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# Practice Tips

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## WHAT ACTIVITIES CONSTITUTE THE PRACTICE OF LAW?

Quick quiz: Which of the following activities constitute the practice of law? (Circle all that apply).

- a) Deciding whether to represent a particular client
- b) Evaluating a personal injury claim
- c) Advising clients of the claim’s merits
- d) Negotiating the claim with insurance companies
- e) Discussing case authority and legal strategy with clients
- f) Advising a client about his or her legal rights and recommending future actions
- g) Preparing and signing demand letters
- h) All of the above

If you chose “All of the above,” you are correct. The Nevada Supreme Court has noted that each of these actions has been found to constitute the practice of law.<sup>1</sup>

So, what exactly constitutes the “practice of law?” The Supreme Court has stated that the “practice of law” definition is not susceptible to a bright-line, broadly stated rule. The Nevada Supreme Court, as well as courts throughout the country, agree that what constitutes the practice of law must be decided on the facts and within the context of each individual case.<sup>2</sup> As a general rule of thumb, however, the “practice of law” means the exercise of professional judgment in applying legal principles to address another person’s individualized needs through analysis, advice or other forms of assistance.<sup>3</sup>

Thus, simply providing forms or offering a service to type client-provided forms was not the practice of law, but advising the client on how to complete a form (e.g., what information

to include and on what portions of the form to include that information), would constitute the practice of law.<sup>4</sup>

The Rules of Professional Conduct specifically prohibit attorneys from assisting non-attorneys in the unauthorized practice of law under RPC 5.5 (Unauthorized Practice of Law), and attorneys have a duty to properly supervise non-attorney employees if they have either direct supervisory authority over them or managerial responsibility for the firm under RPC 5.3 (Responsibilities Regarding Non lawyer Assistants).

If your non-attorney assistant goes rogue and unilaterally decides to offer legal advice or sign-up clients, and you take immediate action to correct the problem, you’ll likely have a defense to these disciplinary charges. However, if your office policy allows non-attorney assistants to sign up clients or otherwise practice law, or if the policy is indifferent to such conduct, you may be found to have ratified the unauthorized practice of law.

Unsurprisingly, many of the bar complaints that ultimately result in the imposition of discipline involve the unauthorized practice of law by non-attorneys, particularly the signing up of clients and/or managing clients’ cases. We’ve had disciplinary hearings in which the client, who has come in to testify, notes that he/she is glad to finally meet the attorney in person (helpful hint: if the first time you meet your client is at your own disciplinary hearing, it’s not going to go very well for you).

This month’s Office of Bar Counsel Report includes an attorney who received a public reprimand for allowing a non-lawyer to sign up clients for traffic-ticket violations. As noted

earlier, making the determination to accept a client is an exercise of professional judgment. It involves an evaluation of the potential client's claims and a determination that the attorney can adequately represent the client's interests.

Last year, an attorney also received a public reprimand for allowing his non-attorney employee to sign up a client who received a traffic citation. This employee contacted the wrong court to calendar the attorney's appearance, and then failed to follow up when no return call was received. The client was eventually arrested on a bench warrant, and only then did the attorney personally get involved in the client's matter.

Another attorney also received discipline last year for allowing a non-attorney employee to sign up traffic-ticket clients. The complaining client had grieved that the attorney failed to do anything in her matter and had refused to grant a refund. The attorney's initial response to the state bar gave a version of events that was contradicted by court records (such as claiming the client had blown off a court hearing and was subsequently arrested on a bench warrant). The attorney subsequently admitted to having had no actual involvement in the case (and the client got her refund).

Lastly, these concerns also apply to attorneys who are inactive or suspended (regardless of whether it's a disciplinary or administrative suspension), as inactive and suspended attorneys are ineligible to practice law. *See SCR 77* (Membership in state bar required; exception); *see also In re Holmberg*, 135 P.3d 1196 (Kan. 2006) *In re Schoeneman*, 891 A.2d 279 (D.C. App. 2006).<sup>5</sup>

Given that bar dues are due (and CLE requirements must be fulfilled) by March 1 of each year, and that this is the March issue of *Nevada Lawyer*, please make sure you've remitted your bar dues and CLE information. Otherwise, this article may soon apply to you. ■

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1. *In re Lerner*, 124 Nev. 1232, 1241-1242, 197 P.3d 1067, 1074 (2008).

2. 124 Nev. at 1239, 197 P.3d at 1073.

3. 124 Nev. at 1239, 197 P.3d at 1072-1073.

4. 124 Nev. at 1239, 197 P.3d at 1073.

5. Inactive attorneys may be eligible to practice law under SCR 49.2 (Limited practice for emeritus pro bono attorneys).