UNAUTHORIZED PRACTICE OF LAW (UPL) TRAINING FOR ADVOCATES

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Why must advocates and assistants avoid the UPL and attorneys avoid assisting in the UPL?

- Because an assistant or paraprofessional's work merges into and becomes the lawyer's work, lawyers will be held liable for the malpractice of the paraprofessional working under supervision if the client was harmed.
- If the State Bar determines that the lawyer failed to properly supervise or otherwise aided the paraprofessional in the unauthorized practice of law, the lawyer may be subject to penalties, such as injunction, civil penalties, censure, suspension, or disbarment.
- The State Bar also has the authority to investigate and prosecute cases of unauthorized practice of law against non-attorneys. If the State Bar finds that UPL has taken place, it can file a complaint in Superior Court seeking to enjoin the non-attorney from further activity and can seek restitution in appropriate cases.

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What is the "Unauthorized Practice of Law" (UPL)?

"Unauthorized practice of law" includes but is not limited to:

- (1) engaging in the practice of law by persons or entities not authorized to practice; or

What is the "Unauthorized Practice of Law" (UPL)?

- (2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state, the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state. 17A A.R.S. Sup. Ct. Rules, Rule 31(a)(2)(B).

Who is authorized to practice law in Arizona?

- Generally, active members of the state bar. 17A A.R.S. Sup. Ct. Rules, Rule 31(b).

What is the Practice of Law?

"Practice of law" means providing legal advice or services to or for another by:

- (1) preparing any document through any medium intended to affect or secure legal rights for a specific person or entity;
- (2) preparing or expressing legal opinions;

What is the Practice of Law?

"Practice of law" means providing legal advice or services to or for another by:

- (3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
- (4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

What is the Practice of Law?

"Practice of law" means providing legal advice or services to or for another by:

- (5) negotiating legal rights or responsibilities for a specific person or entity.
- 17A A.R.S. Sup. Ct. Rules, Rule 31(a)(2)(A).

What UPL exceptions, if any, apply to ACDL's services?

- **ADHS administrative appeal procedures for behavioral health services**
- **AHCCCS administrative appeal procedures**
- **Any ADES proceeding, such as VR and DDD proceedings**
- **SPED due process hearings and manifestation determinations**
- **Paraprofessionals working under an attorney's supervision**

ADHS administrative appeal procedures for behavioral health services

In any administrative appeal proceeding of the Department of Health Services, for *behavioral health services*, pursuant to A.R.S. § 36-3413, a party may be represented by a duly authorized agent who is not charging a fee for the representation. 17A A.R.S. Sup. Ct. Rules, Rule 31(d)(8).

AHCCCS administrative appeal procedures

In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation. 17A A.R.S. Sup. Ct. Rules, Rule 31(d)(12).

ADES proceedings, such as VR and DDD

In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation or a duly authorized agent who is charging a fee may represent any party, if an attorney is responsible for and supervises the agent. 17A A.R.S. Sup. Ct. Rules, Rule 31(d)(1).

SPED due process hearings and manifestation determinations

In any administrative proceeding pursuant to 20 U.S.C. § 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging the party a fee for the representation. 17A A.R.S. Sup. Ct. Rules, Rule 31(d)(15).

Paraprofessionals working under an attorney's supervision

Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. 17A A.R.S. Sup. Ct. Rules 31(18).

What is legal advice?

Written or verbal statements that:

- Interpret some aspect of the law, court rules, procedures, or recommend a specific course of conduct a person should take in an actual or potential legal proceeding;
- Apply the law to the individual's specific factual circumstances; or
- Require the person giving the advice to have knowledge of the law and legal principles beyond generally available facts and resources.

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Paraprofessionals may:

- Share facts with client (e.g. inform client of date of hearing or that RSA offers mediation).
- Draft legal documents for review and approval by attorneys before sharing outside of the firm.
- Fill out forms for review and approval by the attorney.
- Make referrals to agencies, legal aid, public interest law offices, and specialty bar associations.

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Paraprofessionals may:

- Help people articulate preferences and goals and have those goals and preferences respected at meetings.
- Help individuals gather facts and information: to organize, summarize, collect and record information about the situation.
- Gather information.

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Paraprofessionals may:

- Quote directly from an ACDL guide or self-advocacy material or government website (e.g. DOJ, EEOC, AHCCCS).
- Provide guides or printed materials.
- Explain the steps in a process.

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Paraprofessionals may:

- Do legal and other research which is reviewed and approved.
- Provide factual information.
- Relay legal advice from an attorney.

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Paraprofessionals may not:

- Give legal advice.
- Accept cases.
- Define the scope of services.

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American Bar Association UPL guidelines for hotline services

- A telephone hotline service providing legal information and advice must not participate in the unauthorized practice of law.
- When paraprofessionals staff the hotline services, they must do so under the direction and supervision of attorneys.

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American Bar Association UPL guidelines for hotline services

- Hotline services must avoid the perception that lawyers are staffing the telephones when they are staffed by paraprofessionals.
- Hotline services must adopt and use procedures that inform callers that those giving legal information are not lawyers.

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What are the consequences of engaging in the unauthorized practice of law?

- Because an assistant or paraprofessional's work merges into and becomes the lawyer's work, lawyers will be held liable for the malpractice of the paralegal working under supervision.
- If the State Bar determines that the lawyer failed to properly supervise or otherwise aided the paraprofessional in the unauthorized practice of law, the lawyer may be subject to penalties, such as injunction, civil penalties, censure, suspension, or disbarment.
- The State Bar also has the authority to investigate and prosecute cases of unauthorized practice of law against non-attorneys. If the State Bar finds that UPL has taken place, it can file a complaint in Superior Court seeking to enjoin the non-attorney from further activity and can seek restitution in appropriate cases.

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Which questions may be answered without engaging in the UPL? If so, how?

- Do I need to tell my employer that I have a disability?
- How do I write a good letter of medical necessity?
- Where can I go to get more information about the FMLA?
- What is a service animal?

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Which questions may be answered without engaging in the UPL? If so, how?

- Can my landlord evict my family because my son with autism makes a lot of noise?
- Should I file a discrimination charge with the EEOC?
- How do I prepare for mediation?

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Which questions may be answered without engaging in the UPL? If so, how?

- My son who is DD uses adult incontinent briefs and the brand that Preferred Healthcare provides do not work. Are they required to supply the brand I prefer?
- Is my hybrid wolf/dog a service animal?
- My landlord has a pet policy that restricts pets by breed and size. Can he apply it to my service animal?
- What happens after I file a charge of discrimination with the EEOC?

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Which questions may be answered without engaging in the UPL? If so, how?

- VR made me a priority 2? Should I be classified as priority 1?
- I disagree with the school's evaluation of my daughter and their determination that she is not eligible for special education. What steps should I take to challenge the decision?
- I believe my school employer discriminated against me. How long do I have to file a discrimination complaint? Where do I file my complaint?

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Which questions may be answered without engaging in the UPL? If so, how?

- I requested mediation from the ADE and the mediation is in three days. What should I ask for?
- How can I get my healthcare plan to provide a notice of action to me?
- Is my employer required to let me telework because of my disability?
- My medical provider will not allow my service animal in the room when I get a specific medical procedure. Is my medical provider required to care for my service animal during the procedure?

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Which questions may be answered without engaging in the UPL? If so, how?

- I am a temporary employee at a warehouse and need an accommodation. May I request a reasonable accommodation?
- I have a hearing at the Office of Administrative Appeals in 5 days. I need more time. How do I ask for an extension?
- What are the steps in the appeal process?
- Must Cenpatico give me a copy of my file if I request it?

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Which questions may be answered without engaging in the UPL? If so, how?

- The ACRD is requesting that I come to a "Position Statement Review"? Should I go? If so, what will they ask me? How should I get ready for it?
- The school district will not let my son bring his service animal to school. How can I complain about that decision?
- So that's how my employer treated me. Do I have a good case?
- I received a document called a Right to Sue letter. What does it mean?

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Which questions may be answered without engaging in the UPL? If so, how?

- Should I file a grievance or an appeal regarding my disagreement with MMIC?
- VR is requiring me to apply for a PELL grant and I'm in the DACA program? What should I do?
- The hospital says I'm ready to be discharged, but I don't agree with the discharge plan. Can I stop the discharge?
- VR is requiring me to pay for some of my services, but I have medical expenses. It is fair for me to have to pay when my expenses are so high?

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Practical tips and reminders:

- Be clear in oral and written communications that you are not an attorney.
- Never guess! You can say, "I don't know, but I will ask one of our attorneys."
- Don't say things like "I don't think you have that right" or "you don't have a case."
- Do not answer questions that apply the specific facts to the law without conferring with an attorney.

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Practical tips and reminders:

- Rely on written reliable sources that provide facts or generally available resource and information.
- Do not feel compelled to provide legal advice: remind callers or clients that you are not an attorney and you will need to discuss that with your attorney.
- Generally, filing deadlines and any limitation periods should be confirmed with an attorney.

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Examples of sources where you can get trusted generally available legal information and resources:

- **Discrimination by public accommodations and services**: U.S. Department of Justice ADA Home Page
- **Discrimination by schools**: U.S. Department of Education-Office of Civil Rights
- **Discrimination by ADA-covered**: U.S. Equal Employment Opportunity Commission
- **Member behavioral health rights**: Member Manuals for Cenpatico and MMIC and State Department of Health Services

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Examples of sources where you can get trusted generally available legal information and resources:

- **Special education disputes under IDEA:** Arizona Department of Education; U.S. Dept. of Education, Office of Special Education and Rehabilitative Services
- **Healthcare disputes:** AHCCCS website; member manuals for healthcare providers
- **DDD Eligibility and Services:** Division of Developmental Disabilities website, including FAQ section
- **Assistive technology ideas:** Arizona Technology Access Program (AzTap) – Topic Sheets
- **Accommodation ideas:** Job Accommodation Network
- **Benefits issues:** DIRECT; Ability360

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