

ETHICS & Immigration

Practice Advisory

By Sherry L. Neal

The Unauthorized Practice of Immigration Law

The prohibition on the unauthorized practice of law is designed to protect the interests of attorneys, but more importantly, to protect the public by ensuring that those who are trained in the legal profession and subject to its penalties are performing the legal work. Beginning in the late 1800s, some states began enacting legislation against the unauthorized practice of law. Since that time, the terms "practice of law" and "unauthorized practice of law" have not been specifically defined. In fact, the Ethical Considerations to the Professional Rules of Conduct for attorneys states that it is "neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law." However, in a case involving the issue of the unauthorized practice of immigration law, the Supreme Court of Texas said:

The practice of law embraces in general all advice to clients and all action taken for them in matters connected with the law. Although the act of recording a client's responses to the questions on the form I-130 probably does not require legal skill or knowledge, the act of determining whether the I-130 should be filed at all does require specific legal skills. (Unauthorized Practice Committee, *State Bar of Texas v. Cortez*, 692 S.W.2d 47 (Tex. 1985).

UPL on a State and Federal Level


Since immigration law is federal law, there are both federal and state issues to consider regarding the unauthorized practice of law. Several years ago the Office of the General Counsel issued an opinion stating that a non-licensed attorney who represents individuals before the Immigration and Naturalization Service would be violating federal immigration regulations and may also be violating state laws regarding the unauthorized practice of law (Memorandum dated June 9, 1992, reprinted in 69 *Interpreter Releases* 823 (July 6, 1992)). The general counsel defined the terms "practice" and "representation" very broadly to include "activities which range from incidentally preparing papers for a person, to giving a person advice about his or her case, to appearing before the Service on behalf of the person." *Id.*

The INS regulations permit the following people to file immigration petitions on behalf of foreign nationals: (1) attorneys in the United States; (2) law students and law graduates not yet admitted to the bar provided the foreign national consents to the representation and the law student or law graduate is working under the direct supervision of an attorney, faculty member or legal aid program; (3) any reputable individual of good moral character provided that he or she is appearing on an individual case basis at the request of the person entitled to representation, he is appearing without direct or indirect remuneration and files a written declaration to that effect, he has a pre-existing relationship with the person being represented (however this requirement can be waived), and his appearance is permitted by the INS officer; (4) accredited representatives of a nonprofit religious, charitable, social service, or similar organization provided it makes "only nominal charges and assesses no excessive membership dues" for persons given assistance and it has at its disposal "adequate knowledge, information and experience"; and (5) an accredited official of the government to which the foreign national owes allegiance if the official appears solely in his official capacity. See 8 CFR §292.1.

'Attorneys have an obligation to protect the public from those individuals who engage in the unauthorized practice of law.'

Furthermore, it is permissible for a person to complete the forms on behalf of a foreign national if the person: (1) does not play any role in deciding which form should be completed and filed; (2) does not give any advice or opinion concerning the questions on the form; (3) receives no payment, or only nominal payment, and (4) does not hold himself out to be qualified in the area of immigration law. See 69 *Interpreter Releases* 805 (July 6, 1992). In an immigration case involving the issue of the

unauthorized practice of law, the Supreme Court of Texas said that a consultant may type forms already completed by the client but cannot engage in any other personal legal assistance including the “correction of errors or omissions.” See *Florida Bar v. Dobbs*, 508 So.2d 326.

The increase in immigration filings brings with it an increase in “opportunists”—people who see an opportunity to make money by filing immigration documents for foreign nationals. Attorneys have an obligation to protect the public from those individuals who engage in the unauthorized practice of law. 

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