition, as provided in either Rule _____ or Rule _____, in the complainant's own name. If such a petition is filed, the Regulation Counsel shall not be required to prepare the petition or prosecute the matter. If the complainant files a petition in the complainant's own name pursuant to this provision, the complainant shall post with the Committee a \$500 deposit against which the costs of the proceedings may be assessed if at the conclusion of the proceedings it is determined that there was no reasonable cause to believe that an unauthorized practice of law occurred.

Rule 1008

Civil Injunction Proceedings; General

(a) If the Committee determines that civil injunction proceedings shall be instituted against a respondent, such proceedings may be commenced in the name of the State of Kansas by a petition filed in the Supreme Court by the Regulation Counsel or by a member of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.

(b) The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include, without limitation, injunction, refund, restitution, and assessment of costs of the proceeding.

(c) The Supreme Court, upon consideration of the petition so filed, may issue its order directed to the respondent commanding the respondent to show cause why the respondent should not be enjoined from the alleged unauthorized practice of law, and further requiring the respondent to file with the Supreme Court within 20 days after service of the petition and show cause order, a written answer admitting or denying the matter stated in the petition. The show cause order, together with a copy of the petition, shall be served upon the respondent. Service of process shall be sufficient when made either personally upon the respondent or by certified mail sent to the respondent's last known address.

(d) If no response or defense is filed within the time permitted, the Supreme Court, upon its motion or upon motion of any party, shall decide the case, granting such relief and issuing such other orders as may be appropriate.

(e) If a response or defense raises no genuine issue of material fact, any party by motion may request a judgment on the pleadings and the Supreme Court may decide the case as a matter of law, granting such relief and issuing such orders as may be appropriate.

(f) Upon the Supreme Court's motion or upon motion of any party, questions of fact raised in proceedings under this rule shall be referred to a District Court in any district designated by the Supreme Court, or to a hearing master for determination.

Rule 1009

Civil Injunction Proceedings; Hearing Master, Powers, Procedure

(a) Civil injunction proceedings before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.

(b) The State of Kansas may be represented in proceedings before the hearing master by the Regulation Counsel, or by a member of the Bar appointed pursuant to Rule 1008. Upon receipt of the order of reference, the hearing master shall set a date, time, and place for a first meeting of the parties which shall be within 30 days after the date notice thereof is given and notify the parties accordingly. At such meeting, a date, time, and place for hearing shall be set, and any matters which may expedite the proceedings shall be considered. A complete record of this meeting shall be made unless jointly waived by the parties. After the first meeting, the hearing master shall issue a notice of hearing to the parties. The notice shall be in writing and shall designate the date, time, and place of the hearing. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence in the respondent's own behalf. The giving of notice

shall be sufficient when made by certified mail sent to the respondent at the respondent's last known address.

(c) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas which shall run in the name of the Supreme Court and may be issued by the hearing master or Clerk of the Appellate Courts upon the request of a party. All such subpoenas shall be subject to the provisions of the Kansas Code of Civil Procedure. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly.

(d) The Kansas Rules of Civil Procedure shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "Court" under the Kansas Rules of Civil Procedure. At all hearings before a hearing master witnesses shall be sworn and a complete record made of all proceedings had and testimony taken.

Rule 1010

Civil Injunction Proceedings; Report of Hearing Master; Objections

(a) After the hearing, the hearing master shall report in writing to the Supreme Court in accordance with the order of reference, setting forth findings of fact, conclusions of law, and recommendations for final disposition of the case. Promptly after the report is filed with the Supreme Court, the Clerk shall mail copies thereof to all parties.

(b) Objections to the report of the hearing master may be filed with the Supreme Court by any party, within 30 days after copies of the report have been mailed to the parties.

(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.

(d) If objections are filed, the objecting party shall within 10 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court.

The opposing party may within 10 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof.

The reporter shall prepare the transcript and file it, properly certified, with, the Supreme Court within 60 days after the filing of the objections.

(e) An objecting party shall have 30 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 30 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 10 days after the filing of the answer brief within which to file a reply brief.

(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the

motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

Rule 1011

Civil Injunction Proceedings; Determination by Court

(a) After review of the report of the hearing master, together with any objections and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law, and make such further orders as it may deem appropriate, including restitution and the assessment of costs, which may include attorneys' fees expended or incurred before and throughout the proceeding.

(b) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.

Rule 1012

Contempt Proceedings; General

(a) The Committee through Regulation Counsel or through an enlistee obtained pursuant to 1003(d) shall investigate any reports of violations of orders made by the Supreme Court pursuant to Rule 1011.

(b) After receiving a report accomplished pursuant to Rule 1012(a), If the Committee determines that contempt proceedings shall be instituted against a respondent, such proceedings shall be commenced in the name of the People of the State of Kansas by a petition filed in the Supreme Court by the Regulation Counsel or by a member of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.

(c) The petition shall allege facts indicating that the respondent is engaged in the unauthorized practice of law and shall contain a prayer for the issuance of a contempt citation.

(d) Upon the filing of a petition, the Supreme Court may issue a citation directing the respondent to show cause why he should not be held in contempt of the Supreme Court for the unauthorized practice of law, or the Supreme Court may, in the alternative, issue a show cause order in civil injunctive proceedings which shall be governed by K.S.A. 20-1201-1206. If a citation is issued, the citation shall state that a fine or imprisonment may be imposed to vindicate the dignity of the Supreme Court.

(e) If a contempt citation is issued, it shall be served upon the respondent, together with a copy of the petition, as provided in K.S.A. 20-1201-1206, and the citation shall specify the time for response. If a response is filed, the Supreme Court shall appoint a hearing master who shall set a date, time, and place for the appearance of the respondent, and shall give notice

thereof. The notice shall be in writing. The notice shall designate the date, time, and place of the appearance. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the appearance, to cross-examine witnesses, and to present evidence in the respondent's own behalf. The giving of notice to non-resident entities shall be sufficient when made by certified mail sent to respondent at the respondent's last known address.

(f) Proceedings for the hearing of a contempt citation before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.

(g) If the respondent has been served with a citation and fails to respond to the citation or appear before the hearing master at the time and place designated in the notice issued by the hearing master, a warrant for the arrest of the respondent may be issued by the hearing master without prior approval of the Supreme Court. The warrant shall fix the time and place for the production of the respondent before the hearing master. The hearing master shall direct by endorsement on the warrant the amount of bail required, and the respondent shall be discharged upon the delivery to and approval by the sheriff or the Clerk of the Appellate Courts of a written undertaking executed by a sufficient surety, to the effect that the respondent will appear at the time and place designated in the warrant and at any time thereafter to which the hearing on the citation may be continued, or pay the sum specified. Any funds surrendered as bail shall be deposited with the Clerk of the Appellate Courts or with the Clerk of the District court in the county where the proceedings are to be held. If the respondent fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the undertaking may be forfeited upon order of the hearing master. If the respondent fails to make bond, the sheriff shall keep the respondent in custody and produce the respondent before the hearing master at the time and place fixed by the warrant.

(h) At all hearings before the hearing master, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken. The citation shall be prosecuted by the Regulation Counsel of the State of Kansas or by such duly licensed and registered members of the Bar as may be designated by this Court.

(i) The Kansas Rules of Civil Procedure shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "court" under the Kansas Rules of Civil Procedure.

(j) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas in the name of the Supreme Court, which may be issued by the hearing master or Clerk of the Appellate Courts upon the request of a party. All such subpoenas shall be subject to the provisions of the Kansas Code of Civil Procedure. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly. The parties shall have the right to be present at all times during the hearings before the hearing master and to examine and cross-examine witnesses.

Rule 1013

Contempt Determination by Court Proceedings; Report of Hearing Master; Objections

(a) After the conclusion of the hearing, the hearing master shall report in writing to the Supreme Court, setting forth the hearing master's findings of fact, conclusions of law, and,

upon a finding of contempt, recommendations for punishment. Promptly after the report is filed with the Supreme Court, the Clerk of the Supreme Court shall mail copies thereof to the parties.

(b) Objections to the report of the hearing master may be filed with the Supreme Court by either party within 30 days after the filing of the report.

(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.

(d) If objections are filed, the objecting party shall within 10 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court.

The opposing party may within 10 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof.

The reporter shall prepare the transcript and file it, properly certified, with the Supreme Court within 60 days after the filing of the objection.

(e) An objecting party shall have 30 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 30 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 10 days after the filing of the answer brief within which to file a reply brief.

(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

(g) After review of the report of the hearing master any objections thereto and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine whether the respondent is guilty of contempt of the Supreme Court and shall, by order, prescribe the punishment therefore, including the assessment of costs, expenses and reasonable attorney's fees, expended or incurred before and throughout the proceedings.

(h) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of contempt proceedings in order to prevent public harm, or to limit the power of the Supreme Court to issue an injunction in lieu of or in addition to the imposition of a fine or any other remedy under these rules.

Rule 1014

General Provisions; Qualifications of Hearing Master; Access to Information Concerning Proceedings Under these Rules

(a) A hearing master to whom matters are referred pursuant to these rules shall be a person who is duly licensed to practice law in Kansas.

(b) All civil injunction proceedings and contempt proceedings filed in the Supreme Court or referred to a District Court, including proceedings before a hearing master, shall be public proceedings.

(c) Except as otherwise provided by these rules or by order of the Supreme Court, all proceedings conducted pursuant to these rules shall be confidential, and the files and records of the Committee shall be confidential and shall not be made public.

Except as otherwise provided by these rules, any person who wishes to disclose or to make public the pendency, subject matter, or status of proceedings which are otherwise confidential or to disclose or to make public the files and records of the Committee which are otherwise confidential or to gain access to the files and records of the Committee which are otherwise confidential shall file a petition with the Supreme Court setting forth the specific reasons why the existence of the particular proceedings should not remain confidential or the specific reasons why the disclosure of particular files and records or access to them should be permitted.

Upon final determination of any proceedings conducted pursuant to these rules notice of the disposition of the matter shall be given by Regulation Counsel or the Clerk of the Supreme Court to the respondent, the complainant, and their counsel of record. Any person having received notice that a written agreement has been entered pursuant to Rule 1007 shall treat such information as confidential and shall not disclose such information to anyone, except by order of the Supreme Court. Any person who makes a disclosure other than as permitted by these rules or by order of the Supreme Court may be subject to punishment for contempt of the Supreme Court.

(d) Exceptions to Confidentiality. The pendency, subject matter, and status of the proceedings conducted pursuant to these rules may be disclosed by the Committee or Regulation Counsel to:

- (1) An entity authorized to investigate the qualifications of persons for admission to practice law;
- (2) An entity authorized to investigate the qualifications of judicial candidates;
- (3) A lawyer discipline enforcement agency;
- (4) Any person or agency requesting such information, provided that the respondent has waived confidentiality and the request is within the scope of the waiver;
- (5) An enlistee who, pursuant to Rule 1003(d), was enlisted to assist the Committee;
- (6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States; or
- (7) Any person or agency, provided the proceeding is predicated either upon allegations that have become generally known to the public through printed or broadcast news accounts or upon acts of the respondent which are public or generally known.

Access to the files and records of the Committee may be granted by the Committee or the Regulation Counsel, provided a request for disclosure or access is made in writing by:

- (1) An entity authorized to investigate the qualifications of persons for admission to practice law;

- (2) An entity authorized to investigate the qualifications of persons for government employment;
- (3) An agency authorized to investigate allegations of unauthorized practice of law;
- (4) An entity authorized to investigate the qualifications of judicial candidates;
- (5) A lawyer discipline enforcement agency; or
- (6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States.

If the Regulation Counsel discloses confidential information to a judicial nominating commission of the State of Kansas or grants a judicial nominating commission access thereto, the Regulation Counsel shall give written notice to the respondent that specified confidential information has been so disclosed or that access has been granted.

(e) Any proceeding pursuant to this rule shall not preclude an appropriate party or entity from pursuing relief authorized by any other remedy, including the criminal law.

Rule 1015

Immunity

Persons performing official duties under the provisions of this chapter, including but not limited to members of the Committee and its staff; the Regulation Counsel and the Regulation Counsel's staff; the members of the Bar and enlistees working under the direction of the Committee; and the hearing masters, shall be immune from suit for all conduct in the course and scope of their official duties.

KANSAS BAR ASSOCIATION
Unauthorized Practice of Law Committee

Summary of Responses from Other States
Unauthorized Practice of Law Information Inquiry

A full copy of all responses has previously been provided to the KBA Board of Governors and staff with the interim report of the committee filed during 2003.

Alabama

Defined by statute, Sec. 34-4-6. However, the courts ultimately determine what is and what is not the unauthorized practice of law.

Enforcement typically by UPL Committee of the Alabama State Bar to bring the matter to the court's attention. Typically done by quo warranto proceeding in county Circuit Court. On some occasions may request District Attorney to prosecute under criminal violation. Enforcement either by civil action or criminal prosecution.

Do not have an enforcement officer per se other than UPL Committee and county prosecutor.

No private legal action allowed. Will often ask the attorney filing the complaint to handle the civil action on behalf of the Alabama State Bar. Experience indicates almost impossible to get a district attorney to prosecute UPL case.

Arkansas

No statutory or regulatory definition. Relies upon definitions and provisions of common law appellate court cases. Determined on case by case basis.

UPL Committee created by Supreme Court in 1994. May investigate and issue advisory opinions. If activity continues after advisory opinion determining it is UPL then injunctive relief may be pursued. Anyone may file a complaint with the UPL committee and it has considered anonymous complaints in the past.

Arizona

No statutory or regulatory definition. Relies upon definitions set forth in appellate court cases.

Consumer Protection Committee of State Bar of Arizona is attempting to address this by proposing definitions and regulatory rules concerning UPL.

California

Unclear. California statutes have created several regulated non-lawyer practitioners including Legal Document Assistant, Unlawful Detainer Assistant, Immigration Consultant and non-lawyer advocates before the Public Service Commission. Legislative proposals were made by the state bar including providing civil remedies against UPL violators and authorizing attorneys fees and costs. These proposals proved highly controversial. These proposals were withdrawn and the state bar adopted a 10 point approach to try and focus bar and public attention on UPL issues.

California has misdemeanor prosecution available but rarely used. A task force report recommends increased activity by the state bar and a "balanced" approach to UPL issues to try to continue the 10 point approach which is mostly persuasive. The California Supreme Court also appears to have common law authority to define what is "practice of law".

Colorado

No statutory or regulatory definition. Based on caselaw.

Colorado recently set up a new UPL Committee under its Supreme Court. It is a nine member committee with six of the members to be members of the bar. The committee has jurisdiction to investigate complaints, conduct hearings, including through a Special Master and to file civil injunctions and contempt proceedings. Regulation Counsel represents the state before the Hearing Master and also provides staff investigative and review services to the UPL Committee.

Delaware

List of items to be considered contained within Rule 4(c) which is a part of the complaint procedure created by court rule contained within rules and procedures for Disciplinary Counsel and Board on Unauthorized Practice of Law. However, rule indicates that the description of types of prohibited conduct are used as general guidelines for evaluation by Disciplinary counsel and no as a definition of UPL. Rule includes as a part of the list "engaging in any other act which may indicate an occurrence of the unauthorized practice of law in the State of Delaware as established by case law, statute, ruling, or other authority.

Enforcement and review of complaints for UPL is by Disciplinary Counsel. UPL Board is appointed by Supreme Court. Detailed procedure for review and investigation and hearing of complaints. Rules were adopted by and under authority of Supreme Court. No statutory or legislative action.

District of Columbia

Definition by court rule, D.C.Rule 49 effective February 1, 1998.

Committee on UPL is created under the D. C. Court of Appeals. This committee has 10 practicing attorneys and 1 non-lawyer member of the public. Conducts investigations on unauthorized practice. Procedures for formal proceedings and sworn testimony of witnesses and/or respondent. Committee may also provide opinions as to what constitutes unauthorized practice of law. No provision in Rule 49 for any other person or party to take legal action for enforcement. However, injured party may initiate proceedings to seek civil damages. Rule 49 provides the Committee with authority to initiate original proceeding before Court of Appeals. Court may punish by contempt or injunctive relief.

Florida

No statutory or regulatory definition. Relies on case law definitions.

Florida Bar has civil enforcement authority and State's Attorney's Office has criminal enforcement authority. The Florida Bar may file petitions with the Supreme Court which may issue cease and desist orders, with or without monetary penalty, and can order injunctive relief and indirect criminal contempt which can carry jail time and a fine. Hearings are conducted by local judges acting as referees to make recommendations to the Supreme Court. The program operates out of five branch offices with staff attorneys and investigators shared with the Lawyer Regulation Department.

Florida Bar has exclusive standing to seek civil injunctive relief for UPL but an aggrieved party may seek civil damages.

Georgia

Definition by rule which indicates that "the unlicensed practice of law shall mean the practice of law as prohibited by statute, court rule, and case law of the State of Georgia." Supreme Court rule recites inherent authority to regulate the practice of law.

State Bar of Georgia as official arm of the Court has duty of considering, investigating and seeking prohibition of UPL matters. Court rule establishes Standing Committee on UPL and a District Committee in each judicial district. Procedures included in the rule for appointment of members, rule making, advisory opinions, investigation and complaint handling and hearings. Enforcement is by injunctive relief through a petition filed in the Superior Court in which the respondent resides in the name of the State Bar of Georgia. Court may tax costs and expenses to respondent found to have engaged in UPL. Appeal is to Supreme Court.

Misdemeanor prosecution is also available through District Attorney but rarely used. Illinois

No statutory definition although some statutes touch on this and their consumer fraud statute specifically prohibits non-attorneys from drafting trust documents. Although no statutory or rule definition, common law is quite extensive.

It is reported that the bar and the Illinois Supreme Court have argued that the regulation and definition of the practice of law are solely within the authority of the Illinois Supreme Court and there is ongoing tension between the legislative and judicial branches regarding the separation of powers.

The ISBA has proposed amendments to the Attorney Act and Supreme Court Rule creating an Unauthorized Practice of Law Commission. Under this proposal the Supreme Court Commission would have broad and liberal authority to investigate and prosecute civilly UPL violations. The legislation proposed would provide for a private cause of action for an injured individual and make it clear that bar associations and attorneys have standing to bring UPL cases.

Currently the ISBA Standing Task Force on UPL receives and investigates UPL complaints. The Task Force may recommend to the Board of Governors filing of a legal action against a specific entity or send cease and desist letters. The ISBA's status as a private member organization has been raised as one of the standing issues in cases now pending. The ISBA reports they are involved in cases against a legal document preparation service, a title company and intervention in a case against Allstate Insurance Company.

Iowa

No statute or court rule definition. Relies upon common law rules set forth by appellate court cases in determining UPL.

Enforcement is by Supreme Court Commission on UPL. Commission is made up of attorneys and lay members.

Judges can hold parties in contempt for UPL and it is assumed a tort suit for misrepresentation may be filed.

Kentucky

Defined by Supreme Court Rule 3.020

Executive Director of Kentucky Bar Association and Office of Bar Counsel of the Kentucky Bar Association responsible for enforcement of UPL rules. These are employees of the Kentucky Bar Association and are governed by the Kentucky Supreme Court.

No procedure for private party to seek civil damages. UPL is a misdemeanor and can be prosecuted by county attorneys.

Louisiana

Statutory definition similar to Tennessee with statutory prohibition on conduct in violation of the statute. Misdemeanor prosecution is only remedy mentioned in reply.

Maryland

Very narrow and limited statute dealing mainly with holding out as an attorney. No real definition of UPL.

Both Bar Counsel and Attorney General have concurrent jurisdiction to investigate, but as reported neither has really done much.

Minnesota

Broad statutory definition with long list of exceptions and authorized parties. Chapter 481, Minnesota Statutes.

UPL enforcement handled by individual county attorneys or attorney general as either misdemeanor prosecution or injunction. No other procedure for enforcement or private civil action.

Michigan

No definition by statute or court rule. Appellate case law, mostly fact specific. Definition currently being developed by State Bar of Michigan UPL committee. Committee draft is modeled largely after State Bar of Washington's definition.

Supreme Court has delegated to the State Bar of Michigan the authority to investigate and prosecute UPL cases. Grant is not exclusive and private parties may bring a civil action alleging UPL violation. If State Bar of Michigan brings an action on UPL it is usually through staff counsel. State level enforcement is by civil injunctive relief only, no criminal penalties. On some occasion jail time has been ordered for repeated violation of injunction and contempt.

Missouri

Statutory definition in M.R.S. 484.010 and 484.020. Supreme Court however has made it clear that the unauthorized practice of law is exclusively the province of the Court and they treat the statutes as useful but not definitive.

Chief Disciplinary Counsel has jurisdiction to investigate issues of UPL. Jurisdiction limited to injunctive action and does not permit restitution. Missouri prosecutors could take criminal action for misdemeanor and Attorney General would have some jurisdiction under consumer fraud statutes.

Private individuals can seek restitution under Section 484.020 and seek treble damages.

Nebraska

No statutory or regulatory definition.

Criminal misdemeanor statute on the books but prosecution is rare.

Nebraska State Bar has petitioned Nebraska Supreme Court to adopt a definition of practice of law and enforcement procedures. Two petitioned proposals have been made, neither adopted to date. Procedural rules proposed to the court are similar to those of Colorado. A second proposal was made similar to UPL rules and definition used by the State of Virginia. Petition withdrawn with understanding that a joint committee between practicing lawyers and the Supreme Court would be established to further study the issue.

New Jersey

No statutory or regulatory definition. Case law determination on case by case basis.

New Jersey does have a UPL committee appointed by their Supreme Court. It consists of 21 attorneys and 4 lay members. Has power to investigate complaints, pursue written agreements or consent orders and advisory opinions. Advisory opinions are subject to petition for review to Supreme Court.

New York

The New York State Bar Association has recommended amendment to statutes to replace them with a definition of practice of law, a prohibition on unauthorized practice, and a series of exceptions to general prohibition.

Current enforcement procedures are only by Attorney General which has civil enforcement authority by case law and statutory misdemeanor prosecution.

Ohio

Broad definition in Supreme Court Rules but what constitutes unauthorized practice of law in Ohio is decided by the court on a case by case basis.

Enforcement is by Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court. Appointed by the court. Rule sets out procedures for investigations, complaints, expenses, action on complaint. Supreme Court of Ohio has original jurisdiction

Oregon

State Bar Board of Governors has adopted a policy defining UPL. Definition based primarily on case law. This is a very broad definition and the UPL committee has a separate list of activities that is a "conduct subject to investigation by the Committee" This appears to be sort of a "probable cause" list.

Oregon State Bar is responsible for enforcement and is an instrumentality of the Judicial Department. UPL Committee may conduct investigations and may enjoin suit for injunctive relief. Misdemeanor prosecution also available but rarely used.

Oklahoma

No statutory or rule definition. Relies on common law rules in defining unauthorized practice of law.

Supreme Court has exclusive jurisdiction in all matters involving discipline, admission to practice and unauthorized practice. Enforcement actions taken by Office of General Counsel, an official arm of the Oklahoma Supreme Court. General Counsel's office is the party responsible for enforcement. May seek an injunction to prohibit unauthorized practice. They report that many of the instances occur after an attorney has been disbarred or suspended.

Pennsylvania

No statutory or regulatory definition. Based upon common law Supreme Court decisions

Misdemeanor prosecution and injunctive relief available. Party obtaining injunction may be awarded costs and expenses, including reasonable attorneys fees, against enjoined parties.

Rhode Island

No specific statute or court rule definition. Statute does include a number of acts which are included in practice of law but definition is not all-inclusive. Their UPL Chair feels that attempt to freeze definition by statute or court rule would be counterproductive and that highest level court should decide on case by case basis.

Any attorney may bring civil action to enjoin UPL. UPL Committee which is an arm of the Supreme Court created by statute, has standing to maintain civil action to address UPL issues. UPL Committee has formal rules for investigation of complaints, taking of evidence and adjudicative proceedings. Criminal sanctions may be pursued by Attorney General.

South Dakota

No statutory or regulatory definition. Rely upon common law rules set forth by appellate courts.

Consumer Protection Committee of the South Dakota State Bar is the only entity with general responsibility for enforcement. Misdemeanor prosecution is available but rarely used. The Attorney General or any private citizen may seek injunctive relief and unauthorized practice of law subjects the violator to liability for damages proximately caused thereby.

Tennessee

Definition by statute. Title 23, Chapter 3, T.C.A.

Enforcement by Attorney General, Consumer Protection Division. May prosecute an individual who holds themselves out to be an attorney. In addition a bar association may bring a civil action.

Texas

No current statutory or regulatory definition. Currently defined by caselaw and by case by case analysis of Texas Supreme Court.

UPL investigations and prosecutions conducted by unpaid volunteers. Overall effort supervised by statewide UPL committee or attorneys and public members appointed by Texas Supreme Court. This committee is not a part of the State Bar of Texas. May bring actions by injunctive relief and enforce through contempt. State Bar of Texas provides staff liaison to the committee and some administrative support. Texas Supreme Court has appointed a task force to rewrite the definition of UPL in order to codify case law and incorporate exceptions to UPL resulting from legislative authorizations for nonlawyers to provide representation in certain administrative hearings.

Utah

Serious controversy. Utah legislature completely repealed the UPL statute which stated its belief that lawyers were not sufficiently meeting the needs of the middle class and that opening the practice to anyone who wished to do so was a good way to remedy the problem. The Utah State Bar was able to get part of the law reinstated and the legislature later relented during a special judiciary committee study.

No statutory or regulatory definition. Defined by case law.

Utah State Bar under the direction of the Utah Supreme Court enforces violations. Future is highly questionable.

Vermont

No statutory or regulatory definition. Defined by case law. No rules or regulations relating directly to unauthorized practice of law.

Attorney General may take action for criminal prosecution and it "may" be possible for aggrieved persons to seek a remedy under the Vermont consumer fraud statutes.

Washington

After an extensive multiple year study the Washington Supreme Court established by court rule a definition of the practice of law and a Practice of Law Board. The purpose of the Board is to investigate allegations of UPL and to recommend to the Supreme Court any areas of practice that might be suitable for the limited licensing of non-lawyers.

The Practice of Law Board may issue advisory opinions and investigate complaints and matters on its own initiative. Enforcement action appears to be by referral to outside agency or by petition to the Supreme Court for injunctive action. Actions of the Board, including opinions as to what constitutes UPL, are subject to right of respondent to petition for review by Supreme Court.

West Virginia

Definition by rule of West Virginia Supreme Court.

UPL Committee created by Supreme Court rule with investigatory powers and hearing procedures. Members appointed by President of State Bar. UPL Committee can take enforcement actions.