

**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 These proposals were withdrawn and the state bar adopted a 10 point approach to try and focus bar and public attention on UPL issues.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.