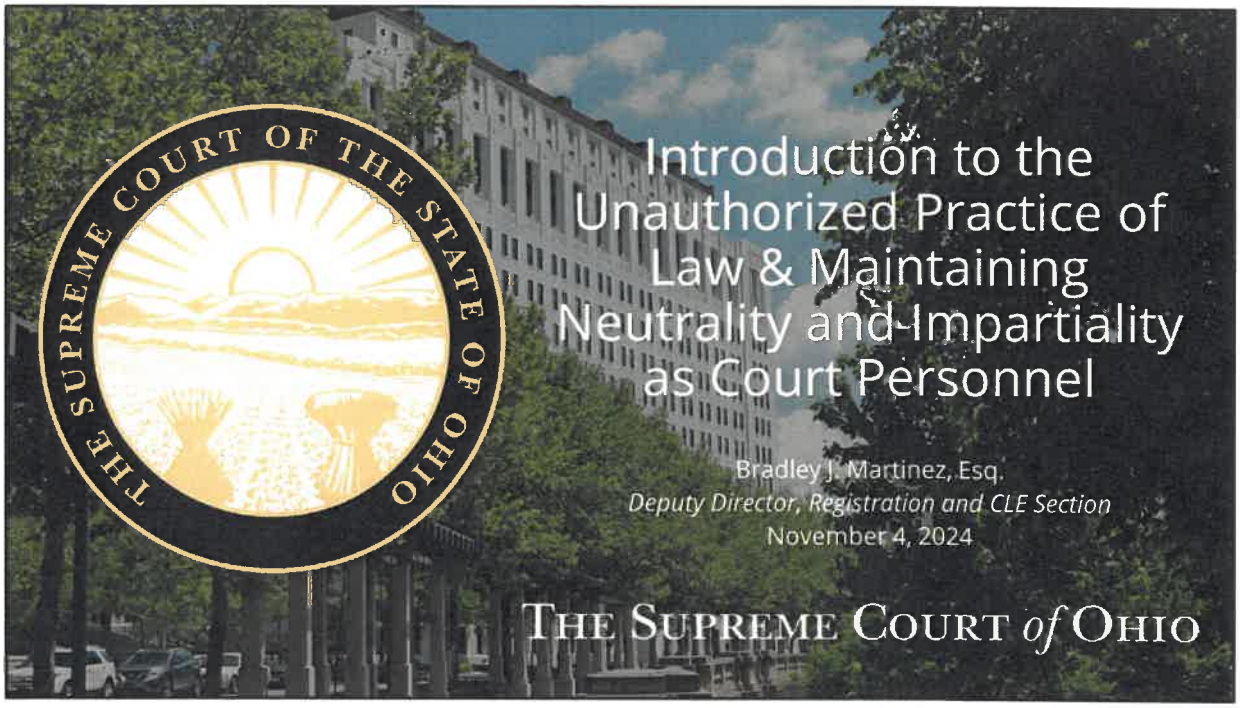

THE SUPREME COURT OF THE STATE OF OHIO
Introduction to the Unauthorized Practice of Law & Maintaining Neutrality and Impartiality as Court Personnel
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THE SUPREME COURT of OHIO

Board on the Unauthorized Practice of Law (UPL)

- Established by Supreme Court of Ohio via Gov.Bar R. VII
- Thirteen commissioners appointed by the Court
  - Nine active Ohio attorneys and four non-attorneys
- Meets at least four times a year
- Subcommittees
- Conducts hearings and makes recommendations to the Court regarding UPL allegations
- Issues advisory opinions

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Gov. Bar R. VII is built on the premise that limiting the practice of law to licensed attorneys is **generally necessary to protect the public** against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.

Why does UPL exist?

- Tremendous justice gap in this country and state
- Lawyers are expensive and sometimes inaccessible
- As a result, a robust market exists.





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Landlord-tenant case - $500-$3,500 / Immigration - $2k-$7,500 / Family law $5k - $15k

37 36 19 22

What is UPL?

- Gov. Bar R. VII(31)(J)(1):
  - The rendering of legal services for another by any person not admitted to practice in Ohio [subject to exceptions].
  - The rendering of legal services for another by any person who has been disbarred or resigned from the practice of law.
  - The rendering of legal services for another by any person admitted to practice law while the person is suspended or registered inactive or registered retired.
  - Holding out to the public or otherwise representing oneself as authorized to practice law.

ATTORNEYS

NON-ATTORNEYS

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What is UPL (Part 2)?

- *Land Title Abstract Trust Co. v. Dworken,* 129 Ohio St. 23 (1934), syllabus para 1 (emphasis added):
  - The practice of law is *not limited to the conduct of cases in court*. It embraces the *preparation of pleadings* and other papers incident to actions and special proceedings and the *management of such actions* and proceedings on behalf of clients *before judges and courts*, and in addition conveyancing, the *preparation of legal instruments* of all kinds, and in general all *advice to clients* and all *action taken for them* in matters connected with the law.

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widely cited case, note that it's 90P years old

Who has the final word on UPL in Ohio?



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The Supreme Court of Ohio has exclusive jurisdiction over the practice of law in Ohio and **ultimately decides** what is the unauthorized practice of law.

5 TYPES

Relevant "Types" of UPL Allegations

- Advice
- Document Preparation





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- Also briefly mention representation (except individual may present claims on behalf of LLC owned by that person; in some cases, worker's comp and unemployment comp).
- Also briefly mention negotiation.
- Also briefly mention "holding oneself out," though it typically isn't considered UPL unless accompanied by one of the other four.

Advice

- Providing advice regarding an individual's specific circumstances.
- Typically:
  - Contract/lease issues.
  - Estate planning issues (but not tax advisors, usually).
  - Debt/foreclosure/bankruptcy.
  - Forms of businesses.
  - Steps to qualify for Medicaid.
- First Amendment considerations.

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Try to determine whether the advice or conduct is merely a statement of general principles or an application of a rule of law to a specific situation.

The former is not UPL.

In fact, providing views as to what the law may or may not be is protected by the First Amendment. The latter is not protected; it is UPL.

Mention Deters (retired Ohio attorney provided legal advice while working as paralegal).

Robson (law school graduate pretended to be attorney, gave advice at firm).

Document Preparation

- Among other documents, non-lawyers cannot prepare:
  - Pleadings and motions.
  - Documents transferring property.
  - Estate planning documents.
  - Mechanic's liens.
  - Corporate formation documents.
- However, the following document-related activities are NOT UPL:
  - Publishing forms.
  - "Scrivening"
    - Act of filling out or typing a legal document exactly as dictated or requested by someone else, without providing any legal advice, selection, or interpretation.

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Mostly see this in the form of "trust mills" and people willing to help with family law issues.

Principles for Court Staff



Duties and Responsibilities



Neutrality & Impartiality



Inquiry Policies

Duties of the Clerk of Court

- Processing and archiving all Court records;
- Detail all financial transactions involving the Court.







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Access to Accurate Information

- **All** Court users are entitled to the **same** information.
- Feel comfortable providing the same information to self-represented litigants that you provide to attorneys.
- Identify standard court forms that meet the court user's needs.
  - Be careful, this can cross a UPL line;
  - General instructions on how to complete the forms are permitted.

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WHAT FORM DO I NEED? CAN BE BAD

WHICH FORM IS FOR A CHANGE IN CUSTODY?

↓

OKAY

when there are multiple avenues,

BAD

Legal Information

General, not based on a specific set of facts.

"One key element of the practice of law is missing in published advices offered to the general public: the tailoring of that advice to the needs of a specific person."

Disciplinary Counsel v. Palmer, 115 Ohio Misc. 2d 70, (2001).

Neutrality

- All court personnel **must maintain neutrality**;
- Avoid recommending or promoting any course of action to court users;
- Only the court user or their attorney should determine what is in best interests.



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In our role, we are the keeper of records. We are not fact finders, we are not investigators, and we are not advocates. It is critical we are confident in our role and responsibilities, which are part of maintaining the justice system.

even if you know...
- since we all chose public service as a career, we are all inclined to help
- also fun to flex knowledge muscles, but don't do it even if litigant is pushy

Impartiality

- Equal treatment of court uses;
- Sharing court knowledge fairly and equally (e.g., notices sent to all parties);
- Court personnel who are licensed attorneys are *not* permitted to give legal advice because doing so would **violate principles of neutrality and impartiality.**

attorneys

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Why do we prosecute UPL?

- To protect consumers against incompetent and unscrupulous persons who prey on people who need help.
- Only lawyers have ethical duties to be competent and put the client's interest first.
- Only lawyers can be effectively disciplined (beyond and monetary award that a wronged consumer might receive in litigation).



Ohio Board of Professional Conduct

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consumer protection

only lawyers are subject to ethical rules and potential discipline

Advice

- Suggesting which of ral procedures a co er should follow – **NO.**
- Giving advice/information th e one party an advantage over another – **NO .**
- Telling a court user wha y in cour
- Predicting how the c might rule – **NO.**

Think of yourself as a librarian – you can tell the user where the books are, but cannot do the research for them.

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Court Policies

Courts may have different policies or procedures in handling specific inquiries. This presentation is meant to facilitate discussion regarding how to establish policies, ensuring consistency among court staff in serving the public.



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Forms

- Ohio Forms Practice
  - There is no prohibition against courts creating **standard forms**;
  - Local court autonomy
- Task Force/*Pro Se* – Indigent Litigants
  - Standard, statewide forms
  - Forms with instructions

Common Potential Issues

- Preparing forms or other documents for persons to file later pro se (for oneself)
- Inadequate supervision by the attorney
- Not indicating "not an attorney," or misleading by omission
- Offers of document preparation or forms assistance for friends, family, others (for profit or for free)
- Appearances in courts on behalf of others
- Engaging in settlement negotiations on behalf of others

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These are general circumstances, not necessarily ones court staff will find themselves involved in.

Dos and Don'ts

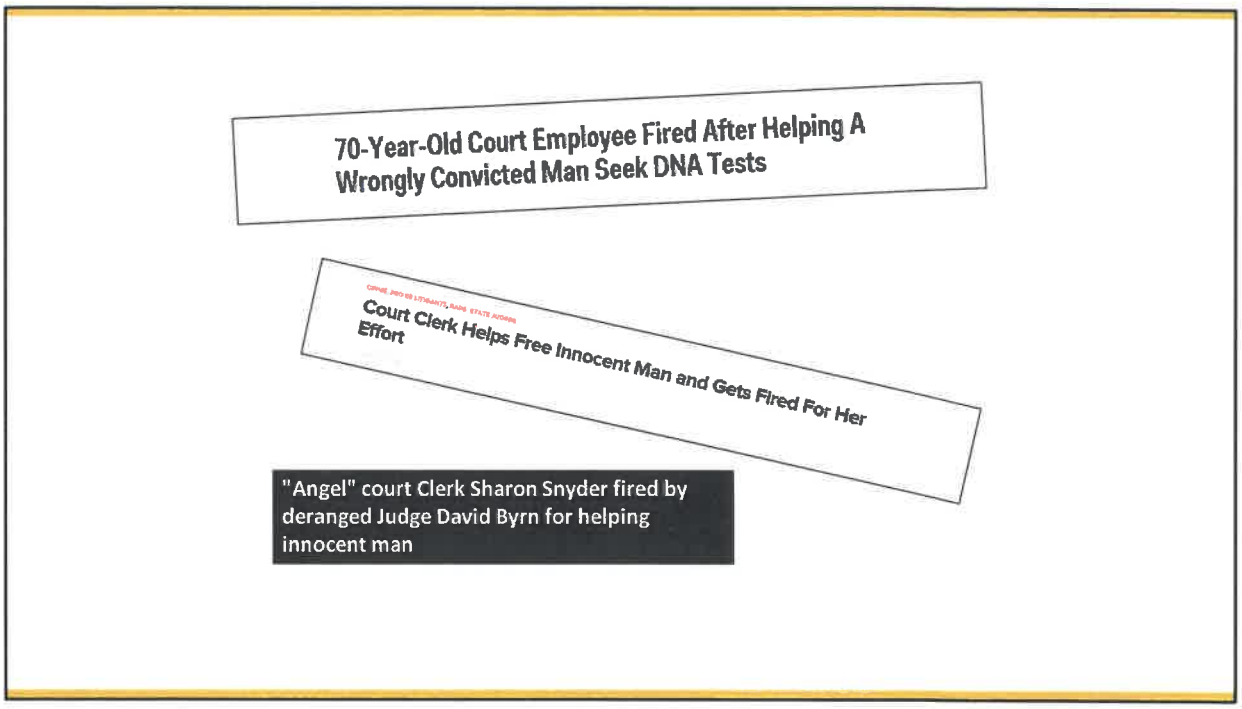
Do

- Cite court rules and procedures;
- Provide public case information;
- Give general information on court operations;
- Offer basic assistance on forms/instructions.

Don't

- Make legal interpretations;
- Give procedural advice;
- Research;
- Give opinions;
- Draft pleadings or fill out forms.

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70-Year-Old Court Employee Fired After Helping A Wrongly Convicted Man Seek DNA Tests
Court Clerk Helps Free Innocent Man and Gets Fired For Her Effort
"Angel" court Clerk Sharon Snyder fired by deranged Judge David Byrn for helping innocent man

Review

- Do not give information to one party that you would not give to an opposing party;
- Do not tell a court user whether a case should be brought to court or give opinion about the outcome;
- Do not advise on the "best way" to handle a court appearance;
- Do not take a position that will encourage or discourage a court user's course of action.

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