LAW CLERK

COMPLIANCE WITH THE PROHIBITION ON THE UNAUTHORIZED PRACTICE OF LAW

(A 50-STATE SURVEY) *REVISED AUGUST 2020*

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Section I - Introduction

LAWCLERK™ is an online legal marketplace. LAWCLERK allows lawyers who are admitted to and in good standing with their respective state's bar association ("Attorneys") to engage other lawyers who are barred and in good standing in their jurisdiction ("Lawclerks")[1] to provide discrete legal-related services in a paraprofessional capacity. These services include, but are not limited to, the preparation of memorandums, pleadings, written discovery requests, and agreements.

The use of LAWCLERK by Lawclerks and Attorneys encourages cost-effective delivery of legal services and reduces the spiraling cost of civil litigation.[2] Yet, Attorneys, Lawclerks, and others may be concerned that offering or accepting assignments through LAWCLERK may raise ethical concerns, specifically the unauthorized practice of law. This white paper will assure all parties that the use of LAWCLERK does not constitute the unauthorized practice of law in any jurisdiction.

The definition of "the practice of law" is established by each jurisdiction and therefore, the definition varies from one jurisdiction to another.[3] Because of the divergent definitions of what constitutes the practice of law, this white paper undertakes a state by state analysis of how LAWCLERK fits within the unauthorized practice of law framework for every state.

Section I will first describe the application of the American Bar Association's Model Rules of Professional Conduct (hereinafter "Model Rules") to the LAWCLERK platform. Courts and bar associations unanimously agree that the purpose of the prohibition on the unauthorized practice of law is to protect the public from receiving legal services from unqualified persons.[4] Consistent with the Model Rules and as shall be developed herein, LAWCLERK balances the need for Attorneys to obtain paraprofessional services to maintain cost-effective legal services while meeting society's need to ensure that the public is not unknowingly receiving legal advice from unqualified people.

Section II of this memorandum will explain how LAWCLERK complies with the ethical rules of all 50 states and the District of Columbia. Though the rules may differ, in all jurisdictions, LAWCLERK is a convenient, cost-effective way to run a law practice without engaging in the unauthorized practice of law.

Hopefully, this white paper will provide helpful guidance and peace of mind for those who take advantage of the many benefits offered by LAWCLERK. The team that prepared this paper has made every effort to be accurate. However, laws change frequently and courts are constantly amending the rules of practice. Therefore, while this paper is intended to be helpful, Attorneys

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[1] LAWCLERK's terms of service also permit, at LAWCLERK's sole discretion, attorneys that were barred and in good standing but allowed their licenses to lapse due to retirement or similar reasons to act as Lawclerks.
[2] *Missouri v. Jenkins by Agyei,* 491 U.S. 274, 288 (1989) (noting the "spiraling cost" of civil rights litigation)(quoting *Cameo Convalescent Center, Inc. v. Senn,* 738 F.2d 836, 846 (7th Cir. 1984), cert. denied, 469 U.S. 1106 (1985)).
[3] *See, e.g.,* MODEL RULES OF PROF'L CONDUCT Comment 5.5 (2016) [hereinafter Model Rules].
[4] *See id.*

and Lawclerks using LAWCERK remain solely responsible for complying with all applicable rules in each jurisdiction where they are barred.

LAWCLERK's Terms of Use

Each Attorney utilizing the services of a Lawclerk through LAWCLERK must execute the following agreement:

> I am a duly licensed attorney in good-standing and I agree to fully comply with the following rules regarding the use of Lawclerk services.
>
> 1. I shall have sole professional responsibility for the work product of the Lawclerk.
>
> 2. I will supervise the Lawclerk's performance of services on the assigned project to ensure compliance with the applicable Rules of Professional Conduct.
>
> 3. I will establish and maintain the relationship with my client.
>
> 4. The Lawclerk shall have no contact with my client, including without limitation no email, telephone, Skype, web, social media, or in-person contact.
>
> 5. The Lawclerk shall not appear in court or any other judicial or administrative body on behalf of my client.
>
> 6. I will not ask or otherwise cause the Lawclerk to serve or otherwise disseminate the Lawclerk's work product or any other documents to anyone other than me.
>
> 7. I will not ask or otherwise cause the Lawclerk to sign or file any documents with any court or administrative body.
>
> 8. The Lawclerk shall have no contact with opposing counsel, witnesses, or other persons potentially involved in the project for which the Lawclerk has been engaged, including without limitation no email, telephone, skype, web, social media, or in-person contact.
>
> 9. If required by my engagement agreement with my client or applicable law, I have obtained my client's consent to utilize the services of a Lawclerk.
>
> 10. I have sole responsibility for determining the fee charged to my client for legal services. The Lawclerk shall not have any involvement in determining the fee I charge my client for the Lawclerk's services.

11. All payment for Lawclerk services shall be completed through www.lawclerk.legal.

Additionally, LAWCLERK imposes the following requirements on its Attorneys and Lawclerks:

- The Attorney establishes the flat fee price for the Project, which is not contingent upon the outcome of the Attorney's case or matter. The Lawclerk will not be involved in determining the fees charged by an Attorney to his/her clients.

- The Lawclerk shall be barred and in good standing in the Lawclerk's jurisdiction, or, subject to LAWCLERK's sole discretion, has allowed their license to lapse due to retirement or similar circumstances and was in good standing at such time.

- The Lawclerk's services shall solely be offered to Attorneys (not the public).

- The Attorneys shall be properly admitted and in good standing within their applicable jurisdiction(s).

- Disbarred or suspended lawyers may not serve as Lawclerks.

- LAWCLERK will maintain a list of all of the Attorney's clients for which the Lawclerk has been engaged through LAWCLERK and will remove from the available list of Lawclerks any Lawclerk that has a conflict as a result of prior work performed through LAWCLERK.

- For each Project in which a Lawclerk is engaged by an Attorney, the Lawclerk shall: (i) complete a conflict check and review the applicable state's conflict laws and affirm that he or she does not have any conflict and may complete the Project; and (ii) execute a confidentiality and non-disclosure agreement.

LAWCLERK thereby requires that the Attorney agree to remain solely responsible for the attorney-client relationship and the legal advice provided by the Attorney to the client. Thus, while the Attorney may obtain a legal memorandum, a draft pleading, or other legal services from a Lawclerk, the Lawclerk will have no direct contact with the Attorney's client, the Lawclerk will be supervised by the Attorney, and the Attorney will retain sole responsibility for the Lawclerk's work product and the Attorney's ultimate use of such work product.

Section I – Guidance From the Model Rules and Elsewhere

The Model Rules provide important guidance. Every state has now adopted the Model Rules. Note, however, that some states have modified the Model Rules in their adoption or have not adopted the most recent amendments to the Model Rules.[5] Model Rule 5.3, titled "Responsibilities Regarding Nonlawyer Assistance," and Model Rule 5.5, titled "Unauthorized Practice of Law; Multijurisdictional Practice of Law," are most pertinent to the analysis of what constitutes the unauthorized practice of law.[6]

A. LAWCLERK complies with Model Rule 5.3.

Model Rule 5.3, "Responsibilities Regarding Nonlawyers Assistance," provides:

> With respect to a nonlawyer employed or retained by or associated with a lawyer:
>
> (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
>
> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
>
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.[7]

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[5] The date of adoption is available at: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.

[6] The American Bar Association's (the "ABA's") comparison of Model Rule 5.3 to each state's adopted form of Model Rule 5.3 as of September 29, 2017 is available at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_3.pdf.
The ABA's comparison of Model Rule 5.5 to each state's form of Model Rule 5.5 as of October 18, 2018 is available at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_5.pdf.

[7] *Id.*, 5.3.

The comments to Model Rule 5.3 are also helpful. Comment 1 to Model Rule 5.3 under the heading "Law Firms and Association" discusses the attorneys' responsibilities for paraprofessionals that are engaged within or outside of a firm. The comment states:

> Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment [6] to Rule 1.1 (retaining lawyers outside the firm) and Comment [1] to Rule 5.1 (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.[8]

Comment 2 to Model Rule 5.3 under the heading "Nonlawyers Within the Firm" contemplates attorneys use of paraprofessionals, providing:

> Attorneys generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.[9]

Comment 3 to Model Rule 5.3 under the heading: "Nonlawyers Outside the Firm" expressly address the engagement of nonlawyers outside the firm and provide as follows:

> ***A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service***, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information;

[8] *Id.*, Comment 5.3(1).
[9] *Id.*, Comment 5.3(2).

> and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. *See also* Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.[10]

The addition of Comment 5.3(3) and the change from "nonlawyer assistants" to "nonlawyer assistance" in 2012 served to highlight that attorneys have an obligation to make reasonable efforts to ensure that nonlawyers that assist them act in a manner that is consistent with the attorneys' professional obligations, whether they are employed or contractual paralegals, assistants within a law firm, or others engaged from outside the firm.[11]

LAWCLERK complies with Model Rule 5.3. Supervision designed to ensure that nonlawyers do not provide legal advice or otherwise violate the Rules of Professional Conduct is the key to Model Rule 5.3. By precluding any contact with an Attorney's clients, opposing counsel, witnesses, or any other party to the project for which the Lawclerk has been engaged, LAWCLERK eliminates the greatest concern addressed by Model Rule 5.3. LAWCLERK also requires, as more fully set forth above, conflict checks, an acknowledgment that the Lawclerk has reviewed and will comply with the applicable state's Rules of Professional Conduct, an agreement by the Attorney to supervise the Lawclerk, and an acknowledgement by the Attorney that the Attorney is solely responsible for the Lawclerk's work product. These restrictions and requirements are designed to satisfy not only the actual text of Model Rule 5.3, but the policy behind it.

B. LAWCLERK Complies with Model Rule 5.5.

Model Rule 5.5 is titled "Unauthorized Practice of Law; Multijurisdictional Practice of Law" and provides in relevant part:

> (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
>
> (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
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> (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

[10] *Id.*, Comment 5.3(3) (emphasis added).

[11] *See* ABA Model Guidelines for the Utilization of Paralegal Services, n. 3, available at: https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_modelguidelines.pdf.

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.[12]

Comment 2 to Model Rule 5.5 expounds as follows:

> The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. ***This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work.*** See Rule 5.3.[13]

Through LAWCLERK, the Attorney has sole responsibility for the Lawclerk's work product. The Lawclerk is precluded from having any contact with an Attorney's clients, opposing counsel, witnesses, or any other party to the project for which the Lawclerk has been engaged. As such, the Lawclerk is precluded from providing legal advice to an Attorney's client, thereby satisfying both the requirements imposed in Model Rule 5.5, as well as the policy behind the rule.

C. LAWCLERK complies with Accepted Guidance Regarding Paralegal and Non-Legal Assistance

Beyond the Model Rules, the services to be provided by Lawclerks to Attorneys through LAWCLERK are consistent with the parameters set forth in the Second Edition of the American Jurisprudence addressing the services that may be provided by a law clerk:

> ***The functions of an unlicensed law clerk should be limited to work of a preparatory nature, such as research, investigation of details, assemblage of data, and like work that will enable the attorney/employer to carry a given matter to a conclusion through his or her own examination, approval, or additional effort; the activities of a law clerk do not constitute the practice of law so long as they are thus limited.*** [footnote omitted] On the other hand, an unlicensed law clerk who engages in activities requiring legal knowledge or training, such as handling probate matters, examination of abstract titles, and preparation of wills, leases, mortgages, bills of sales, or contracts, ***without supervision from his or her employer,*** thereby engages in the unauthorized practice of law.[14]

Further, while paralegals and legal assistants may not serve as Lawclerks, the guidelines, rules, and case law analyzing the services that may be provided by legal assistants and paralegals is nonetheless instructive as to what services may be employed by a paraprofessional without engaging in the unauthorized practice of law. For instance, the National Association of Legal Assistants (NALA) has formulated the Code of Ethics and Professional Responsibility (NALA

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[12] Model Rules, 5.5.
[13] *Id.*, Comment 5.5(2) (emphasis added).
[14] 7 Am. Jur. 2d Attorneys at Law § 130 (emphasis added).

Code) and the Model Standards and Guidelines for Utilization of Paralegals (NALA Guidelines) both of which its members must follow to remain a member in good standing with the organization.[15] Most applicable here, the NALA Guidelines, citing to Model Rule 5.3, provide that "a paralegal may perform any task which is properly delegated and supervised by an attorney, as long as the lawyer is ultimately responsible to the client, maintains a direct relationship with the client, and assumes complete professional responsibility for the work product."[16]

The NALA Code further instructs that the attorney - not the paralegal - must form and maintain the direct relationship with the client. The Code prohibits the paralegal from: (i) engaging in, encouraging, or contributing to any act that could constitute the practice of law; (ii) establishing attorney-client relationships, setting fees, giving legal opinions or advice, or representing a client before a court or agency unless specifically authorized by that court or agency; and (iii) engaging in conduct or taking any action that would assist or involve the lawyer in a violation of professional ethics or giving the appearance of impropriety.[17] However, such restrictions do not alter the requirement that a paralegal must use discretion and professional judgment commensurate with his knowledge and experience, but must not render independent legal judgment in place of a lawyer; rather, any legal opinion may only be rendered to the attorney.[18]

The ABA Standing Committee on Paralegals has additionally prepared its Model Guidelines for the Utilization of Legal Assistant Services (ABA Guidelines). While the ABA Guidelines refer to paralegals, the term is intended to include legal assistants.[19] ABA Guideline No. 2 states that "***[p]rovided the lawyer maintains responsibility for the work product, a lawyer may delegate to a paralegal any task normally performed by the lawyer"*** unless there is a statute, court rule, administrative rule or regulation, controlling authority, the applicable rule of professional conduct of the jurisdiction in which the attorney practices, or the Guidelines that expressly precludes the attorney from delegating the specific task to a nonlawyer.[20] The ABA Guidelines then identify three responsibilities that may not be delegated to a paralegal: (i) responsibility for establishing a lawyer-client relationship; (ii) responsibility for establishing the amount of a fee to be charged for a legal service; and (iii) responsibility for a legal opinion rendered to a client.[21] Conversely, the preparation of factual investigation and research, legal research, and the preparation of legal documents are identified as tasks that may be delegated to paralegals subject to appropriate attorney supervision.[22]

Consistent with the foregoing legal authorities and guidelines, LAWCLERK requires the Attorney to supervise the Lawclerk and to maintain responsibility for the Lawclerk's work product. However, LAWCLERK is far more restrictive than the foregoing guidelines for paralegals, law clerks, and legal assistants and more protective of the public as it precludes Lawclerks from

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[15] NALA Code, available at https://www.nala.org/sites/default/files/codeofethics.pdf; *see also* NULA Guidelines, available athttps://www.nala.org/sites/default/files/files/banner/Model%20Standards.pdf. .
[16] NALA Guideline No. 2; NALA Code Canon 2.
[17] *See* NALA Code Canons 2 and 3; NALA Guidelines 2 and 3.
[18] *See* NALA Code Canon 4; *see also* 122 Am. Jur. Proof of Facts 3d § 279.
[19]*See* ABA Guidelines, at Preamble and n. 1, available at: https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_modelguidelines.pdf.
[20] *See id.* at Guideline No. 2 (emphasis added).
[21] *See id.* at Guideline No. 3.
[22] *See id.* at Comment to Guideline No. 2.

engaging in any contact with clients, opposing counsel, witnesses, or any other party to the project for which the Lawclerk has been engaged.

Section III - 50 State Review and Analysis

Every state has adopted a form of Model Rules 5.3 and 5.5. While states adopted varying versions of these Model Rules, each state's laws were are drafted to further the central purpose of the Model Rules: ensuring that the public is not unknowingly receiving legal advice from someone other than lawyers properly admitted and in good standing within the jurisdiction.

The following analysis will explain why the use of LAWCLERK complies with the ethical obligations in all 50 states and the District of Columbia.

Alabama.

Section 34-3-6 of the Code of Alabama, titled "Who May Practice As Attorneys" states in pertinent part:

> (b) For the purposes of this chapter, the practice of law is defined as follows:
>
> Whoever,
>
> (1) In a representative capacity appears as an advocate or draws papers, pleadings, or documents, or performs any act in connection with proceedings pending or prospective before a court or a body, board, committee, commission, or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof; or
>
> (2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document, or instrument affecting or relating to secular rights; or
>
> (3) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or
>
> (4) As a vocation, enforces, secures, settles, adjusts, or compromises defaulted, controverted, or disputed accounts, claims or demands between persons with neither of whom he or she is in privity or in the relation of employer and employee in the ordinary sense;

> is practicing law.[23] The foregoing statute was enacted to "ensure that laymen would not serve others in a representative capacity in areas requiring skill and judgment of a licensed attorney."[24]

Alabama expressly authorizes eligible[25] law students to prepare pleadings, interview, advise, and negotiate for a client while rendering assistance to the attorney of record, and appear in civil and criminal matters if the attorney of record and the client consent in writing and the attorney of record supervises the law clerk.[26] Additionally, beyond Alabama's adoption of Model Rule 5.3,[27] the Alabama Association of Paralegals, Inc. has adopted the NALA Code. The Association's decision to adopt the NALA Code further establishes that legal assistants and paralegals may perform the tasks delegated to them subject to the supervision of the attorney and the above-discussed restrictions on the attorney-client relationship.[28]

Alabama courts have held that a nonlawyer engages in the unauthorized practice of law when he performs activities customarily executed by licensed attorneys while not under the direct supervision of a licensed lawyer in good standing, such as an executor filing a complaint on behalf of the estate,[29] completing blanks in form deeds and giving legal advice or expressing opinions as to the effect of legal documents at closings conducted by title companies,[30] parents prosecuting actions on behalf of their child without stating any claims of their own in the complaint,[31] and filing pleadings with the court on behalf of another person or corporation irrespective of the existence of a power of attorney.[32]

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[23] Ala. Code 1975, § 34-3-6(a)(b).

[24] *Godwin v. McKnight*, 784 So.2d 1014 (Ala. 2000) (citing *Porter v. Alabama Ass'n of Credit Executives*, 338 So.2d 812 (Ala. 1976). *See generally*, *Armstrong v. Brown Service Funeral Home West Chapel*, 700 So.2d 1379 (Ala. Civ. App. 1997); Derek A. Denckla, *The Unauthorized Practice of Law: an Overview of the Legal and Ethical Parameters*, 67 Fordham L.Rev. 2581 (1999); L. Bruce Ables, *Unauthorized Practice of Law*, 56 Ala. Law. 288 (1995) (documenting Alabama's rampant problem with the unauthorized practice of law).

[25] Alabama Rule for Legal Internship by Law Students (amendment effective September 19, 2006), available at: http://judicial.alabama.gov/docs/library/rules/intern1.pdf. The eligibility requirements include, but are not limited to, being registered as a law student with the Secretary of the Board of Commissioners of the Alabama State Bar and duly enrolled in a law school from which a graduate is qualified and authorized to take the Alabama Bar Exam, completed not less than four semesters (not less than 54 semester hours), be certified by the dean of the law school as being of good character and competent legal abilities, and certify that he has read the Alabama Rules of Professional Conduct and will faithfully perform the duties of a legal intern. *E.g.*, *Hayden v. Elam*, 739 So. 2d 1088, 1091-1092 (Ala. 1999).

[26] *Id.*

[27] Alabama Rules of Professional Conduct Rule 5.3(a), (available at: http://judicial.alabama.gov/docs/library/rules/cond5_3.pdf) omits the phrase "and a lawyer who individually or together with other lawyers possesses comparable managerial authority" included in Model Rule 5.3(a) (available at: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_3_responsibilities_regarding_nonlawyer_assistant/.).

[28] Available at: https://alabamaparalegals.starchapter.com/images/downloads/code_of_ethics.pdf.

[29] *Godwin v. McKnight*, 784 So.2d 1014 (Ala. 2000).

[30] *Coffee County Abstracto and Title Co. v. State ex rel Norwood*, 445 So.2d 852 (Ala. 1983); *see also*, *Mississippi Valley Title Insurance v. Hooper*, 707 So.2d 209 (Ala. 1997).

[31] *Chambers v. Tibbs*, 980 So.2d 1010, (Ala. Civ. App. 2007).

[32] *Franklin v. Max Federal Credit Union*, 168 So.3d 83 (Ct. App. Ala. 2014); *see also Beasley v. Poole*, 63 So.3d 647 (Ala. Civ. App. 2010); *A-OK Construction Co., Inc. v. Castle Construction Co., Inc.*, 594 So.2d 53 (Ala. 1992).

LAWCLERK imposes restrictions on its Lawclerks and Attorneys that are more restrictive than the restrictions imposed on eligible law students under Section 34-3-6 of the Alabama Code and more restrictive than the NALA Code requirements for paralegals. LAWCLERK further complies with Rule 5.3 of the Alabama Model Rules of Professional Conduct and is in accord with the case law determining what constitutes the unauthorized practice of law in Alabama.

Alaska.

In Ethics Opinion No. 73-1, "Use of Legal Assistants," the Ethics Committee of the Alaska Bar Association considered "whether or not a legal assistant who investigates workmen's compensation claims, directly deals by telephone with the claim managers and agents of insurance companies regarding the settlement of such claims and who additionally dictates letters of correspondence setting forth his employer's position, as a representative of a client, regarding their settlement is engaged in the unauthorized practice of law if at all times his status as a legal assistant is fully disclosed to the other party with whom he is dealing and his activities are consistently supervised and reviewed by a lawyer admitted to practice law in the State of Alaska."[33] Citing to Canons 35[34] and 47[35] of the Canons of Professional Ethics,[36] Ethics Opinion 73-1 provides that:

> As further pointed out in American Bar Association Opinion 316, 1967***, a lawyer attorney may employ non-lawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, or appear in court or in formal proceedings a part of the judicial process, so long as it is the attorney who takes the work and vouches for it to the client and is responsible to the client.*** While a lawyer cannot delegate his professional responsibility to a law student employed in his office, '[He] may avail himself of the assistance of the student in many of the field of the lawyer's work, such as examination of case law, finding and interviewing witnesses, making collections of claims, examining court records, delivering papers, conveying important messages, and other similar matters . . . . ***The student in all his work must act as agent for the lawyer employing him, who must supervise his work and be responsible for his good conduct. . .*** Any such employee negotiating adjustments must report proposed settlements to the lawyer for final decision.' American Bar Association Opinion 85, 1932. Drinker, Legal Ethics, 1954 at page 180 also

[33]Alaska Bar Association Ethics Opinion 73-1, "Use of Legal Assistants" adopted October 6, 1973, available at https://alaskabar.org/wp-content/uploads/73-1.pdf.

[34] Canon 35 of the Canons of Professional Ethics stated in part: "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest or such intermediacy. A lawyer's relation to his client should be personal and the responsibility should be direct to the client. . . ."

[35] Canon 47 of the Canons of Professional Ethics stated: "No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

[36] Alaska subsequently replaced the Canons of Professional Ethics with the Model Rules. *See* Order No. 1123 Adopting the Alaska Rules of Professional Conduct, April 14, 1993 and *Jurisdictions That Have Adopted the ABA Model Rules of Professional Conduct*, American Bar Association (March 28, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/.

> states that it is not unethical for a lawyer to employ a layman to negotiate insurance adjustments for the lawyer's approval provided that such services do not constitute the practice of law and the layman's compensation is not a proportion of the lawyer's fee.
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> It is, of course, true that that lay assistant is, in all cases, bound by the Code of Professional Responsibility, and the attorney who employs the lay assistant will be personally subject to discipline if the lay assistant violates a disciplinary rule. Also, disclosure that the lay assistant is not a lawyer must be made in all transactions in such a manner as to assure that that fact is known and understood by the person with whom the lay assistant is dealing.[37]

In determining that two paralegals had not engaged in the unauthorized practice of law, the Alaska Court of Appeals discussed: (i) the Comments to Rule 5.5 of the Alaska Rules of Professional Conduct, noting that the comments expressly state that "this rule 'does not prohibit a lawyer from employing the services of paralegals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work;'" (ii) the ABA Guidelines which state that "paralegals may properly 'communicate a lawyer's legal advice to a client' (as long as they do not 'interpret or expand on that advice'), and that paralegals may also properly participate in 'preparing the lawyer's legal opinion'—that is, participate in the process of formulating the lawyer's legal advice, so long as the lawyer makes the final assessment of what that advice should be;" and (iii) the fact that law clerks working for the trial and appellate courts participate in the formulation of court decisions even though they may not be authorized to practice law, and concluded that the paralegals' conduct functioned within these boundaries and while they had direct contact and communications with the client about her case, they were always under the ultimate supervision of the attorney.[38]

Consistent with the foregoing ethics opinion and case law, Lawclerks can only provide the services that are delegated to them and supervised by the Attorney. The Attorney always retains responsibility for the Lawclerk's work and only the Attorney may provide legal advice to the Attorney's client.

2020 UPDATE: The Alaska Supreme Court recently reaffirmed that attorneys have an obligation to supervise any nonlawyer staff under Rule 5.3(a)(2).[39] Applying this rule, the court found that an attorney who delegated several important duties to a nonlawyer assistant violated those rules by failing to properly supervise the paralegal.[40]

This case further illustrates that the use of LAWCLERK will not violate Alaska's ethical rules. The Alaska Supreme Court did not preclude delegation. However, like other courts, it demands that a licensed attorney supervise all legal work. Consistent therewith, LAWCLERK's terms of service require all Attorneys to agree to supervise any tasks delegated to a Lawclerk and

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[37] Alaska Bar Association Ethics Opinion 73-1, adopted October 6, 1973 (emphasis added).
[38] *Welton v. State of Alaska*, 2011 WL 2151850 *9 (Ala. Ct. App. 2011).
[39] *In re Reger, 421 P.3d 25, 27* (in appx.) (Alaska 2018).
[40] *See id.*

to be solely responsible for the work product. Therefore, LAWCLERK promotes compliance with the ethical rules.

Arizona.

Arizona is one of the few states to have formulated precise definitions of both the practice of law and the unauthorized practice of law. Rule 31 of the Rules of the Supreme Court of Arizona, "Regulation of the Practice of Law," provides in pertinent part as follows:

> **(a) Supreme Court Jurisdiction Over the Practice of Law**
>
> 1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.
>
> 2. *Definitions.*
>
> A. 'Practice of law' means providing legal advice or services to or for another by:
>
> (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
> (2) preparing or expressing legal opinions;
> (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
> (5) negotiating legal rights or responsibilities for a specific person or entity.
>
> B. '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 pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a); or
>
> (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 pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a), 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.

C. 'Legal assistant/paralegal' means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

* * *

(b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.

(c) **Exemptions.** Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

* * *

18. 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[41] of the rules of professional conduct. This exemption is not subject to section (c).

* * *

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5[42] of the rules of professional conduct. [43]

Applying Rule 31, Arizona courts have found the unauthorized practice of law where: (i) a nonlawyer represents a client in a judicial proceeding or mediation (a) in the capacity as guardian ad litem,[44] (b) as an agent of a business[45]; (ii) real estate agents and title companies prepare deeds, mortgages, releases, or other instruments affecting the obligations or rights between parties other than the title company irrespective of whether the title company has a lawyer as the title company's attorney that is representing the title company, not the customer;[46] (iii) a lawyer that is not admitted to the Arizona bar, but is admitted to practice in tribal court, represents clients in matters outside of the tribal jurisdiction, maintains an office address outside of the boundaries of the tribal

[41] ER 5.3 is Arizona's adopted version of Model Rule 5.3.
[42] ER 5.5 is Arizona's adopted version of Model Rule 5.5.
[43] A.R.S. Sup. Ct. Rules, Rule 31, available at: https://govt.westlaw.com/azrules/Document/NAE025A20A48C11DE97CFC30D94C59A9E?transitionType=Default&contextData=%28sc.Default%29.
[44] *Byer-Watts v. Parker*, 18 P.3d 1265 (Ariz. Ct. App. 2001).
[45] *State v. Eazy Bail Bonds*, 229 P.3d 239 (Ariz. Ct. App. 1 2010).
[46] *State Bar of Arizona v. AZ Land Title and Trust Co.*, 366 P.2d 1 (Ariz. 1961); *see also*, *Morley v. J. Pagel Realty & Insurance*, 27 Ariz. App. 62 (Ariz. Ct. App. 1976).

jurisdiction, and presents himself on his letterhead and otherwise as a "J.D." or an "attorney";[47] and (iv) a lawyer suspended from the practice of law acts without supervision of an active member of the State Bar of Arizona while employed as a legal assistant/paralegal."[48]

Consistent with Rule 31 and the applicable case law, Lawclerks can only provide the services that are delegated to them and supervised by an Attorney, cannot appear in court, and cannot have any communication with the client or opposing counsel. The Attorney always retains responsibility for the Lawclerk's work and only the Attorney may provide legal advice to the Attorney's client. Further, the fact that Arizona permits attorneys to engage suspended or disbarred lawyers to provide paraprofessional services as long as the suspended or disbarred lawyer acts under the supervision of a lawyer in good standing with the Arizona State Bar further confirms that Lawclerks do not engage in the unauthorized practice of law by completing projects delegated to them by an Attorney that is responsible for their work product and for their supervision.

2020 UPDATE: Division One of the Arizona Court of Appeals recently reaffirmed that nonlegal assistants may not engage in legal work without the supervision of duly licensed attorneys.[49] After being disbarred, the attorney began working as a paralegal.[50] As a paralegal, this disbarred attorney drafted legal documents, filed legal documents with courts, and held himself out as an attorney.[51] As such actions were directly contrary to Arizona's ethical rules, the court disciplined the disbarred attorney for engaging in the unauthorized practice of law.[52]

In light of this opinion, neither LAWCLERK nor Arizona attorneys using LAWCLERK will engage in the unauthorized practice of law in the state. This is so for two reasons. First, the court never stated that the attorney could not work as a paralegal despite being disbarred. The problem arose when the disbarred attorney was acting as a barred attorney, not a paralegal. Nonetheless, LAWCLERK is stricter as LAWCLERK's terms of service require that all Lawclerks must be in good standing with the granting jurisdiction. Second, the Arizona court was not concerned about the paralegal work as much as the fact that the individual held himself out to the public as an attorney. At LAWCLERK, only the Attorneys contact their clients, establish attorney/client relationships, or file pleadings. Therefore, LAWCLERK creates no danger that Lawclerks in the system will confuse the public by representing themselves as eligible to practice law in the jurisdiction.

Arkansas.

In applying Rules 5.3 and 5.5 of the Arkansas Rules of Professional Conduct, the Supreme Court of Arkansas has emphasized that "…it is clear that, while a lawyer may delegate certain tasks to his assistants, he or she, as supervising lawyer, has ultimate responsibility for compliance by the nonlawyer with the applicable provisions of the Model Rules."[53] Finding that a lawyer had violated Rule 5.5(b), among others, the Supreme Court of Arkansas focused on the fact that the

[47] *State Bar of Arizona v. Lang*, 323 P.3d 740 (Ariz. Ct. App. 2014).
[48] *In re Gallego*, 2012 WL 5286893 *1 (Ariz. 2012).
[49] *State Bar of Ariz. v. Berry*, No. 1 CA-CV 18-0661 (Ariz. App. January 16, 2020).
[50] *See id*. at *3.
[51] *See id*. at *3.
[52] *See id*. at *3.
[53] *Mays v. Neal*, 938 S.W.2d 830, 835 (Ark. 1997).

attorney had permitted his assistants to engage in the following unsupervised tasks: (i) direct communications and providing settlement advice to clients; (ii) referring to firm clients as the assistants' clients in correspondence sent to third parties; (iii) utilizing the lawyer's signature stamp, thereby acting in the attorney's stead; and (iv) negotiating settlements with insurance companies on behalf of the firm's clients.[54]

Consistent with the Arkansas Supreme Court's *Mays* decision, LAWCLERK requires the Attorney's supervision of the Lawclerk, the Attorney retains ultimate responsibility for the Lawclerk's work, and prohibits the Lawclerk from having any direct contact with the Attorney's clients, opposing counsel, witnesses, or any other party to the project for which the Lawclerk has been engaged.

California.

Section 6125 of the California Business and Professions Code states that "[n]o person shall practice law in California unless the person is an active licensee of the State Bar"[55] and Rule 1-300 of the California Rules of Professional Conduct is titled "Unauthorized Practice of Law" and provides:

> (A) A member shall not aid any person or entity in the unauthorized practice of law.
>
> (B) A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.[56]

The general rule is that while a person may represent one's self and one's own interests without being a member of the California state bar, only active members of the California state bar may practice law for another person in California.[57] California's prohibition on the unauthorized practice of law serves to "protect the public, the courts, and litigants who rely on attorneys by 'assur[ing] the competency of those performing [legal] services.'"[58]

While the "practice of law" is not defined by statute, the California courts have explained that the practice of law is "the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure," including legal advice, legal instruments, and contract preparation irrespective of whether such services are rendered in the course of litigation.[59]

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[54] *Id.* at 836.

[55] Cal. Bus. & Prof. Code § 6125, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml ?lawCode=BPC&sectionNum=6125.

[56] Cal. R. Prof. Conduct R. 1-300, http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-1-300.

[57] *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal.4th 119 (Cal.1998).

[58] *Aulisio v. Bancroft*, 230 Cal.App.4th 1516, 1519 (Cal. Ct. App. 2014) (*quoting Drake v. Superior Court,* 21 Cal.App.4th 1826, 1830 (Cal. Ct. App. 1994)).

[59] *Wertheim, LLC v. Currency Corp*, 2012 Cal. App. Unpub. LEXIS 3839, 3881-82 (Cal. Ct. App. 2012) *citing Birbrower, Montalbano, Condon & Frank v. Superior Court,* 17 Cal.4th 119,128 (Cal. Ct. App. 1998), (quoting *People ex rel. Lawyers' Institute of San Diego v. Merchants' Protective Corp.,* 189 Cal. 531, 535 (Cal. 1922)).

In *People v. Landlords Professional Services*, the court examined whether Landlords Professional Services, a company that offered eviction services, had engaged in the unauthorized practice of law.[60] In its analysis, the court examined other jurisdictions' decisions on "do-it-yourself" legal services and manuals and concluded that the sale of "do-it yourself" kits and manuals does not constitute the unauthorized practice of law, nor does the provision of related clerical services (i.e., making forms available for a client's use, completing the forms at the specific direction of the client, and filing and serving the documents at the direction of the client).[61] However, because Landlords Professional Services' nonlawyers interviewed their clients and provided client-specific advice regarding eviction procedures and legal rights, as well as unlawful detainer actions, the court found that Landlords Professional Services had engaged in the unauthorized practice of law.[62] After determining that Landlords Professional Services engaged in the unauthorized practice of law, the trial court granted, and the appellate court affirmed, the following permanent injunction:

> Defendants, their agents, officers, employees and representatives are enjoined from engaging in or performing directly or indirectly any and all of the following acts:
>
> 1. The preparation, other than at the specific and detailed direction of a person in propria persona ***or under the direct supervision of a lawyer***, of written instruments relating to evictions such as: three day notices, summons and complaints, at issue memoranda, judgments, writs of execution or other legal documents relating to evictions.
>
> 2. Explaining orally or in writing, ***except under the direct supervision of a lawyer*****,** to individual clients: (A) the effect of any rule of law or court; B) advising such persons as to the requirements for commencing or maintaining a proceeding in the Courts of this state; or (C) advising or explaining to such clients the forms which are legally required or how to complete such forms.
>
> 3. Holding themselves out or allowing themselves to be held out to newspapers, magazines, or other advertising, or representing themselves as being able to provide, ***except through a lawyer*****,** any of the following: legal advice, the preparation of legal documents (other than as a secretarial service), or any explanation of any rules of law or court in relation to evictions or as being qualified to do any of the above activities.
>
> 4. Any employee, agent, officer or representative of L.P.S., not a licensed member of the California Bar, is prohibited from practicing law in any form or holding themselves out as having the right to practice law in any form. [63]

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[60] *People v. Landlords Prof'l Servs*., 215 Cal.App.3d 1599 (Cal. Ct. App. 1989); *see also Drake v. Superior Court*, 21 Cal.App.4th 1826 (Cal. Ct. App. 1994).
[61] *People v. Landlords Prof'l Servs*., 215 Cal.App.3d 1599, 1604-10
[62] *Id.* at 1608-09.
[63] *Id.* at 1603-04 (emphasis added).

The *Landlords Professional Services* decision illustrates why LAWCLERK does not violate California's rules against the unauthorized practice of law. At LAWCLERK, only the Attorney provides advice to the client, and only the Attorney maintains the attorney-client relationship. The Lawclerk provides services directly to the Attorney, and the services are undertaken at the direction of, and under the direct supervision of, the Attorney.

In *Birbrower*, the court held that a law firm based in New York that did not have any attorneys barred in California and did not associate with a member in good standing of the California bar at the time the significant pre-litigation services were rendered in California had engaged in the unauthorized practice of law.[64] However, reasoning that California's unauthorized practice of law statute did not regulate the practice of law in other states, the court concluded that it did not bar recovery of compensation for services that the New York-barred attorneys had performed in New York. In fashioning a test for what constituted the practice of law in California, the court reasoned that:

> the practice of law 'in California' entails sufficient contact with the California client to render the nature of the legal service a clear legal representation. In addition to a quantitative analysis, we must consider the nature of the unlicensed lawyer's activities in the state. Mere fortuitous or attenuated contacts will not sustain a finding that the unlicensed lawyer practiced law 'in California.' The primary inquiry is whether the unlicensed lawyer engaged in sufficient activities in the state, or created a continuing relationship with the California client that included legal duties and obligations. [[65]]

Notably, the *Birbrower* court's analysis not only focused on the relationship between the client and the non-barred lawyer, but additionally discussed the exceptions for attorneys admitted to practice law in California on a temporary basis (*pro hac*) subject to affiliating with a barred attorney in good standing in California.[66]

The *Birbrower* analysis underscores why LAWCLERK does note promote the unauthorized practice of law. At LAWCLERK, the attorney-client relationship occurs between a duly licensed Attorney in good standing and that attorney's California client. There is no contact between the Attorney's client and the Lawclerk. Further, the Lawclerk solely provides the services delegated by the Attorney, which services are solely provided to the Attorney (not the Attorney's client).

While Lawclerks who have graduated law school are not paralegals, the statutory framework defining the permissible scope of services that may be provided by California paralegals is nonetheless instructive.[67] Section 6450 of the California Business and Professions

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[64] *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal.4th 119, 124 (Cal. 1998).
[65] *Id.* at 128.
[66] *Id.* at 129-30.
[67] Discussing whether a lawyer may be reinstated, the California State Bar affirmatively cited that after his release from jail, the lawyer had worked as a law clerk under the supervision of a barred lawyer performing legal research and preparing legal briefs, complaints, and discovery, thereby connoting that unbarred lawyers may serve as paraprofessionals. *See In re Rudnick,* 2007 WL 431815, at *4 (Cal. Bar Ct. Feb. 8, 2007).

Code entitled "Paralegal defined; prohibited activities; qualifications; continuing legal education" provides in pertinent part:

> (a) 'Paralegal' means a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by a lawyer, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or a lawyer practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or her. ***Tasks performed by a paralegal include, but are not limited to, case planning, development, and management; legal research; interviewing clients; fact gathering and retrieving information; drafting and analyzing legal documents; collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and representing clients before a state or federal administrative agency if that representation is permitted by statute, court rule, or administrative rule or regulation.***
>
> (b) Notwithstanding subdivision (a), a paralegal shall not do the following:
>
> (1) Provide legal advice.
> (2) Represent a client in court.
> (3) Select, explain, draft, or recommend the use of any legal document to or for any person other than the attorney who directs and supervises the paralegal.
> (4) Act as a runner or capper, as defined in Sections 6151 and 6152.
> (5) Engage in conduct that constitutes the unlawful practice of law.
> (6) Contract with, or be employed by, a natural person other than a lawyer to perform paralegal services.
> (7) In connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived.
> (8) Establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. This paragraph does not apply to fees charged by a paralegal in a contract to provide paralegal services to a lawyer, law firm, corporation, governmental agency, or other entity as provided in subdivision (a).
>
> [Subsections (c) and (d) address what certifications a paralegal must possess and what continuing education must be completed.]
>
> (d) A paralegal does not include a nonlawyer who provides legal services directly to members of the public, or a legal document assistant or

> unlawful detainer assistant as defined in Section 6400, unless the person is a person described in subdivision (a).[68]

In *Jorgensen*, the California State Bar determined that a lawyer assisted a paralegal in the unauthorized practice of law where a paralegal company named Legally Yours hired a lawyer to provide legal services to its clients; however, it was Legally Yours (not the lawyer) that: (i) solicited and engaged the clients; (ii) controlled the supervision of its clients' cases, evaluated the legal needs of its clients, and undertook decision-making regarding legal matters; (iii) reserved the right to make tactical and procedural decisions for its clients; and (iv) obtained a special power of attorney from its clients to settle client claims.[69]

Notably, LAWCLERK imposes greater restrictions than Section 6450 places on paralegals and precludes the type of violations cited in *Jorgensen* as Lawclerks are precluded from engaging in any direct client contact, communicating with the opposing counsel, and appearing before any tribunal or court. The attorney-client relationship is established and maintained by the Attorney and only the Attorney determines legal strategy and provides legal advice to the Attorney's clients. Thus, while Lawclerks are not paralegals under California law, Section 6450 further confirms that the limited services provided by Lawclerks under the supervision of the Attorneys do not constitute the unauthorized practice of law.

2020 UPDATE: Since the first draft of this white paper was released, California has wholly revised its rules of professional responsibility. In May 2018, the California Supreme Court approved new rules.[70] These new rules became effective on November 1, 2018.[71] The numbers of the new rules more closely align with the ABA's Model Rules.[72] The language tracks as well. The changes are discussed below.

New Rule 5.3
California's new rule 5.3 states:

> Rule 5.3 Responsibilities Regarding Nonlawyer Assistants
>
> With respect to a nonlawyer employed or retained by or associated with a lawyer:
>
> (a) a lawyer who individually or together with other lawyers possesses managerial authority in a law firm,* shall

[68] Cal. Bus. & Prof. Code § 6450 (emphasis added), available at: https://codes.findlaw.com/ca/business-and-professions-code/bpc-sect-6450.html.
[69] *In Matter of Jorgensen,* 2016 WL 3181013, at *7 (Cal. Bar Ct. May 10, 2016).

[70] Order Re: Request for Approval of Proposed Amendments to the Rules of Professional Conduct of the State Bar of California May 10, 2018, available at http://www.calbar.ca.gov/Portals/0/documents/Supreme%20Court%20Order%202018-05-09.pdf.
[71] *See* The State Bar of California, Current Rules of Professional Conduct, http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules (noting the effective date).
[72] *See id.* (providing list comparing new numbering with old numbering of Ca. rules; new rules match numbering in ABA Model Rules.)

make reasonable* efforts to ensure that the firm* has in effect measures giving reasonable* assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer, whether or not an employee of the same law firm,* shall make reasonable* efforts to ensure that the person's* conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person* that would be a violation of these rules or the State Bar Act if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm* in which the person* is employed, or has direct supervisory authority over the person,* whether or not an employee of the same law firm,* and knows* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable* remedial action.[73]

The comment to the new rule states:

> Lawyers often utilize nonlawyer personnel, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning all ethical aspects of their employment. The measures employed in instructing and supervising nonlawyers should take account of the fact that they might not have legal training. [74]

California's new Rule 5.3 makes it clear that lawyers may use nonlawyer assistants with appropriate supervision. LAWCLERK aids, rather than undermines this rule. LAWCLERK's terms of service require all Attorneys to supervise Lawclerks in their duties.

[73] Cal. R. Prof. Conduct 5.3.
[74] Cal. R. Prof. Conduct 5.3, *cmt*.

New Rule 5.3.1

Notably, in a departure from the ABA Model Rules, California has adopted a rule that specifically addresses the employment of disbarred or inactive lawyers. The rule states, in part:

> Rule 5.3.1 Employment of Disbarred, Suspended, Resigned, or Involuntarily Inactive Lawyer
>
> (b) A lawyer shall not employ, associate in practice with, or assist a person* the lawyer knows* or reasonably should know* is an ineligible person to perform the following on behalf of the lawyer's client:
>
> (1) Render legal consultation or advice to the client;
>
> (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
>
> (3) Appear as a representative of the client at a deposition or other discovery matter;
>
> (4) Negotiate or transact any matter for or on behalf of the client with third parties;
>
> (5) Receive, disburse or otherwise handle the client's funds; or
>
> (6) Engage in activities that constitute the practice of law.
>
> (c) A lawyer may employ, associate in practice with, or assist an ineligible person to perform research, drafting or clerical activities, including but not limited to:
>
> (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
>
> (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
>
> (3) Accompanying an active lawyer in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client. [75]

[75] *See* Cal. R. Prof. Conduct 5.3.1.

Rule 5.3.1 plainly allows California lawyers to hire attorneys who are not in good standing with the California bar. In this regard, LAWCLERK's standards are stricter than the California bar's. LAWCLERK's terms of service state that all Lawclerks who are admitted to any bar must be in good standing with those bars. Therefore, LAWCLERK complies with California law.

New Rule 5.5
California's new version of Rule 5.5 states:

> Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
>
> (a) A lawyer admitted to practice law in California shall not:
>
> (1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or
> (2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.
>
> (b) A lawyer who is not admitted to practice law in California shall not:
>
> (1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or
>
> (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

California's new Rule 5.5. is nearly identical to the ABA's Model Rule 5.5. For the reasons discussed above, LAWCLERK is wholly compliant with the ABA's Model Rules governing the hiring of nonlegal assistants and the unauthorized practice of law. While case law interpreting the new rules is sparse, because LAWCLERK complies with ABA guidance, the use of LAWCLERK more than likely complies with the new California rules as well.

Colorado.

The Colorado Supreme Court has defined the 'practice of law' as "acting 'in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counselling, advising and assisting him in connection with these rights and duties....'"[76] Applying the foregoing definition, Colorado courts have "held that an unlicensed person engages in the unauthorized practice of law by offering legal advice about a specific case, drafting or selecting legal pleadings for another's use in a judicial proceeding without the supervision of an attorney, or holding oneself out as the representative of another in a legal action."[77]

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[76] *State of Colorado v. Shell*, 148 P.3d 162, 171 (Colo. 2006) (quoting *Denver Bar Ass'n v. Pub. Util. Comm'n*, 391 P.2d 467, 471 (Colo. 1964)).

[77] *Id.*; *see also Unauthorized Practice of Law Comm. v. Grimes*, 654 P.2d 822, 823 (Colo. 1999) (nonlawyers offering case-specific legal advice and selecting case-specific legal documents constitutes the unauthorized practice of law); *Unauthorized Practice of Law Comm. v. Prog*, 761 P.2d 1111, 1115 (Colo. 1988) (same).

In *Stewart*, a lawyer was held to have violated Rules 5.3(b) and (c) and 5.5(b) of the Colorado Rules of Professional Conduct where the nonlawyer assistant conducted the first meeting with the clients, obtained the retainers, and provided legal advice directly to the clients.[78] Similarly, in *Calvert*, a lawyer was held to have violated Rules 5.3(b) and 5.5(b) of the Colorado Rules of Professional Conduct where the lawyer: (i) failed to work on a dog bite case for which he signed the contingency fee agreement, instead giving complete responsibility for providing the client with legal advice, advocating in writing for the client, negotiating a settlement, and attending a court hearing with the client to his law clerk/paralegal; and (ii) allowed, without a modicum of supervision, the law clerk/paralegal to represent clients in a bankruptcy matter and to use the lawyer's electronic signature on filings the lawyer had not reviewed.[79]

Consistent with the foregoing authority, Formal Ethics Opinion No. 79 states that "[t]he use of paralegals, law clerks, or other legal assistants (who are not licensed attorneys) employed by a licensed attorney to appear at depositions, hearings, or administrative proceedings to represent the attorney's client constitutes […] the unauthorized practice of law."[80] Nothing in the opinion indicates that paralegals, law clerks, and other legal assistants may not complete legal research and prepare pleadings under the direct supervision of a barred lawyer in good standing where the work product is provided solely to the lawyer for the lawyer's review and use.

Consistent therewith, the Colorado Bar Association has developed guidelines divided into twenty-one specialty areas of practice that provide a general framework of potential tasks that can or should be performed by a supervised paralegal in an effort to assist with work flow.[81] By way of example, under the "Civil Litigation Paralegal" area of practice, the following delegable tasks, subject to lawyer supervision, are identified:

A. COMMENCEMENT OF ACTION

1. Identify parties.

2. Attend initial client interviews.

3. Check for conflicts of interest.

4. Participate in case analysis and identification of potential issues, including discovery considerations with attorney; check jury instructions for claims and defenses.

5. Internal Factual Development; investigate and analyze factual issues: a. Determine sources of potential evidence; b. Locate, obtain, and preserve material evidence, i.e., search public records, conduct site inspection, obtain medical and investigative materials, obtain photographs, documents and other physical evidence; c. Place and monitor "litigation hold" on all evidence, hard

[78] *State of Colorado v. Stewart*, 892 P.2d 875, 876-878 (Colo. 1995).
[79] *State of Colorado v. Calvert*, 280 P.3d 1269, 1282-1283 (Colo. PDJ 2011); *see also State of Colorado v. Milner*, 35 P.3d 670, 686 (Colo. PDJ 2001).
[80] Formal Opinion 79 of the Colorado Bar Association Ethics Committee, Colorado Ethics Handbook 5th ed., available at https://www.cobar.org/Portals/COBAR/repository/ethicsOpinions/FormalEthicsOpinion_79_2011.pdf.
[81] Guidelines for the Utilization of Paralegals, Colorado Bar Association, adopted May 17, 2008, available at http://www.cobar.org/For-Members/Law-Practice-Management/Paralegal-Resources.

and electronic files; d. Locate and interview lay and expert witnesses, obtain statements and prepare written reports; e. Arrange for outside investigator, if necessary; f. Review and organize data; establish concept and design for document management system; assist in determining whether to use litigation support software, and the extent of such use; g. Analyze and summarize all data; prepare necessary chronologies; h. Obtain, review, and organize damage information; calculate damages and prepare, maintain and update damage summaries; and i. Begin trial/hearing notebooks.

6. Research (including computer research) legal issues: a. Locate and summarize applicable statutory law, including statutes of limitation, and regulatory law; b. Locate, Sherardize, and summarize relevant case law; c. Draft briefs and legal memoranda for attorney review; d. Review citations and references in briefs; and e. Review citations and references in briefs of opposing parties and prepare memoranda.

7. Draft pleadings and other documents, including, but not limited to: complaint, summons, answer, motions, stipulations, discovery pleadings, affidavits, briefs, etc.; and arrange for service of process.

8. Draft or prepare correspondence.

9. Communicate with the clerk of the Court, division clerk, and law clerk as needed.

10. Maintain tickler system, master dockets and calendars: a. Statute of limitations situations for filing suit/notices of claim; b. Answers/Responses to complaints (e.g. original, third party, counterclaims); c. Answers, Responses to motions requiring an answer or response; d. Rule 16 Case and Trial Management Orders, in accordance with Rule 26 where required; and e. Answers/Responses to discovery requests (e.g., interrogatories, request for production, request for admissions).

11. Review file regularly, make recommendations to attorney and prepare regular status reports to client.

12. Conduct medical and technical research as necessary.

B. DISCOVERY AND DISCLOSURES

1. Assist in formulation of discovery/disclosure plan.

2. Send 26(a)(1) letter to client.

3. Collect, review, organize and index and Bates number discovery documents; maintain list of privileged documents.

4. Subjectively code documents to database; supervise objective coding of documents; arrange to have documents imaged for use during trial preparation, depositions, and trial.

5. Draft Rule 26(a)(1) disclosures, organize, index and Bates number documents.

6. Draft, prepare, and respond to requests for admission, production of documents, interrogatories, and discovery motions.

7. Meet with client and prepare Rule 26(a)(1) disclosures and responses to discovery requests.

8. Prepare summary of disclosures and discovery responses.

9. Attend and/or supervise document productions.

10. Assemble witness files and assist in preparing witnesses for deposition.

11. Depositions: a. Assist attorney in determining appropriate depositions; b. Arrange deposition times, locations, reporters, videographers, etc.; c. Prepare subpoenas and notices of deposition, witness fees and mileage checks; prepare demand letters, subpoenas and commissions to take out-of-state depositions; d. Draft deposition questions and outline; prepare witness profile notebooks; review and assemble documents for depositions; e. Attend deposition with attorney and take notes, which can include observation of reactions of deponent and others present, and manage documents; f. Prepare summaries and digests of deposition transcripts; g. Follow-up after depositions for additional information; and h. Load full-text transcripts on computer, and conduct text searches as needed.

13. Supervise discovery and recommend further discovery.

C. PRE-TRIAL

1. Designate portions of testimony from video tapes, audio tapes or transcribed depositions for use at trial and consult with attorney regarding same.

2. Schedule and accompany attorney to hearings, pretrial conferences, and settlement conferences, and draft and prepare necessary follow-up documents, i.e., letter to client, order, etc.

3. Prepare disclosure certificates, amend case management order, settlement statements and trial management order.

4. Prepare witnesses for trial.

5. Prepare or arrange for demonstrative exhibits, i.e., charts, graphs, diagrams, etc.

6. Arrange for necessary special equipment at trial.

7. Locate and interview potential expert witnesses and give them copies of necessary records, documents, etc.

8. Organize and label trial exhibits and prepare trial notebooks.

9. Coordinate additional arrangements required for out-of-town trials.

D. TRIAL

1. Prepare trial subpoenas.

2. Assist in drafting voir dire.

3. Assist in drafting jury instructions both before and during trial; obtain jury lists and biographical information on jurors.

4. Manage trial logistics such as coordination of witnesses, delivery and return of trial materials, provisions for special equipment and other matters that arise during the course of trial.

5. Attend trial with attorney and take notes; assist with jury selection; take notes during voir dire, observe reactions of potential jurors to voir dire questions; assist with coordination of witnesses; manage exhibits and visual aids.

6. Meet with attorney regarding evaluation of witnesses, testimony and trial strategy.

7. Assist with retrieving testimony from depositions for impeachment purposes.

8. Work with database, imaged documents and transcripts on laptop computer during course of trial.

9. Monitor exchange of exhibits at trial; maintain list of exhibits as mentioned, offered, admitted or objected to.

E. POST-TRIAL

1. Draft cost bill.

2. Draft Attorney's Fee Application.

3. Summarize trial testimony; order trial transcripts and prepare recap or outline of same.

4. Draft or prepare post-trial motions.

5. If case is not appealed, participate in post-mortem, if case is not appealed, i.e., assist in speaking with members of the jury, and closing the file.

6. Prepare garnishments, levies, and other post-judgment collection documents; assist in processing writs of execution.

F. APPEAL

1. Prepare timetable for appeal process and set up reminder system.

2. Obtain applicable case law and organize research.

3. Assist with preparation of appeal briefs, i.e., Sherardize cases, prepare table of contents and table of authorities, etc.

4. Assist with designation of record on appeal; organize appendix.

5. Draft notice of appeal for attorney review.

6. Review and analyze legal authority cited by adverse party.

G. SETTLEMENT

1. Draft or prepare settlement agreements, calculations and releases.

2. Draft or prepare motions and stipulations for dismissal.

H. INCIDENTAL

1. Utilize applicable computer programs, Internet, and other technology for research, investigations, document management, exhibit and witness preparation, tracking deadlines, e-filing and service of pleading, and other case-specific tasks. [82].

The foregoing case law, coupled with the Colorado Guidelines, illustrates the broad scope of legal services that may be delegated to a paraprofessional as long as the paraprofessional is supervised by a barred lawyer. At LAWCLERK, the Lawclerk, who has superior legal knowledge to a paralegal, only engages with the Attorney and the Attorney is responsible for the Lawclerk's work product, thereby removing an ability for the paraprofessional to provide legal advice to a client. The Colorado courts have also repeatedly held that suspended or disbarred lawyers may perform paralegal services,[83] further proving that Lawclerks do not engage in the unauthorized

[82] *Id.*, available at: http://www.cobar.org/Portals/COBAR/Repository/ParalegalGuidelines/CivilLitigation.pdf.
[83] *See, e.g. State of Colorado v. Gray*, 35 P.3d 611, n. 4 (Colo. PDJ 2001) (citing *Goff v. State of Colorado*, 35 P.3d 487, 492 (Colo. PDJ 2000), *McCaffrey v. State of Colorado*, 35 P.3d 481, 483 (Colo. PDJ 2000); *Varallo v. State of Colorado*, 35 P.3d 177, 179 (Colo. PDJ 1999)).

practice of law by completing projects delegated to them by the Attorney that is responsible for their work product and for their supervision.

2020 UPDATE: In April 2018, Colorado amended its ethics rules. New Rule 5.3 states:

> With respect to nonlawyers employed or retained by or associated with a lawyer:
>
> (a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
>
> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
>
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.[84]

New Rule 5.5 states, in pertinent part:

> (c) Subject to the limitation set forth below in paragraph (d), a lawyer may employ, associate professionally with, allow or aid a lawyer who is disbarred, suspended (whose suspension is partially or fully served), or on disability inactive status to perform research, drafting or clerical activities, including but not limited to:
>
> (1) legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
>
> (2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; and

[84] *See* RPC 5.3 (2018), available at https://www.cobar.org/For-Members/Opinions-Rules-Statutes/Rules-of-Professional-Conduct/Rule-53-Responsibilities-Regarding-Non-lawyer-Assistants.

(3) accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing assistance to the lawyer who will appear as the representative of the client.

(d) A lawyer shall not allow a person the lawyer knows or reasonably should know is disbarred, suspended, or on disability inactive status to have any professional contact with clients of the lawyer or of the lawyer's firm …. [85]

LAWCLERK complies with both of these new rules. LAWCLERK complies with Rule 5.3 because LAWCLERK's terms of service require Attorneys to supervise Lawclerks' work at all times and to be solely responsible for the work product. Similarly, while Rule 5.5 allows disbarred attorneys to work on legal matters, LAWCLERK is more stringent. Unlike Colorado, LAWCLERK requires Lawclerks to be in good standing in any and jurisdictions where they are licensed.

Connecticut.

Section 51-88 of the Connecticut General Statutes prohibits a person that has not been admitted as an attorney to the Connecticut Bar from providing legal services unless such person is providing legal services pursuant to statute or a rule of the Superior Court.[86] Rule 2-44A of the Connecticut Rules for the Superior Court defines the practice of law in pertinent part as follows:

(a) **General Definition**: The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to:

(1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.

(2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.

(3) Drafting any legal document or agreement involving or affecting the legal rights of a person.

[85] *See* RPC 5.5 (2018), available at https://www.cobar.org/For-Members/Opinions-Rules-Statutes/Rules-of-Professional-Conduct/Rule-55-Unauthorized-Practice-of-Law-Multijurisdictional-Practice-of-Law.
[86] Conn. Gen. Stat. § 51-88.

(4) Representing any person in a court, or in a formal administrative adjudicative proceeding….

(5) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is transferred…. and

(6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Connecticut as established by case law, statute, ruling or other authority.

Section (c) expressly addresses nonlawyer assistance stating, "Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct."[87]

Connecticut courts have held that a lay person, including a paralegal, acting without the supervision of a lawyer engages in the unauthorized practice of law when the paralegal prepares legal documents for others.[88] In reaching this conclusion, the courts emphasize that it "is not for the economic protection of the legal profession", but rather so that the public is protected from the "potentially severe economic and emotional consequences which may flow from erroneous advice given by persons untrained in the law."[89] They have further explained that while Practice Book § 2-44(c) allows for work to be done by a paralegal under the supervision of the lawyer, when the lawyer does not supervise the paralegal and the paralegal engages in direct contact with the client and negotiates a settlement with the opposing party, the lawyer violates Rule 5.3 of the Connecticut Rules of Professional Conduct.[90]

Similarly, the Connecticut Supreme Court has held that where a nonlawyer engaged in the unauthorized practice of law where he operated a business named "Doc-U-Prep" that prepared legal documents for nonlawyers to file *pro se* in their own legal proceedings based on questionnaires that his clients had completed and returned to him.[91] In reaching its conclusion, the court stated "[i]t is of importance to the welfare of the public that these manifold customary functions [of practicing law] be performed by persons possessed of adequate learning and skill and

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[87] Conn. R. Supr. Ct. Gen. § 2-44A, available at https://www.jud.ct.gov/cbec/rules.htm#2-44A.

[88] *Statewide Grievance Comm. v. Patton,* 683 A.2d 1359 (Conn. 1996) (operator of legal document preparation business who was not admitted to the Connecticut bar engaged in the unauthorized practice of law when he gave customers questionnaires regarding the type of services they needed, sent completed questionnaires to the office which prepared legal documents pursuant to the franchise agreement, and then delivered completed documents to the customers); *Monroe v. Horwitch*, 820 F. Supp. 682, 687 (D. Conn. 1993), *aff'd,* 19 F.3d 9 (2d Cir. 1994) (quoting *State v. Buyers Service Co.,* 357 S.E.2d 15 (S. C. 1987)) (unsupervised paralegals preparing court documents in uncontested divorce actions are engaged in the unauthorized practice of law); *Statewide Grievance Committee v. Irizarry*, CV 03 0194210 (2003) (notary public and accountant engaged in unauthorized practice of law when he helped prepare legal documents for pro se plaintiffs seeking a divorce.)

[89] *State v. Buyers Service Co. Inc.*, 357 S.E.2d at 18.

[90] *Saas v. Statewide Grievance Comm.*, 2013 WL 388204 at *11 (Conn. 2013).

[91] *Statewide Grievance Comm. v. Patton,* 683 A.2d 1359 (Conn. 1996); *see also Statewide Grievance Committee v. Zadora*, 772 A.2d 681, 684 (Conn. App. Ct. 2001) ("Advertising alone is sufficient to constitute the unauthorized practice of law if the advertisement is for activity that amounts to legal services.").

of sound moral character, acting at all times under the heavy trust obligation to clients which rests upon all attorneys."[92]

As discussed above, LAWCLERK not only complies with Rule 5.3, but by precluding Lawclerks from having any client contact or contact with the opposing party and requiring the Attorney to be responsible for the Lawclerk's work product, LAWCLERK protects the public from the receipt of "erroneous advice given by persons untrained in the law."

Delaware.

The Delaware Supreme Court has defined the practice of law as follows:

> In general, one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill. The practice of law includes 'all advice to clients, and all actions taken for them in matters connected with the law'[93] ... and the exercise of such professional skill certainly includes the pursuit, as an advocate for another, of a legal remedy within the jurisdiction of a quasi-judicial tribunal.[[94]]

In applying this definition, Delaware courts and the Delaware Office of Disciplinary Counsel have found the unauthorized practice of law where: (i) a paralegal, acting through his own company and without lawyer supervision, instructs the paralegal's client (not the lawyer's client) on the law and drafts legal documents for the client;[95] (ii) someone other than a lawyer licensed to practice law in Delaware conducts a closing of a sale or refinancing of Delaware real property[96] or represents Delaware residents in motor vehicle accident matters;[97](iii) a public accountant drafts, prepares, signs, and files legal documents on behalf of a third party and provides legal advice to third parties with respect to filing legal documents;[98] and (iv) nonlawyers represent third parties in judicial proceedings, including due process hearings before the Delaware Department of Public Instruction.[99]

Conversely, the Delaware Office of Disciplinary Counsel has determined that the nonlawyer did not engage in the unauthorized practice of law where: (i) a paralegal (a) forwarded

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[92] *Statewide Grievance Committee v. Patton*, 683 A.2d at 1361 (quoting *State Bar Ass'n of Conn. v. Connecticut Bank & Trust Co*., 140 A.2d 863 (Conn. 1958)).

[93] *Delaware State Bar Ass'n v. Alexander,* 386 A.2d 652, 661 (Del. 1978) (quoting *In re Welch*, 185 A.2d 458, 459 (Vt. 1962)).

[94] *Id.* (quoting *Tumulty v. Rosenblum*, 48 A.2d 850, 852 (N.J. 1946)).

[95] *Alston v. Issa*, 2012 WL 6845666(Del.2012); *In re Alston*, 991 A.2d 17 (2010).

[96] *Matter of Mid-Atlantic Settlement Services, Inc.*, Supreme Court No. 102, 2000, UPL 95-15 (5/31/000) available at http://courts.delaware.gov/ODC/Digest/Download.aspx?id=419 (further explaining that an attorney licensed to practice law in Delaware is required to be involved in a direct or supervisory capacity in drafting or reviewing all documents affecting the transfer of title to Delaware real property and evaluating the legal rights regarding title to real property and real property transfers).

[97] *In re Edelstein*, 99 A.3d 227 (Del. 2014) (court found unauthorized practice of law had occurred when person not licensed to practice law in Delaware represented Delaware residents in "matters arising out of motor vehicle accidents which occurred in Delaware and involved a police of insurance issued for a vehicle registered in the State of Delaware).

[98] *In re Estep*, 933 A.2d 763 (Del. 2007); *In re Kingsley*, 950 A.2d 659 (Del. 2008).

[99] *In re Arons*, 756 A.2d 867 (Del. 2000).

documents to a court, (b) requested scheduling of a hearing in a writing clearly identifying herself as a paralegal, (c) gathered factual information on a case and drafted legal documents under the supervision of a lawyer, and (d) attended a mediation session at the Family Court, where by common practice, lawyers do not attend, and where the lawyer's clients were not given legal advice by the paralegal;[100] and (ii) a law student admitted to practice pursuant to Delaware Supreme Court Rule 56 (limited practice as legal intern) and who may have been held out as a Delaware lawyer, did not give legal advice to third-parties.[101]

Additionally, the Delaware Supreme Court has repeatedly held that a suspended or disbarred lawyer may be engaged to perform tasks usually performed by law clerks or paralegals as long as the suspended or disbarred lawyer does not have any contact with clients, witnesses, or prospective witnesses.[102]

Consistent with the foregoing authority, LAWCLERK does not engage in the unauthorized practice of law because all services provided by the Lawclerk are provided at the direction of, and under the supervision of, a barred Attorney, the Lawclerk does not provide legal advice to the client, the Lawclerk has no client contact and the Attorney retains sole responsibility for the Lawclerk's work product.

District of Columbia.

Rule 49 of the District of Columbia Court of Appeals is titled the "Unauthorized Practice of Law" and provides the general rule that "[n]o person shall engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the District of Columbia Bar, except as otherwise permitted by these Rules."[103] Rule 49(b)(2) then defines the "practice of law" as:

> the provision of professional legal advice or services where there is a client relationship of trust or reliance. One is presumed to be practicing law when engaging in any of the following conduct on behalf of another:
>
> > (A) Preparing any legal document, including any deeds, mortgages, assignments, discharges, leases, trust instruments or any other instruments intended to affect interests in real or personal property, will, codicils, instruments intended to affect the disposition of property of decedents' estates, other instruments intended to affect or secure legal rights, and contracts except routine agreements incidental to a regular course of business;

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[100] *In re Stone,* BUPL No. UPL 91-2 (1991), available at http://courts.delaware.gov/ODC/Digest/Download.aspx?id=424.

[101] *In re Gross*, BUPL No. UPL 92-8 (1993), available at http://courts.delaware.gov/ODC/Digest/Download.aspx?id=428.

[102] *In re Mekler*, 672 A.2d 23, 25 (Del. 1995); *In re Frabizzio*, 508 A.2d 468 (Del. 1986); *see also In re Member of Bar of Supreme Court of Delaware Martin*, 105 A.3d 967 (Del. 2014) (court sanctioned lawyer who was knowingly assisting a suspended lawyer in the unauthorized practice of law).

[103] D.C. Ct. App. R. 49(a) available at https://www.dccourts.gov/sites/default/files/2017-07/DCCA%20Rule%2049%20Unauthorized%20Practice%20of%20Law.pdf.

> (B) Preparing or expressing legal opinions;
>
> (C) Appearing or acting as an attorney in any tribunal;
>
> (D) Preparing any claims, demands or pleadings of any kind, or any written documents containing legal argument or interpretation of law, for filing in any court, administrative agency or other tribunal;
>
> (E) Providing advice or counsel as to how any of the activities described in subparagraph (A) through (D) might be done, or whether they were done, in accordance with applicable law;
>
> (F) Furnishing an attorney or attorneys, or other persons, to render the services described in subparagraphs (a) through (e) above.[104]

The District of Columbia Committee on Unauthorized Practice of Law has issued several opinions providing guidance regarding whether LAWCLERK complies with Rule 49. For instance, in Opinion 6-99, the committee concluded that despite the language in Rule 49(F), legal staffing companies do not engage in the practice of law by providing attorneys to legal services organizations so long as: (1) an attorney with an attorney-client relationship with the prospective client selects the temporary attorney; (2) the temporary attorney is directed or supervised by a lawyer representing the client; and (3) the staffing company does not otherwise engage in the practice of law within the meaning of Rule 49 or attempt to supervise the practice of law by the attorneys it places.[105] Consistent therewith, the Attorney selects the Lawclerk, the Attorney maintains the attorney-client relationship, and the Lawclerk is supervised by the lawyer.

In Opinion 16-05, the committee examined, among other inquiries, whether a contract lawyer that is hired to provide paralegal work or other work that calls for little or no application of legal knowledge, training or judgment, and that is supervised by a member of the District of Columbia bar, engages in the unauthorized practice of law. In response to this inquiry the committee explained that the answer generally depends on whether the person is being held out, and billed out, as a lawyer or as a paralegal.[106]

> Rule 49 does not regulate the hiring of a person as a paralegal or a law clerk, even though the person may be admitted to the practice of law in another jurisdiction. When a person is hired and billed as a lawyer, however, the person is generally engaged in the practice of law, and is certainly being held out as authorized or competent to practice law. Clients would reasonably assume that the person held out as a contract lawyer performs actions that are different in degree, if not in kind, from those performed by paralegals or law clerks, and that

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[104] *Id.* at 49(b)(2)(A-F)

[105] District of Columbia Committee on Unauthorized Practice of Law, Opinion 6-99, Permissible Conduct of Commercial Firms that Place Attorneys on a Temporary Basis with Legal Service Organizations, issued June 30, 1999, available at https://www.dccourts.gov/sites/default/files/matters-docs/rule49_opinion6.pdf

[106] District of Columbia Committee on Unauthorized Practice of Law, Opinion 16-05, Compliance with Rule 49 by "Contract" Lawyers in the District of Columbia, issued June 17 2005, at p. 5, available at https://www.dccourts.gov/sites/default/files/matters-docs/rule49_opinion16-05.pdf

> the cost of services performed by contract lawyers reflects the legal training and judgment that they bring to the work they perform. When a client is paying for the services of a lawyer, and not a paralegal or a law clerk, the person providing the services and the person's employer must comply with Rule 49.
>
> In addition, if a contract lawyer is supervised not as a paralegal or law clerk but as a subordinate attorney would be supervised, the contract lawyer is engaged in the practice of law.[107]

At LAWCLERK, the Attorney establishes the payment for the services performed by the Lawclerk, which are not established based on the billable hour, and the Attorney's clients are not charged for the services based on the billable hour. Thus, not only are Lawclerks "held out" as paraprofessionals (not lawyers), but they are not paid or billed in the same manner as lawyers.

In Opinion 21-12, the committee analyzed whether companies that assist lawyers with document review, including offering lawyers to staff document review projects, providing physical space at which the document review may be conducted, providing computers for document review, and providing servers for hosting the documents to be reviewed, are engaged in the unauthorized practice of law.[108] The committee offered the following pertinent principles. First, companies that provide lawyers for document review must abide by Rule 49 and Opinion 6-99, meaning that the final selection of lawyers to staff a document review project must be made by a member of the District of Columbia bar with an attorney-client relationship with the client, the document review lawyer's legal work must be directed or supervised by a District of Columbia bar member who represents the client, and the discovery services company may not otherwise violate Rule 49 or attempt to supervise the document review lawyer.[109] Second, discovery service companies may not provide legal advice to their clients and may not hold themselves or any lawyers on their staff as authorized to practice law in the District of Columbia.[110] This opinion further illustrates that LAWCLERK does not engage in the unauthorized practice of law as the Attorney selects the Lawclerk, the Lawclerk does not provide legal advice to the Attorney's clients, the Attorney supervises the Lawclerk, and LAWCLERK does not hold the Lawclerks out as being able to practice law.

Florida.

The Florida Supreme Court has explained that:

> [D]efining the practice of law must be considered in the context of our obligation to protect the public:
>
> > [I]n determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute

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[107] *Id.* at pp. 5-6.
[108] District of Columbia Committee on Unauthorized Practice of Law, Opinion 21-12, Applicability of Rule 49 to Discovery Services Companies, issued January 12, 2012, available at https://www.dccourts.gov/sites/default/files/matters-docs/21-Opinion-21-12.pdf
[109] *Id*. at pp. 6-7.
[110] *Id.* at pp. 7-8.

> the practice of law it is safe to follow the rule that if the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law. [111]

Further expounding, the Florida Supreme Court "emphasized that the major purpose for prohibiting the unlicensed practice of law is to protect the consuming public from being advised and represented in legal matters by unqualified persons who may put the consuming public's interests at risk."[112] The court then found that a paralegal had engaged in the unauthorized practice of law where he misled claimants and others to believe he was an lawyer, represented clients in mediations, analyzed statutory and case law and discussed it with clients, signed court-filed documents, and discussed legal documents with clients without a lawyer present.[113]

The Florida courts have also explained that while nonlawyers may sell legal forms and may serve as notaries and typists completing the forms with the information provided by their customers, nonlawyers engaged in the unauthorized practice of law where they provided legal advice to their customers regarding the preparation of marriage dissolutions, bankruptcy proceedings, and trust documents, among others, contacted opposing parties and lawyers for opposing parties on behalf of their customers in reference to legal matters without lawyer supervision, and advertised that their services were the equivalent of a lawyer.[114]

By precluding any contact with the client or other parties to the applicable matter and ensuring that the Attorney maintains full responsibility for the Lawclerk's work product, LAWCLERK allows Attorneys to engage necessary paraprofessional assistance, thereby lowering legal costs, while ensuring that the "consuming public" continues to be represented by, and only receive legal advice from, the Attorney. This complies with not only the public policy goals behind the prohibition on the unauthorized practice of law, but additionally ensures compliance with Rule 4-5.3 (Responsibilities Regarding non-lawyer Assistants) and Rule 4-5.5 (Unauthorized Practice of Law) of the Florida Rules of Professional Conduct.

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[111] *Florida Bar v. Neiman*, 816 So.2d 587, 596 (Fla. 2002) (citing *State ex rel. Florida Bar v. Sperry*, 140 So.2d 587, 591 (Fla. 1962)).
[112] *Id.* (citing *Florida Bar v. Schramerk*, 616 So.2d 979, 983 (Fla. 1993)).
[113] *Id.* at 596-97.
[114] *Florida Bar v. We the People Forms and Service Center of Sarasota, Inc.*, 883 So.2d 1280 (Fla. 2004); *see also Florida Bar v. Catarcio*, 709 So.2d 96 (Fla. 1998) (holding that a nonlawyer who has direct contact with individuals in the nature of consultation, explanation, recommendations, advice, and assistance in the provision, selection, and completion of legal forms engages in the unauthorized practice of law); *Florida Bar v. Abreu*, 833 So.2d 752 (Fla. 2002) (holding that assisting in preparing documents related to obtaining green cards by a nonlawyer constitutes the unauthorized practice of law).

Georgia.

Section 15-19-50 of the Georgia Code defines the practice of law as follows:

> (1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body;
>
> (2) Conveyancing;
>
> (3) The preparation of legal instruments of all kinds whereby a legal right is secured;
>
> (4) The rendering of opinions as to the validity or invalidity of titles to real or personal property;
>
> (5) The giving of any legal advice; and
>
> (6) Any action taken for others in any matter connected with the law.[115]

Georgia courts, engaging in a fact-specific inquiry, have found the following conduct to constitute the unauthorized practice of law: (i) a "nondebtor mediation firm" representing debtors under a power of attorney in negotiations with a creditor's lawyer in an effort to reduce the amount of the debtor's indebtedness to the creditor or to work out a payment plan;[116] (ii) a nonlawyer advising a taxpayer to plead guilty for willful evasion of Federal income taxes and subsequently appearing for the taxpayer and making a motion to withdraw the guilty plea.[117]

A lawyer aids a nonlawyer in the unauthorized practice of law in violation of Rule 5.5 of the Georgia Rules of Professional Conduct when the lawyer "creates a reasonable appearance to others that the lawyer has effectively substituted the legal knowledge and judgment of the nonlawyer for his or her own."[118]

Georgia courts have determined that while a suspended or disbarred lawyer may serve as a law clerk or paralegal for a lawyer in good standing with the Georgia bar so long as the suspended or disbarred lawyer has no contact with the clients and appropriate supervisory mechanisms are in place, where the lawyer fails to supervise the disbarred or suspected lawyer working as a law clerk or paralegal, the supervising lawyer violates Rule 5.5 of the Georgia Rules of Professional Conduct.[119] This is consistent with the Supreme Court of Georgia's explanation of the public policy behind the prohibition on the unauthorized practice of law:

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[115] Ga. Code Ann. § 15-19-50.
[116] *In re UPL Advisory Opinion 2003-1*, 623 S.E.2d 464, 465 (Ga. 2005).
[117] *Lowe v. Presley*, 71 S.E.2d 730 (1952).
[118] Formal Advisory Opinion No. 00-2 issued by the Supreme Court of Georgia, Feb. 11, 2000, available at https://www.gabar.org/handbook/index.cfm#handbook/rule466..
[119] *In re Gaff*, 524 S.E.2d 728 (Ga. 2000).

> For public policy reasons it is important that the legal profession restrict its use of nonlawyers to those uses that would improve the quality, including the efficiency and cost-efficiency, of legal representation rather than using nonlawyers as substitutes for legal representation. Attorneys, as professionals, are ultimately responsible for maintaining the quality of the legal conversation in both the prevention and the resolution of disputes. This professional responsibility cannot be delegated to others without jeopardizing the good work that lawyers have done throughout history in meeting this responsibility.[120]

In Advisory Opinion No. 21, the Georgia State Disciplinary Board outlined the ethical responsibilities of lawyers that employ legal assistants or paraprofessionals and permit them to deal with other lawyers, clients, and the public. In reaching its conclusions, the State Disciplinary Board emphasized that the "delegation of activities which ordinarily comprise the practice of law is proper only if the lawyer maintains a direct relationship with the client involved, supervises and directs the work delegated to the paralegal, and assumes complete ultimate professional responsibility for the work product produced by the paralegal. Supervision of the work of the paralegal by the attorney must be direct and constant to avoid any charges of aiding the unauthorized practice of law."[121] The Disciplinary Board's opinion went on to say:

> It is the opinion of this Board that the following may be delegated to nonlawyer paralegals, provided that proper and effective supervision and control by the attorney exists:
>
> (1) The interview of clients, witnesses and other persons with information pertinent to any cause being handled by the attorney.
>
> (2) Legal research and drafting of pleadings, briefs of law and other legal documents for the attorney's review, approval and use.
>
> (3) Drafting and signing of routine correspondence with the clients of the attorney when such correspondence does not require the application of legal knowledge or the rendering of legal advice to the client.
>
> (4) Investigation of facts relating to the cause of a client of the attorney, including examinations of land records and reporting of his findings to the attorney.

[120] Formal Advisory Opinion No. 00-2, issued by the Supreme Court of Georgia, Feb. 11, 2000, available at https://www.gabar.org/handbook/index.cfm#handbook/rule466.

[121] Georgia State Disciplinary Board Advisory Opinion No. 21, available at https://www.gabar.org/handbook/index.cfm#handbook/rule469.

(5) Scheduling of the attorney's activities in the law office and scheduling of his appearance before courts, tribunals and administrative agencies.

(6) Billing of clients and general management of the law firm's office and nonlegal staff.

(7) Routine contacts with opposing counsel on topics not effecting the merits of the cause of action at issue between the attorneys or requiring the use or application of legal knowledge.

(8) Rendering of specialized advice to the clients of the attorney on scientific and technical topics, provided that such advice does not require the application of legal judgment or knowledge to the facts or opinions to be discussed with the client.

It is the opinion of the Board that the following duties should not be delegated to paralegals [all of which are also prohibited at LAWCLERK]:

(1) Any contact with clients or opposite counsel requiring the rendering of legal advice of any type.

(2) Any appearance as a lawyer at depositions, hearings, calendar calls or trials or before any administrative Tribunal unless otherwise preempted by Federal law or regulation.

(3) Responsibility for making final decisions as to the ethics of activities of paralegal employees of an attorney.

(4) Drafting, without review and approval by a member of the Bar, of any pleading or legal document.

(5) Negotiation with opposing parties or their counsel on substantive issues in expected or pending litigation.

(6) Contacting an opposite party or his counsel in a situation in which legal rights of the firm's client will be asserted or negotiated.

(7) Signature of pleadings, briefs or other legal documents for presentation to any court or explanation of legal document s to the

client of the lawyer or to the opposite party in any negotiation or litigation. [*[122]*]

It is the opinion of the State Disciplinary Board that there are other duties incumbent upon lawyers supervising the work of paralegals as follows:

(1) (a) In order to avoid any appearance that the lawyer is aiding the paralegal in the unauthorized practice of law, including unauthorized practice by way of 'holding out as an attorney' (see Ga. Code Ann. 9-402), any letters or documents signed by the paralegal should clearly indicate the status of the paralegal and such status should be made clear by the nature of the typed signature or by express language in the text of the letter or document. *See* Advisory Opinion No. 19. [[123]]

(b) The name of the paralegal should not appear on the letterhead or on the office door of any lawyer engaged in private practice. The paralegal may have a business card containing the name of the firm by which he or she is employed, but the card must contain the word 'paralegal' to clearly convey that the paralegal is not a lawyer.[[124]]

(c) In oral communications, either face-to-face or on the telephone, the paralegal should begin the conversation with a clear statement that he or she is speaking as a paralegal employee of the lawyer or the law firm. Such communication concerning the status of the paralegal should be given prior to all oral communications with clients, opposite parties, and other attorneys unless previous contacts with such persons would justify the paralegal in believing that their status was clearly known to such persons.[*[125]*]

(2) A paralegal may not be a partner in a law firm nor have a financial interest that amounts to a partnership interest in such firm other than participation in a profit-sharing plan allowed under Bar ethics rules. [DR 2-102 (A)][[126]]

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[122] Notably, the Lawclerk Marketplace similarly prohibits the duties set forth in subsections 1-7 above.
[123] The Lawclerks are prohibited from signing any documents.
[124] The Lawclerks are engaged on a project-by-project basis and their names do not appear on any letterhead, office doors, or business cards.
[125] The Lawclerks do not communicate with the client, the court, opposing counsel, or any other party to the project for which the Lawclerk has been engaged.
[126] The Lawclerks are engaged on a project by project basis and are not partners in the engaging Lawyer's law firm and they do not have a financial interest that amounts to a partnership interest in such firm.

(3) As the paralegal is the agent of the attorney, the paralegal has a duty to protect and preserve the confidences and secrets of the firm's clients. [EC 4-2 and DR 4-102] [*[127]*]

(4) As the paralegal is an agent of the lawyer or law firm, it is the duty of the supervising lawyer to carefully instruct the paralegal so that the paralegal will avoid taking any action which the attorney himself is prohibited from taking, including avoidance of solicitation of cases or clients for the lawyer or the law firm and avoiding any other activity which would be improper activity if performed by the supervising lawyer or his firm.[[128]]

Commenting on Advisory Opinion No. 21, the Supreme Court of Georgia explained:

> It is our opinion, however, that applying the lists of tasks in Advisory Opinion No. 21 in a categorical manner runs risks of both over regulation and under regulation of the use of nonlawyers and, thereby, risks both the loss of the efficiency nonlawyers can provide and the loss of adequate protection of the public from unauthorized practice. Rather than being applied categorically, ***these lists should instead be considered good general guidance for the more particular determination of whether the representation of the client has been turned over, effectively, to the nonlawyer by the lawyer permitting a substitution of the nonlawyer's legal knowledge and judgment for that of his or her own.*** If such substitution has occurred then the lawyer is aiding the nonlawyer in the unauthorized practice of law whether or not the conduct is proscribed by any list. [[129]]

Formal Advisory Opinion No. 05-9 further explains that it is ethically proper for lawyers to work for other lawyers on a temporary basis. However, firms employing temporary lawyers should: (i) carefully evaluate each proposed employment for conflicting interests and potentially conflicting interests; (ii) if conflicting or potentially conflicting interests exist, then determine if imputed disqualification rules will impute the conflict to the firm; (iii) screen each temporary lawyer from all information relating to clients for which a temporary lawyer does not work, to the extent practicable; (iv) make sure the client is fully informed as to all matters relating to the temporary lawyer's representation; and (v) maintain complete records on all matters upon which each temporary lawyer works.[130]

Beyond the satisfaction of the public policy goals, LAWCLERK permits Attorneys to obtain cost-effective paraprofessional assistance to perform some, but not all, of the services that the Georgia State Disciplinary Board has determined may be delegated, subject to lawyer

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[127] Prior to commencing an engagement, Lawclerks must review the Rules of Professional Conduct and affirm that they will comply with them, expressly including the duty to protect and preserve client confidences.

[128] *Id.*

[129] Formal Advisory Opinion No. 00-2, issued by the Supreme Court of Georgia, Feb. 11, 2000, available at https://www.gabar.org/handbook/index.cfm#handbook/rule466 (emphasis added).

[130] Formal Advisory Opinion No. 05-9, issued by the Supreme Court of Georgia, April 13, 2006, available at https://www.gabar.org/handbook/index.cfm#handbook/rule461.

supervision, to a paraprofessional. At all times, however, LAWCLERK prohibits any direct contact with the Attorney's client and opposing counsel, thereby ensuring that only the Attorney provides legal advice to the client. Additionally, the Attorney is solely responsible for the Lawclerk's work product and only the Attorney receives the Lawclerk's work product, thereby ensuring that "the representation of the client has [not] been turned over, effectively, to the nonlawyer by the lawyer permitting a substitution of the nonlawyer's legal knowledge and judgment for that of his or her own." Finally, the conflicts check system allows Attorneys to evaluate whether any actual or potential conflict will arise from the engagement of the Lawclerk prior to engaging the Lawclerk.

Hawaii.

Hawaii has not defined the practice of law. The Hawaii state legislature has recognized that:

> the practice of law is not limited to appearing before the courts. It consists, among other things of the giving of advice, the preparation of any document or the rendition of any service to a third party affecting the legal rights ... of such party, where such advice, drafting or rendition of service requires the use of any degree of legal knowledge, skill or advocacy.[131]

Hawaii courts have found the unauthorized practice of law where a nonlawyer seeks to represent a corporation, a third party, or a trust.[132] Additionally, addressing the issue of whether the court may tax fees for the services of extrajurisdictional legal counsel who assist local counsel in the conduct of litigation among parties, who are themselves domiciled in a different jurisdiction, the Supreme Court of Hawaii explained that the evolution of the economy from a local to a global one and the evolution of technology requires rethinking how HRS § 605-14[133] is applied stating:

> While the scope of these statutes must be expansive enough to afford the public needed protection from incompetent legal advice and counsel, the transformation of our economy from a local to a global one has generated compelling policy reasons for refraining from adopting an application so broad that a law firm, which is located outside the state of Hawai'i, may automatically be deemed to have practiced law 'within the jurisdiction' merely by advising a client regarding the effect of Hawai'i law or by 'virtually entering' the jurisdiction on behalf of a client via 'telephone, fax, computer, or other modern technological means.' *See Birbrower,* 70 Cal.Rptr.2d at 309, 949 P.2d at 6. A case such as this—involving parties domiciled in at least five different

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[131] *Fought & Co. v. Steel Eng'g & Erection, Inc.*, 951 P.2d 487, 495 (Haw. 1998) (quoting Sen. Stand. Comm. Rep. No. 700, in 1955 Senate Journal. at 661 and Hse. Stand. Comm. Rep. No. 612, in 1955 House Journal, at 783).

[132] *See, e.g., Oahu Plumbing & Sheet Metal, Ltd. v. Kona Const., Inc.,* 590 P.2d 570 (Haw. 1979); *Tradewinds Hotel, Inc. v. Cochran,* 799 P.2d 60, 66 (1990) ("The general rule is that a trustee may not represent the trust in litigation unless, having the right sought to be enforced, he is the real party in interest.").

[133] HRS § 605-14 is titled "Unauthorized practice of law prohibited" and provides in pertinent part "It shall be unlawful for any person, firm, association, or corporation to engage in or attempt to engage in or to offer to engage in the practice of law, or to do so or attempt to do so or offer to do an act constituting the practice of law, except and to the extent that the person, firm, or association is licensed or authorized to do or offer to do by an appropriate court, agency, or office or by a statute of the State or of the United States."

> jurisdictions—only emphasizes what seems intuitively obvious: a commercial entity that serves interstate and/or international markets is likely to receive more effective and efficient representation when its general counsel, who is based close to its home office or headquarters and is familiar with the details of its operations, supervises the work of local counsel in each of the various jurisdictions in which it does business. Undoubtedly, many Hawai'i corporations follow the same practice.[134]

While this case is not directly applicable to LAWCLERK as it involves lawyers providing services in their capacity as lawyers (verses paraprofessionals), it highlights the continuing evolution of the legal market and the need for flexibility in the application of the prohibition against the unauthorized practice of law, while ensuring that the policy behind the prohibition (i.e., the protection of the public) is not jeopardized. LAWCLERK serves this very goal.

Formal Opinion No. 47 of the Supreme Court of Hawaii, which discusses how costs for contract lawyers must be billed, provides that because a contract lawyer is an employee of the lawyer or the firm, the engaging lawyer or law firm must charge the client the same amount that the lawyer or firm is paying the contract lawyer unless otherwise disclosed to the client and the client consents, preferably in writing.[135] While providing guidance as to the billing of contract lawyers, this opinion also expresses an acceptance of the practice of engaging legal assistance on a temporary basis and thereby lends support for LAWCLERK's model of connecting Attorneys in need of paraprofessional assistance with available paraprofessionals that have legal training.

Idaho.

While Idaho does not have a statute defining the unauthorized practice of law,[136] Idaho courts have consistently applied the following framework when discussing the practice of law:

> The practice of law as generally understood, is the doing or performing services in a court of justice, in any matter depending [sic] therein, throughout its various stages, and in conformity with the adopted rules of procedure. But in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be depending [sic] in a court.[137]

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[134] *Fought & Co.,* 951 P.2d at 497 (holding that Oregon general counsel did not practice law within the jurisdiction of Hawaii where the services rendered by the Oregon general counsel were rendered in Oregon (where the firm's attorneys are licensed), and Oregon general counsel did not file draft or sign any of the filed papers, did not appear in court, and did not communicate with counsel for other parties on behalf of the client; rather, Oregon general counsel's role was strictly one of consultant to the client for which it is general counsel and the client's Hawaii counsel).

[135] Formal Opinion No. 47 of the Hawaii Supreme Court, January 28, 2004, available at https://static1.squarespace.com/static/584f09d8e58c62c148879b60/t/588ffd81b3db2ba320ddf29d/1485831554019/FO_47_-_COST_TO_CLIENT_FOR_USE_OF_A_CONTRACT_ATTORNEY.pdf

[136] Idaho Code Ann. § 3-420 (Section 3-420 of the Idaho Code prohibits the unauthorized practice of law and codifies the sanctions for engaging in the unauthorized practice of law).

[137] *Idaho State Bar v. Meservey*, 335 P.2d 62, 64 (Idaho 1959) (quoting *In re Mathews*, 62 P.2d 578, 581 (Idaho 1936)) (holding that the preparation of adoption documents by a non-attorney constituted the unauthorized practice of law).

The Idaho courts have generally found the unauthorized practice of law where a nonlawyer seeks to represent a third-party, corporation, or trust in a judicial proceeding or before a public agency or service commission that adjudicates legal rights and duties, as well as where a nonlawyer, without supervision from a lawyer in good standing with the bar, prepares documents by which legal rights are secured, negotiates settlements and interprets settlement documents for the client, and provides legal advice to clients about their legal rights concerning personal and property damage, probate, and legal defenses.[138]

While the Idaho caselaw analyzing the unauthorized practice of law is more sparse than other states, the same overarching themes of requiring paraprofessionals to be supervised by a lawyer and prohibiting paraprofessionals from appearing in judicial proceeding and providing legal advice directly to clients appear. Consistent with the foregoing discussions, LAWCLERK's requirements and restrictions ensure that the Lawclerk's work product is solely provided to the Attorney, the Attorney is solely responsible for the work product, and precludes the Lawclerk from appearing in any judicial or administrative proceeding and from having any client contact.

Illinois.

Under Illinois law, there is no bright line test to distinguish what constitutes the practice of law.[139] Where a paralegal is engaged by a lawyer, the Illinois courts have held that the paralegal does not independently practice law, but simply serves as an assistant to the lawyer.[140]

The Illinois Code of Paralegal Ethics outlines the scope of professional duties for paralegals as follows:

> (a) The paralegal shall be familiar with and heed the directives found in the Illinois Rules of Professional Conduct or the Illinois Code of Paralegal Ethics. A paralegal shall not undertake any behavior which the Illinois Rules of Professional Conduct prohibit the supervising attorney from doing.
>
> (b) A paralegal shall refrain from engaging in the unauthorized practice of law.
>
> (1) The paralegal shall not work with a lawyer's client unless the paralegal's work is supervised by an attorney.
>
> (2) The paralegal shall not draft pleadings or papers on behalf of a lawyer's client unless the paralegal's work is supervised by an attorney.

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[138] *See, e.g., Kyle v. Beco Corp.*, 707 P.2d 378 (Idaho 1985); *Indian Springs LLC v. Indian Springs Land Investment, LLC*, 215 P.3d 457 (Idaho 2009); *Idaho State Bar v. Villegas*, 879 P.2d 1124, 1126 (Idaho 1994); *In re Farness*, 244 B.R. 464 (Bankr. D. Idaho 2000).

[139] *Curielli v. Department of Financial and Professional Regulation*, No. 2-17-0832 (Ill. App. Ct. 2018) (stating that there are several factors to be considered when determining if someone is acting as a lawyer: nature of the work, extent to which it requires a lawyer's training and exercise of legal judgement, and how that person hold themselves out with the primary focus on what they are doing).

[140] *People v. Hill,* 2012 WL 6935080 *3 (Ill. App. Ct. 2012) (quoting *In re Estate of Divine*, 635 N.E.2d 581, 587 (Ill. 1994)) (In *Hill*, a paralegal was held to have engaged in the unauthorized practice of law where the paralegal, without attorney supervision, prepared a post-conviction petition on another person's behalf and charged a fee to so do*).*

(3) The paralegal shall not sign pleadings or papers filed in a court or other judicial tribunal on behalf of a lawyer's client.

(4) The paralegal shall not appear as an advocate in a representative capacity in a court or other judicial tribunal on behalf of a lawyer's client.

(5) The paralegal shall not set legal fees.

(6) The paralegal shall not provide legal advice to a lawyer's client. [141]

While only advisory, the foregoing categorization recognizes the broad scope of services that may be provided to a lawyer by a paraprofessional as long as the paraprofessional is properly supervised and cannot provide legal advice to the client. Notably, LAWCLERK's restrictions on the services that may be provided to an Attorney by a Lawclerk are far more restrictive and protective, ensuring that only the Attorney provides legal advice and maintains the relationship with the client.

The Illinois courts have cautioned members of the bar against employing disbarred and suspended lawyers; however, the basis for such caution is the opportunity for the disbarred or suspended lawyer to violate the line between the services properly performed by a law clerk or a paralegal versus a lawyer, as well as concern that allowing the public to see a disciplined lawyer providing what the public might consider to be legal services will lessen the public's regard for the effectiveness of the discipline and promote the belief that the public is not being protected from unethical lawyers.[142] While LAWCLERK precludes Lawclerk and client contact, thereby resolving these concerns, LAWCLERK additionally precludes suspended or disbarred lawyers from serving as Lawclerks. Therefore, LAWCLERK's rules are more stringent than Illinois's.

2020 UPDATE: Several key changes have occurred in Illinois. Two new opinions have been released. First, an opinion from October 2019 directly addressed nonlawyer assistants.[143] The opinion digest states:

> An Illinois lawyer may "outsource" legal and legal support services relating to a matter provided the lawyer reasonably believes that the other lawyers' and nonlawyers' services will contribute to the competent and ethical representation of the client and reasonable measures are taken to protect client information and to avoid conflicts of interest. Disclosure to, and informed consent by, the client will ordinarily be required. Informed client consent is always required if the lawyer delegates or transfers complete or substantial responsibility for a matter to an unaffiliated lawyer. [144]

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[141] Illinois Code of Paralegal Ethics, Rule One, available at https://ipaonline.clubexpress.com/content.aspx?page_id=22&club_id=812874&module_id=186420.
[142] *In re Discipio,* 645 N.E.2d 906 (Ill. 1994) (quoting *In re Kuta*, 427 N.E. 2d 136 (Ill. 1981)).
[143] Illinois State Bar Assoc., Op. No. 19-04 (October 2019), available at https://www.isba.org/ethics/byyear.
[144] *Id*.

LAWCLERK complies with this opinion. LAWCLERK requires a conflicts check for all matters, the Lawclerk to sign a confidentiality and non-disclosure agreement for each project and to contractually agree to comply with the applicable state's conflicts rules, the attorney to maintain the attorney-client relationship and to be person providing the client with legal advice, the attorney to maintain responsibility for the Lawclerk's work product, and precludes attorneys from delegating or transferring complete or substantial responsibility to the Lawclerk. Therefore, Illinois attorneys using LAWCLERK will adhere to their ethical obligations.

In May 2020, the Illinois Bar issued an opinion addressing the types of lawyers that can be hired. The digest to the opinion stated:

> An employing lawyer or law firm may allow a law school graduate awaiting the bar exam or admission to the bar to perform many of the services normally performed by licensed first year associates, other than appearing in a legal proceeding, provided that the graduate's work is reviewed by a supervising lawyer who takes responsibility for the work product and that the graduate and employing lawyer or law firm do not make false or misleading statements to clients or others regarding the graduate's status at the firm.[145]

This opinion is instructive and further supports LAWCLERK's ethical compliance as LAWCLERK is even more restrictive requiring Lawclerks to be barred and in good standing or to have been barred and in good standing when they allowed their license to lapse due to retirement or similar reasons. LAWCLERK further precludes interaction with the Attorney's clients, opposing counsel, or courts and requires the Attorney to supervise and retain responsibility for the Lawclerk's work product.

Indiana.

Rule 5.3 of the Indiana Rules of Professional Conduct provide that a lawyer may use nonlawyer assistants in accordance with certain guidelines, including the following pertinent guidelines:

> **Guideline 9.1. Supervision (as amended effective July 3, 2019)**
> A non-lawyer assistant shall perform services only under the direct supervision of a lawyer authorized to practice in the State of Indiana. Independent non-lawyer assistants are prohibited from establishing a direct relationship with a client to provide legal services. A lawyer is responsible for all of the professional actions of a non-lawyer assistant performing services at the lawyer's direction and should take reasonable measures to ensure that the non-lawyer assistant's conduct is consistent with the lawyer's obligations under the Rules of Professional Conduct.
>
> **Guideline 9.2. Permissible Delegation**
> Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a non-lawyer assistant or paralegal any task normally performed by

[145] Illinois State Bar Assoc., Op. No. 20-01 (May 2020), available at https://www.isba.org/ethics/byyear.

the lawyer; however, any task prohibited by statute, court rule, administrative rule or regulation, controlling authority, or the Indiana Rules of Professional Conduct may not be assigned to a non-lawyer.

Guideline 9.3. Prohibited Delegation

A lawyer may not delegate to a non-lawyer assistant:

(a) responsibility for establishing an attorney-client relationship;

(b) responsibility for establishing the amount of a fee to be charged for a legal service; or

(c) responsibility for a legal opinion rendered to a client.

Guideline 9.10. Legal Assistant Ethics

All lawyers who employ non-lawyer assistants in the State of Indiana shall assure that such non-lawyer assistants conform their conduct to be consistent with the following ethical standards:

(a) A non-lawyer assistant may perform any task delegated and supervised by a lawyer so long as the lawyer is responsible to the client, maintains a direct relationship with the client, and assumes full professional responsibility for the work product.

(b) A non-lawyer assistant shall not engage in the unauthorized practice of law.

(c) A non-lawyer assistant shall serve the public interest by contributing to the delivery of quality legal services and the improvement of the legal system.

(d) A non-lawyer assistant shall achieve and maintain a high level of competence, as well as a high level of personal and professional integrity and conduct.

(e) A non-lawyer assistant's title shall be fully disclosed in all business and professional communications.

(f) A non-lawyer assistant shall preserve all confidential information provided by the client or acquired from other sources before, during, and after the course of the professional relationship.

(g) A non-lawyer assistant shall avoid conflicts of interest and shall disclose any possible conflict to the employer or client, as well as to the prospective employers or clients.

(h) A non-lawyer assistant shall act within the bounds of the law, uncompromisingly for the benefit of the client.

> (i) A non-lawyer assistant shall do all things incidental, necessary, or expedient for the attainment of the ethics and responsibilities imposed by statute or rule of court.
>
> (j) A non-lawyer assistant shall be governed by the Indiana Rules of Professional Conduct.
>
> (k) For purposes of this Guideline, a non-lawyer assistant includes but shall not be limited to: paralegals, legal assistants, investigators, law students and paraprofessionals.[146]

Until July 3, 2019, Indiana's Guideline 9.1 contradicted Comment 1 to Rule 5.3 by expressly precluding attorneys from engaging contract paraprofessionals. Guideline 9.1 ***previously stated*** in pertinent part that "[a] non-lawyer assistant shall perform services only under the direct supervision of a lawyer authorized to practice in the State of Indiana and in the employ of the lawyer or lawyer's employer. Independent non-lawyer assistants, to wit, those not employed by a specific firm or by specific lawyers are prohibited."[147] However, in response to commentators and others within the Indiana Bar,[148] on July 3, 2019, the Indiana Supreme Court amended Guideline 9.1 through entry of its Order Amending Indiana Rules of Professional Conduct in Cause No. 19S-MS-41, which was immediately effective. This Order struck Guideline 9.1's prohibition on the use of contract paraprofessionals and is now consistent with Comment 1.

For clarity, Guideline 9.1 now provides in relevant part: "A non-lawyer assistant shall perform services only under the direct supervision of a lawyer authorized to practice in the State of Indiana. Independent non-lawyer assistants are prohibited from establishing a direct relationship with a client to provide legal services. A lawyer is responsible for all of the professional actions

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[146] Guidelines available at https://www.in.gov/judiciary/rules/prof_conduct/#_Toc461714717.

[147] Prior to the July 2019 amendment, the Supreme Court of Indiana enforced the old language of the guideline in determining that a lawyer violated Rule 5.3 of the Indiana Rules of Professional Conduct when he employed an incarcerated legal assistant to assist in researching and preparing a post-conviction relief proceeding petition for the client. *In re Anonymous*, 929 N.E.2d 778, 779 (Ind. 2010). In reaching this conclusion, the Supreme Court of Indiana applied Guideline 9.1's language in effect at the time of the matter and determined that proper direct supervision in compliance with the guideline would be impossible due to the incarceration of the assistant. In a second similar case, the Indiana Supreme Court held that a lawyer that employed a convicted murderer as a paralegal on a contract basis in exchange for a combination of cash, legal representation, and free lodging violated Rule 5.3 and Guideline 9.1. Neither of the two published cases finding a violation of the prior version of Guideline 9.1 because the lawyer engaged a paraprofessional on a contract basis (verses as an employee) addressed the former conflict between the old language of Guideline 9.1 and Rule 5.3. Additionally, in both of these cases, the circumstances of the engagement were sufficiently distinct to call into question whether the court would reach the same conclusion in the context of a contract paralegal that was neither incarcerated nor working in exchange for legal services. Moreover, before and after the amendment to Guideline 9.1, these cases have very limited application as the attorneys' violation of Rule 5.3 is apparent irrespective of the additional violation of the prior version of Guideline 9.1.

[148] Prior to the June 3, 2019 amendment, commentators raised the conflict between Guideline 9.1 and Comment 1 to Rule 5.3 and concluded that the time had come for the Indiana Supreme Court to reconsider the first two sentences of Guideline 9.1, as Indiana was the only state that arguably required attorneys to hire paraprofessionals as opposed to engaging them on a contract basis. *See* Lindberg and Schroeder, *Supreme Court drops paralegal bombshell*, The Journal of Indiana State Bar Association, Res Gestae, Vol 61, No. 5 (Dec. 2017) available at https://issuu.com/res_gestae/docs/rg-dec-2017/20.

of a non-lawyer assistant performing services at the lawyer's direction and should take reasonable measures to insure that the non-lawyer assistant's conduct is consistent with the lawyer's obligations under the Rules of Professional Conduct."

The changes to Guideline 9.1 make it compatible with Comment 1 to Rule 5.3 of the Indiana Rules of Professional Conduct, which provides:

> Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, paralegals and other paraprofessionals. Such assistants, ***whether employees or independent contractors***, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they may not have legal training and are not subject to professional discipline. [[149]]

Additionally, as expressed in the comments to Rule 5.5 of the Indiana Professional Conduct, Rule 5.5 does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for the work.[150]

With the June 3, 2019 amendment to Guideline 9.1, there is no longer any ambiguity — attorneys may engage contract paraprofessionals as long as they are properly supervised, and they do not establish a direct relationship with the attorney's client. This is entirely consistent with LAWCLERK's Terms of Use.

Iowa.

The Iowa Supreme Court has held that it is not appropriate to formulate an all-inclusive definition of the practice of law, instead each case should be decided on its own facts taking into account prior cases. However, the Iowa Supreme Court has also articulated that the practice of law includes, but is not limited to:

> representing another before the courts; giving of legal advice and counsel to others relating to their rights and obligations under the law; and preparation or approval of the use of legal instruments by which legal rights of others are either obtained, secured or transferred even if such matters never become the subject of a court proceeding. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is the educated ability to relate the general body and philosophy of law to a specific legal problem of a

[149] Ind. St. RPC Rule 5.3, Comment 1 (emphasis added) available at https://www.in.gov/judiciary/rules/prof_conduct/#_Toc461714693.

[150] *In re Scott*, 739 N.E.2d 658, 659 (Ind. 2000) (citing the comments to Rule 5.5 of the Indiana Rules of Professional Conduct), reinstatement granted, 894 N.E.2d 561 (Ind. 2008).

> client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, nonlawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required. [[151]]

Iowa Ethics Opinion 13-03 advises that contract lawyers may be engaged by Iowa lawyers, but only with the consent of the client.[152] LAWCLERK advises Attorneys to advise their clients that a Lawclerk will be assisting in the matter. The opinion also provides that the same calculus used in determining an associate's billing rate or charges should be used to determine the billing rate or charges for the contracted lawyer as it is presumed that the retaining lawyer has adopted the work as his or her own and accordingly stands by it.

2020 UPDATE: The latest decisions from Iowa confirm that supervision is the key. Two recent cases have reaffirmed that where attorneys hire non-lawyers, they do not violate Rule 5.3 or Rule 5.5. Rather, these rules are violated when attorneys fail to adequately supervise their nonlegal staff.[153] To be clear, the courts do not encourage lawyers to forego nonlawyer assistance; rather, the attorneys were disciplined for failure to adequately supervise.

LAWCLERK complies with these decisions. LAWCLERK's terms of service require Attorneys to adequately supervise the Lawclerk's work and take sole responsibility for the created work product. LAWCLERK's supervision requirements ensure that both Attorneys and Lawclerks comply with legal and ethical obligations.

Kansas.

Kansas courts have recognized that lawyers often delegate certain tasks to nonlawyers, which delegation "is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product."[154] This is

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[151] *Bergantzel v. Mlynarik*, 619 N.W.2d 309, 312 (Iowa 2000) (quoting Iowa Code of Professional Responsibility Ethical Consideration 3-5)) (holding that where a nonlawyer insurance adjuster that was not acting under the supervision of a lawyer negotiates a settlement of a personal injury claim, the adjuster engaged in the unauthorized practice of law because her actions required the exercise of professional judgment on a legal issue or question that affected the rights of a third party); *see also*, *Steensma v. Buysman, Inc.*, 919 N.W.2d 766 (Iowa Ct. App. 2018); *Iowa Supreme Court Comm'n on Unauthorized Practice of Law v. Sullins*, 893 N.W.2d 864, (Iowa 2017); *Yulin Li ex rel. Lee v*. Rizzio, 801 N.W.2d 351, 360 (Iowa Ct. App. 2011).

[152] Iowa Ethics Opinion 13-03 The Use of Contracted Lawyers August 27, 2013, available at http://205.209.45.153/iabar/ethics.nsf/e61beed77a215f6686256497004ce492/0c024e596ff08b0686257bdd005ca595/$FILE/IA%20Ethics%20Opinion%20%2013-03%20Use%20of%20Contracted%20Lawyers%20.pdf.

[153] *See, e.g, Iowa Supreme Court Attorney Disciplinary Bd. v. Noyes,* 936 N.W.2d 440 (Iowa 2019) ("While Noyes did hire Saipher to provide consulting services to the firm, Noyes cannot delegate management and supervision responsibilities to a third person and then wash his hands of any rule violations."); *Iowa Supreme Court Attorney Disciplinary Bd. v. Mathahs*, 918 N.W.2d 487 (Iowa 2018) ("Mathahs failed to make reasonable efforts to ensure his secretary's conduct conformed to the professional obligations of a lawyer...").

[154] *In re Flack*, 33 P.3d 1281, 1286-87 (Kan. 2001) (finding that a lawyer had violated Rule 5.3(b) and (c) of the Kansas Rules of Professional Conduct, among others, in entering into a services agreement with a marketing company

consistent with Comments 2 and 3 to Model Rule 5.3, which are also Comments to Rule 5.3 of the Kansas Rules of Professional Conduct.[155]

The Kansas Supreme Court has also held that while determining what constitutes the unauthorized practice of law must be determined on a case by case basis, actions of counseling and advising clients on their legal rights and rendering services requiring knowledge of legal principles are included within the definition of practicing law.[156] In *Flack*, the lawyer was determined to have assisted a nonlawyer in the unauthorized practice of law where the nonlawyer directly met with and counseled and advised clients on their legal rights.[157] In *Martinez,* an insurance claims consultant was determined to be engaged in the unauthorized practice of law where the claims consultant was not a lawyer yet he compiled a settlement packet of relevant information, made written demand upon insurance companies, analyzed and advised the claimant on the merit of their claims and the reasonableness of the proposed settlement, and negotiated with insurance companies on behalf of the claimant.[158]

Further illustrating that by prohibiting the Lawclerks from having any client contact and appearing in court or otherwise interacting with other parties to the project, the Lawclerks are not engaged in the unauthorized practice of law, the Kansas Supreme Court has explained that disbarred or suspended lawyers may be engaged as law clerks as long as they do not have client contact or appear in court.

> In addition to that general definition, the Court has set forth what suspended and disbarred attorneys may and may not do:
>
> > 'The consensus is that an attorney suspended from the practice of law may obtain employment as a law clerk, providing there are certain limitations upon the suspended attorney's activities. Regarding limitations, we are persuaded the better rule is that an attorney who has been disbarred or suspended from the practice of law is permitted to work as a law clerk, investigator, paralegal, or in any capacity as a lay person for a licensed attorney-employer if the suspended lawyer's functions are limited exclusively to work of a preparatory nature under the supervision of a licensed attorney-employer and does not involve client contact. **Any contact with a**

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that sent mass mailings to targeted groups soliciting trusts, wills, powers of attorney, and asset transfer document preparation services to be performed by the lawyer, effectuated the engagement of the lawyer by the client, collected the attorney's fees, conducted interviews of the client, provided explanations of the different types of trusts, wills, powers of attorney, and other documents, ultimately reviewed the documents the lawyer had prepared with the client and obtained the client's execution, and would facilitate asset transfers); *see also*, *In re Wood*, 408 B.R. 841 (Bankr. D. Kan. 2009); *In re Jones*, 241 P.3d 90 (Kan. 2010).

[155] Kansas Rules of Professional Conduct, Rule 5.3, Law Firms and Associations: Responsibilities Regarding Nonlawyer Assistance, Comment 2, Nonlawyers Within the Firm, and Comment 3, Nonlawyers Outside the Firm available at: http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&r2=19.

[156] *In re Flack*, 33 P.3d 1281, 1287 (Kan. 2001) (citing *State ex rel. Stephan v. Williams*, 793 P.2d 234 (Kan. 1990) and *State ex rel. Stovall v. Martinez*, 996 P.2d 371 (Kan. 2000)); *see also*, *McCormick v. City of Lawrence*, 253 F.Supp.2d 1156 (D. Kan. 2003)

[157] *Id.*

[158] *State ex rel. Stovall v. Martinez*, 996 P.2d 371, 374-75 (Kan. 2000).

> **client is prohibited. Although not an inclusive list, the following restrictions apply: a suspended or disbarred lawyer may not be present during conferences with clients, talk to clients either directly or on the telephone, sign correspondence to them, or contact them either directly or indirectly.**
>
> 'Obviously, we do not accept that a disbarred or suspended lawyer may engage in all activities that a nonlawyer may perform. By barring contact with the licensed attorney-employer's clients, we prohibit a disbarred or suspended attorney from being present in the courtroom or present during any court proceedings involving clients.' [159]

Kentucky.

Kentucky Supreme Court Rule 3.020 defines the practice of law as follows:

> The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. But nothing herein shall prevent any natural person not holding himself out as a practicing attorney from drawing any instrument to which he is a party without consideration unto himself therefor. An appearance in the small claims division of the district court by a person who is an officer of or who is regularly employed in a managerial capacity by a corporation or partnership which is a party to the litigation in which the appearance is made shall not be considered as unauthorized practice of law.[160]

Kentucky courts have consistently held that paralegals, law clerks, legal assistants, and other paraprofessionals do not engage in the unauthorized practice of law as long as they are acting under the direct supervision of a lawyer that is responsible for their conduct.[161]

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[159] *In re Wilkinson,* 834 P.2d 1356, 1362 (Kan. 1992) (emphasis added); *see also*, *In re Juhnke*, 41 P.3d 855, 860 (Kan. 2002) (holding that a lawyer violated Rule 5.5(b) of the Kansas Rules of Professional Conduct where the lawyer engaged a disbarred lawyer as a law clerk and permitted him to meet with clients, maintaining client files, and provide legal advice to clients); *In re Wiles*, 210 P.3d 613, 618 (Kan. 2009) (holding that a lawyer licensed in Kansas and Missouri but suspended in Missouri had violated Rule 5.5(b) of the Kansas Rules of Professional Conduct where "he worked alone, unsupervised, and continued to represent McKinney in a Missouri case and to hold himself as a Missouri attorney on his professional letterhead.").

[160] Ky. Bar Assoc. R. Sup. Ct. Ky. 3.020, Practice of Law Defined, available at https://cdn.ymaws.com/www.kybar.org/resource/resmgr/SCR3/SCR_3.020.pdf.

[161] *In re Moffett,* 263 B.R. 805, 814 (Bankr. W.D. Ky. 2001) (holding that a bankruptcy petition preparer engaged in the unauthorized practice of law where she provided legal advice and services independent of a supervising lawyer); *Turner v. Kentucky Bar Ass'n*, 980 S.W. 2d 560, 564 (Ky. 1998) (holding that nonlawyer workers' compensation specialists may dispense information by telephone, complete request for assistance forms, mediate disputes and assist claimants in filling out their claim forms while under the direct supervision of a lawyer, but may not represent claimants in an adjudicatory tribunal.)

Additionally, Rule 3.700 of the Kentucky Supreme Court Rules[162] is entitled "Provisions relating to paralegals" and provides:

> PRELIMINARY STATEMENT: The availability of legal services to the public at a price it can afford is a goal to which the Bar is committed, and one which finds support in Canons 2 and 8 of the Code of Professional Responsibility. The employment of paralegals furnishes a means by which lawyers may expand the public's opportunity for utilization of their services at a reduced cost.
>
> For purposes of this rule, a paralegal is a person under the supervision and direction of a licensed lawyer, who may apply knowledge of law and legal procedures in rendering direct assistance to lawyers engaged in legal research; design, develop or plan modifications or new procedures, techniques, services, processes or applications; prepare or interpret legal documents and write detailed procedures for practicing in certain fields of law; select, compile and use technical information from such references as digests, encyclopedias or practice manuals; and analyze and follow procedural problems that involve independent decisions.
>
> PURPOSE: Rapid growth in the employment of paralegals increases the desirability and necessity of establishing guidelines for the utilization of paralegals by the legal community. This rule is not intended to stifle the proper development and expansion of paralegal services, but to provide guidance and ensure growth in accordance with the Code of Professional Responsibility, statutes, court rules and decisions, rules and regulations of administrative agencies, and opinions rendered by committees on professional ethics and unauthorized practice of law.
>
> While the responsibility for compliance with standards of professional conduct rests with members of the Bar, a paralegal should understand those standards. It is, therefore, incumbent upon the lawyer employing a paralegal to inform him of the restraints and responsibilities incident to the project and supervise the manner in which the work is completed. However, the paralegal does have an independent obligation to refrain from illegal conduct. Additionally, and notwithstanding the fact that the Code of Professional Responsibility is not binding upon lay persons, the very nature of a paralegal's employment imposes an obligation to refrain from conduct which would involve the lawyer in a violation of the Code.
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> **SUB-RULE 1**
> A lawyer shall ensure that a paralegal in his employment does not engage in the unauthorized practice of law.

[162] Kentucky was the first state to adopt a paralegal code by Supreme Court Rule. NALA Model Standards and Guidelines for Utilization of Paralegals, p. 7, available at https://www.nala.org/sites/default/files/files/banner/Model%20Standards.pdf.

SUB-RULE 2
For purposes of this rule, the unauthorized practice of law shall not include any service rendered involving legal knowledge or legal advice, whether representation, counsel or advocacy, in or out of court, rendered in respect to the acts, duties, obligations, liabilities or business relations of the one requiring services where:

A. The client understands that the paralegal is not a lawyer;

B. The lawyer supervises the paralegal in the performance of his duties; and

C. The lawyer remains fully responsible for such representation, including all actions taken or not taken in connection therewith by the paralegal to the same extent as if such representation had been furnished entirely by the lawyer and all such actions had been taken or not taken directly by the lawyer.

D. The services rendered under this Rule shall not include appearing formally in any court or administrative tribunal except under Sub-rule 3 below, nor shall it include questioning of witnesses, parties or other persons appearing in any legal or administrative action including but not limited to depositions, trials, and hearings.

SUB-RULE 3
For purposes of this Rule 3.700, the unauthorized practice of law shall not include representation before any administrative tribunal or court where such service or representation is rendered pursuant to a court rule or decision which authorizes such practice by nonlawyers.

SUB-RULE 4
A lawyer shall instruct a paralegal employee to preserve the confidences and secrets of a client and shall exercise care that the paralegal does so.

SUB-RULE 5
A lawyer shall not form a partnership with a paralegal if any part of the partnership's activities consists of the practice of law, nor shall a lawyer share on a proportionate basis, legal fees with a paralegal.

SUB-RULE 6
The letterhead of a lawyer may include the name of a paralegal where the paralegal's status is clearly indicated: A lawyer may permit his name to be included in a paralegal's business card, provided that the paralegal's status is clearly indicated.

SUB-RULE 7
A lawyer shall require a paralegal, when dealing with a client, to disclose at the outset that he is not a lawyer. A lawyer shall also require such a disclosure when the paralegal is dealing with a court, administrative agency, attorney or the

public, if there is any reason for their believing that the paralegal is a lawyer or is associated with a lawyer.[163]

Additionally, Kentucky Bar Association Ethics Opinion E-255 provides that while a suspended or a disbarred lawyer may not be engaged as a paralegal, the suspended or disbarred lawyer may be engaged, subject to the engaging lawyer's duty to not assist a nonlawyer in the unauthorized practice of law, as follows:

General Provisos

1. The individual may do anything a lay person could do.

2. The individual may perform such work which is of a preparatory or ministerial nature.

Specific Provisos

1. The individual may not have any contact whatsoever with a client of a lawyer.

2. The individual is not a Paralegal within SCR 3.700.

3. The individual may not have an office, or place, in the lawyer's facility.

4. The individual may perform any drafting acts, as long as they are submitted in draft form only to the responsible lawyer for approval.

5. The individual may perform clerical aspects of a probate matter.

6. The individual may do an abstract title examination.

7. The individual may provide legal research to a lawyer. [164]

These provisions all support a determination that LAWCLERK does not engage in the unauthorized practice of law.

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[163] Ky. Bar Assoc. R. Sup. Ct. Ky. 3.700, Provisions Relating to Paralegals, available at https://cdn.ymaws.com/www.kybar.org/resource/resmgr/SCR3/SCR_3.700.pdf.

[164]Ethics Opinion KBA E-255, available at https://c.ymcdn.com/sites/www.kybar.org/resource/resmgr/Ethics_Opinions_(Part_2)_/kba_e-255.pdf. This opinion was decided under the Code of Professional Responsibly that was in effect from 1971 to 1999 and has not been updated based on subsequent amendments.

Louisiana.

Louisiana courts have consistently held that limiting the unauthorized practice of law serves to protect the public.[165] Rule 5.5(e)(3) of the Louisiana Rules of Professional Conduct state that for purposes of Rule 5.5, the practice of law includes the following:

> (i) holding oneself out as an attorney or lawyer authorized to practice law;
>
> (ii) rendering legal consultation or advice to a client;
>
> (iii) appearing on behalf of a client in any hearing or proceeding, or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, hearing officer, or governmental body operating in an adjudicative capacity, including submission of pleadings, except as may otherwise be permitted by law;
>
> (iv) appearing as a representative of the client at a deposition or other discovery matter;
>
> (v) negotiating or transacting any matter for or on behalf of a client with third parties;
>
> (vi) otherwise engaging in activities defined by law or Supreme Court decision as constituting the practice of law.[166]

Applying Louisiana Disciplinary Rule 3-101,[167] a predecessor to Rule 5.3 of the Louisiana Rules of Professional Conduct, the Louisiana Supreme Court held that a lawyer aided and abetted his paralegal in the unauthorized practice of law where the lawyer delegated his exercise of his professional judgment to his paralegal who performed the functions and exercised the professional judgment of a lawyer in evaluating the client's claim, advising the client as to the merits of his case, entered into the contract to perform the legal services, prepared motions, negotiated a settlement, and handled and distributed the settlement proceeds to the client.[168] In reaching this conclusion, the Louisiana Supreme Court explained that the prohibition on the unauthorized practice of law is grounded in the need to protect the public from legal services by persons unskilled in the law who may have divided loyalty or conflicts of interest.[169]

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[165] *Louisiana Claims Adjustment Bureau, Inc. v. State Farm Ins. Co.*, 877 So.2d 294 (La. Ct. App. 2004) (providing that the Louisiana Claims Adjustment Bureau, Inc. had engaged in the unauthorized practice of law where, without a licensed attorney on staff making the determination, the bureau evaluated the clients' claims and advised the clients of their causes of action against others); *see also Louisiana State Bar Ass'n v. Carr and Associates, Inc.*, 15 So.3d 158 (La. Ct. App. 2009).

[166] La. R. Prof. Conduct, R 5.5(e)(3), Unauthorized Practice of Law; Multijurisdictional Practice of Law, available at https://lalegalethics.org/louisiana-rules-of-professional-conduct/article-5-law-firms-and-associations/rule-5-5-unauthorized-practice-of-law-multijurisdictional-practice-of-law/.

[167] Louisiana Disciplinary Rule 3-101 provides that a lawyer shall not aid a non-lawyer in the unauthorized practice of law.

[168] *Louisiana State Bar Ass'n v. Edwins*, 540 So. 2d 295, 301 (La. 1989); *see also In re Galloway*, 15-12646, (Bankr. E.D. La. 2018).

[169] *Louisiana State Bar Ass'n v. Edwins*, 540 So. 2d at 299 (citing Cheatham, Availability of Legal Services: The Responsibility of the Individual Lawyer and of the Organized Bar, 12 UCLA Rev. 438, 439 (1965)).

Importantly, the Louisiana Supreme Court also explained that "a lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product."[170]

> A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scriveners, nonlawyer draftsmen or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings as part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible to the client. ABA Comm. on Professional Ethics, Op. 316 (1967). A lawyer cannot delegate his professional responsibility to a law student employed in his office. He may avail himself of the assistance of the student in many of the fields of the lawyer's work, '[b]ut the student is not permitted, until he is admitted to the Bar, to perform the professional functions of a lawyer, such as conducting court trials, giving professional advice to clients or drawing legal documents for them. The student in all his work must act as agent for the lawyer employing him, who must supervise his work and be responsible for his good conduct.' ABA Comm. on Professional Ethics, Op. 85 (1932).[171]

The Louisiana Supreme Court then drew the critical distinction that while a lawyer may delegate various tasks to paralegals, clerks, secretaries, and other nonlawyers, an attorney may not delegate the lawyer's role in appearing in court or giving legal advice and must supervise closely any person to whom he delegates tasks.[172] In two subsequent cases decided after Louisiana's adoption of the Model Rules, the Louisiana Supreme Court affirmatively cited *Edwins* and found that the lawyer had violated Rules 5.3 and 5.5 of the Louisiana Rules of Professional conduct where: (i) nonlawyers would initiate the attorney-client relationship, advise prospective clients regarding the execution of legal documents, negotiate and settle cases without the supervision by a barred lawyer, determine probable insurance coverage, and obtain settlement authority from the client;[173] and (ii) the lawyer introduced the client to a unbarred law clerk and advised that the law clerk's services would be limited until the clerk was barred, but then failed to supervise the law clerk who provided incorrect advice to the client prior to being barred.[174] Additionally, a lawyer may not employ, contract with as a consultant, or otherwise engage any person the lawyer knows is a disbarred lawyer or, unless first preceded by the submission of a fully executed employment

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[170] *Id.* at 299 (citing Ethical Consideration 3-6 from the Model Code, which states "A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.").

[171] *Id.*

[172] *Id.* at 300.

[173] *In re Guirard and Pittenger*, 11 So. 3d 1017, 1023 (La. 2009).

[174] *In re Wilkinson*, 805 So. 2d 142, 146-47 (La. 2002) (quoting *Edwins* for the proposition that "[a] lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product ... A lawyer cannot delegate his professional responsibility to a law student employed in his office ... The student in all his work must act as agent for the lawyer employing him, who must supervise his work and be responsible for his good conduct.").

registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisianan Attorney Disciplinary Board, and approved by the Louisiana Supreme Court, a suspended lawyer.[175]

The foregoing cases establish that LAWCLERK does not engage in the unauthorized practice of law. At LAWCLERK, only Attorneys establish and maintain the attorney-client relationship, and the Attorney – not the Lawclerk, provides legal advice to clients. At LAWCLERK, the Lawclerk solely performs the tasks delegated by the Attorney. The Attorney supervises the Lawclerk and remains solely responsible for the submitted work product. Finally, disbarred or suspended attorneys may not work as Lawclerks.

2020 UPDATE: The most recent Louisiana decisions focus on supervision. The cases that have been decided since the first edition have reprimanded attorneys for "failure to supervise [] employees...,"[176] and failure to "request or require review and approval of a final draft of the [paralegal's] document prior to its submission."[177]

LAWCLERK complies with the guidance from these cases. LAWCLERK's terms of service require Attorneys to supervise Lawclerks by reviewing the work and taking full responsibility for all documents. As such, use of LAWCLERK does not promote the unauthorized practice of law.

Maine.

Section 807 of the Maine Revised Statutes, entitled "Unauthorized practice of law" provides in pertinent part that:

> No person may practice law or profess to practice law within the State or before its courts, or demand or receive any remuneration for those services rendered in this State, unless that person has been admitted to the bar of this State and has complied with section 806-A, or unless that person has been admitted to try cases in the courts of this State under section 802.[[178]]

The Maine courts have found the unauthorized practice of law where nonlawyers appear and/or file pleadings in judicial proceedings for third-parties, corporations, and trusts irrespective of the existence of a power of attorney.[179] Conversely, LAWCLERK prohibits Lawclerks from signing or filing documents and from appearing in any court or administrative proceedings.

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[175] La. R. Prof. C., Rule 5.5(e) available at https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf.

[176] *In re Dobbins*, NO. 2019-B-1346 A (La. January 29, 2020).

[177] *In re Butler*, 283 So.3d 455 (La. 2019).

[178] Me. Rev. Stat. Tit. 4, § 807.

[179] *See, e.g., Boutet v. Miller*, 2001 WL 1711531, at *1 (Me. 2001) (holding that a nonlawyer trustee engages in the unauthorized practice of law when he appears in a judicial proceeding); *Haynes v. Jackson,* 744 A.2d 1050, 1054 (Me. 2000) (finding that a wife has engaged in the unauthorized practice of law by filing pleadings on behalf of her husband under a power of attorney); *Land Mgmt., Inc. v. Dep't of Envtl. Prot*., 368 A.2d 602, 604 (Me. 1977) (a non-attorney appearing in a judicial proceeding on behalf of a corporation engages in the unauthorized practice of law).

Maryland.

Section 10-101(h)(1) of the Maryland Code, Business Occupations & Professions, defines the practice of law as engaging in any of the following activities: (i) giving legal advice; (ii) representing another person before a unit of the State government or of a political subdivision; or (iii) performing any other service that the Court of Appeals defines as practicing law.[180]

Despite the foregoing definition, the Maryland Court of Appeals has explained that determining what constitutes the practice of law requires a factual analysis of each case to determine whether the facts fall within the intent of the definition and the purpose of the prohibition on the unauthorized practice of law, which is "to protect the public from being preyed upon by those not competent to practice law-from incompetent, unethical, or irresponsible representation."[181] This goal is "achieved, in general, by emphasizing the insulation of the unlicensed person from the public and from tribunals such as courts and certain administrative agencies."[182] Supervision and ensuring that the work product of the paraprofessionals becomes or is merged into the lawyer's work product are the benchmarks for determining whether paraprofessionals' services constitute the unauthorized practice of law.[183]

In *Hallmon*, the court determined that a lawyer had violated Rule 5.5(b) of the Maryland Attorneys' Rules of Professional Conduct where the lawyer failed to supervise a law school graduate who was not admitted to practice in any jurisdiction. While the court found that the law clerk's preparation of pleadings, meetings with the client, and meetings with the technical staff of the zoning commission did not violate Rule 5.5(b), the lawyer's lack of understanding of the legal strategy being employed at the zoning hearing and deferrals to the law clerk to answer the zoning commission's questions reflected an abdication of supervision by the lawyer in violation of Rule 5.5(b).[184]

Similarly, in *Barton*, the Maryland Court of Appeals determined that a lawyer had violated Rule 5.5(b) of the Maryland Attorneys' Rules of Professional Conduct where the office manager engaged by the lawyer handled client intake, quoted fees based on his evaluation of the client's case, and led the lawyer's clients to believe that he was a lawyer and provided legal advice to the clients, including advising what type of bankruptcy to file and to stop paying their mortgages.[185]

In the *Application of R.G.S.*, the Maryland Court of Appeals held that an lawyer that had performed significant legal work in Maryland, despite not being barred in Maryland, had not engaged in the unauthorized practice of law where the practitioner was barred in another state, the

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[180] Md. Code Ann., Bus. Occ. & Prof. § 10–101(h)(1).

[181] *Attorney Grievance Comm. of MD v. Hallmon*, 681 A.2d 510, 514 (Ct. App. Md. 1996) (citing *In re Application of R.G.S.*, 541 A.2d 977, 983 (Md. 1988).

[182] *Id.*; *see also Attorney Grievance Comm. of MD v. Bocchino*, 80 A.3d 222, 239 (Ct. App. Md. 2013) ("The goal of the unauthorized practice statute is achieved, in general, by emphasizing the insulation of the unlicensed person from the public and from tribunals such as courts...." (quoting *In re Application of R.G.S.*, 541 A.2d 977 (Md. 1988)); *Attorney Grievance Commission of Maryland v. Maldonado*, 203 A.3d 841 (Md. 2019)

[183] *Id.* (citing *Firris v. Snively*, 19 P.2d 942, 945-46 (Wash. 1933)).

[184] *Id.*

[185] *Attorney Grievance Comm. Of MD v. Barton*, 110 A.3d 668 (Md. Ct. App. 2015).

work was performed in a way that insulated the practitioner from direct contact with lay clients and the courts, and the work was done under the supervision of a licensed Maryland lawyer.[186]

At LAWCLERK, contrary to *Hallmon* and *Barton,* it is the Attorney that meets with clients, establishes the fees for services, provides legal advice to all clients, and appears in court on behalf of those clients. Further, consistent with *R.G.S.,* at LAWCLERK, the Lawclerk is insulated from any contact with the Attorney's client and the court and all services performed by the Lawclerk are performed at the direction of, and under the supervision of, the Attorney who remains solely responsible for the Lawclerk's work product.

Massachusetts.

While Massachusetts courts have explained that what constitutes the practice of law must be decided upon the facts of each particular case because it is impossible to frame any comprehensive or satisfactory definition,[187] the practice of law has been held to include:

> directing and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and to act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, the practice of giving or furnishing legal advice as to such rights and methods and the practice, as an occupation, of drafting documents by which such rights are created, modified, surrendered or secured.[[188]]

Despite the foregoing effort to provide a framework for the unauthorized practice of law analysis, the Massachusetts courts have also recognized that many of the activities described above are also undertaken by persons in other professions and occupations, and the creation of legally binding obligations and commitments is not confined to lawyers.[189] "The proposition cannot be maintained, that whenever, for compensation, one person gives to another advice that involves some element of law, or performs for another some service that requires some knowledge of law, or drafts for another some document that has legal effect, he is practicing law;" rather, to be engaged in the unauthorized practice of law, the activity must be "wholly within: the practice of law."[190]

The Massachusetts courts, citing Rule 5.5(b) of the Massachusetts Rules of Professional Conduct and Comment G of the Restatement (Third) of the Law Governing Attorneys,[191] have

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[186] *In re Application of R.G.S.*, 541 A.2d 977 (Md. 1988).

[187] *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.,* 946 N.E.2d 665, 673 (Mass. 2011) (quoting *In re Shoe Mfrs. Protective Ass'n, Inc.*, 3 N.E. 746 (1939)); *see also Rental Property Management Services v. Hatcher*, 97 N.E.3d 319 (Mass. 2018).

[188] *In re Hrones*, 933 N.E.2d 622, 628 (Mass. 2010) (quoting *Matter of an Application for Admission to the Bar of the Commonwealth*, 822 N.E.2d 1206 (Mass. 2005), quoting *Matter of the Shoe Mfrs. Protective Ass'n*, 3 N.E.2d 746 (Mass. 1936)).

[189] *Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs.,* 946 N.E.2d 665, 673 (Mass. 2011).

[190] *Id.* (quoting *Lowell Bar Ass'n v. Loeb*, 52 N.E. 2d 27 (Mass. 1943)).

[191] Restatement (Third) of the Law Governing Lawyers § 4 (2000). Comment G provides that:
Nonlawyer employees of law firms. For obvious reasons of convenience and better service to clients, lawyers and law firms are empowered to retain nonlawyer personnel to assist firm lawyers in providing legal services to clients.

held that many tasks performed by a lawyer may be performed by a paralegal, law clerk, or other paraprofessional as long as the lawyer supervises and retains responsibility for their work.[192] Consistent therewith, a lawyer was found to have violated both Rules 5.3 and 5.5 of the Massachusetts Rules of Professional Conduct where the lawyer hired a law school graduate who had not passed the bar examination to work as a paralegal and develop a practice in employment discrimination cases before the Massachusetts Commission Against Discrimination and the United States Equal Employment opportunity Commission and failed to supervise the paralegal.[193] More specifically, the lawyer and the paralegal agreed that the lawyer's firm would enter into the contingent fee agreement's with the paralegal's clients and all fees and retainers would be paid to the firm, but that the paralegal would then receive two-thirds of any fees collected. The engaging lawyer did not handle employment or other discrimination cases and it was understood that the paralegal would operate a virtually independent discrimination law practice without substantial supervision by the lawyer or any other lawyer at the firm and, in fact, no supervision was provided.[194] The paralegal solicited clients, determined fee arrangements, executed fee agreements, collected fees, filed complaints, drafted pleadings, conducted discovery, counselled clients as to their legal rights, settled cases, and performed all other legal work on the cases.[195]

Additionally, Ethics Opinion No. 75-8 advises that a lawyer who is engaged in general practice of law may offer a legal research service to other lawyers, and may publicize the availability and advantages of such service by means of letters and advertisements directed to other lawyers, but only upon the following conditions: (i) the research service may be provided only to other lawyers; (ii) the publicity for the legal research service may not identify the lawyer by name nor state that the work will be performed or supervised by a lawyer; (iii) the lawyer may not accept any general work that comes to him through the legal research service; and (iv) in the course of his general practice, the lawyer may not indicate on his letterhead, office sign, or professional card that he operates the legal research service.[196] In reaching this conclusion, the Massachusetts Bar Association Committee on Professional Ethics emphasized that as a "lawyer may use the services of a non-lawyer to perform legal research or draft legal documents if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product," it would follow that a lawyer may properly use the services of another lawyer to perform legal research.[197] The Committee also noted that in recent years, a number of legal research service organizations have begun offering research services to lawyers, and discussed one such company – The Research Group Incorporated, which advertises that "our staff includes 50 full-time law graduates who are seasoned professionals at preparing strategy, comprehensive legal memoranda, trial and appellate briefs and pleadings."[198] In reaching its

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In the course of that work, a nonlawyer may conduct activities that, if conducted by that person alone in representing a client, would constitute unauthorized practice. Those activities are permissible and do not constitute unauthorized practice, so long as the responsible lawyer or law firm provides appropriate supervision (see § 11, Comment e), and so long as the nonlawyer is not permitted to own an interest in the law firm, split fees, or exercise management powers with respect to a law-practice aspect of the firm (see § 10).

[192] *In re Hrones,* 933 N.E.2d 622, 628 (2010).

[193] *Id.*

[194] *Id.*

[195] *Id.* at 626.

[196] Massachusetts Ethics Opinion 75-8, available at http://www.massbar.org/publications/ethics-opinions/ethics-opinions-1975-opinion-no-75-8.

[197] *Id.*

[198] *Id.*

opinion, the Committee accepted the proposition that the operation of a legal research service is not the practice of law and noted that it had been informed that the Committee on Unauthorized Practice of Law of the Massachusetts Bar Association has rendered an informal opinion to the effect that The Research Group Incorporated is not engaged in the unauthorized practice of law in providing research services to lawyers, and we understand that similar committees of other state bar associations have reached the same conclusion. While not addressing LAWCLERK, the analysis applies with equal force demonstrating that LAWCLERK does not engage in the unauthorized practice of law.

Michigan.

Michigan's prohibition on the unauthorized practice of law is intended to protect and secure the public's interest in competent legal representation.[199] Courts construe Section 600.916 of Michigan's Compiled Laws – titled "Unauthorized Practice of Law" - with this purpose in mind.[200] Applying Rules 5.3 and 5.5 of the Michigan Rules of Professional Conduct, the United States Bankruptcy Court for the Eastern District of Michigan explained that if a nonlawyer is working under the direction and control of a licensed lawyer, then the lawyer is ultimately responsible for the debtor's representation and is responsible for ensuring that the nonlawyer's conduct is compatible with the lawyer's ethical obligations.[201] Further elaborating on what constitutes inadequate supervision under Rule 5.3, the court explained that the lawyer is not adequately supervising the nonlawyer if the lawyer does not know about the existence or content of the meetings between the nonlawyer and the client, if the lawyer relies solely on the nonlawyer as the client intermediary and fails to meet directly with the client, or if the lawyer fails to use his independent professional judgment to determine which documents prepared by the nonlawyer should be communicated outside the law office.[202]

Applying Rules 5.3 and 5.5 of the Michigan Rules of Professional Conduct, the Michigan courts have found the unauthorized practice of law involving paraprofessionals where: (i) bankruptcy counsel's legal assistants defined concepts and legal terms of art, explained to prospective clients the difference between Chapter 7 and Chapter 13, rendered advice peculiar to potential debtor's situation, signed the engagement letters, and used their judgment to determine which client questions to answer themselves and which to refer to the lawyer;[203] and (ii) a nonlawyer went beyond advertising for sale and distributing do-it-yourself divorce kits containing forms and documents necessary to effect no-fault divorce and advertised professional guidance to clients, arranged personal conferences with clients to discuss divorce, prepared documents incident to divorce proceeding, occasionally filed completed forms in court and personally advised clients as to proper testimony was engaged in the unauthorized practice of law.[204]

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[199] *Matter of Bright*, 171 B.R. 799, 805 (Bankr. E.D. Mich. 1994) (paralegal engaged in unauthorized practice of law by responding to questions from debtors regarding interpretation or definition of terms in bankruptcy forms); *In re Pinkins*, 213 B.R. 818, 820 (Bankr. E.D. Mich. 1997); *In re Desilets*, 247 B.R. 660 (Bankr. W.D. Mich. 2000).
[200] Mich. Comp. Laws Ann. § 600.916.
[201] *Matter of Bright*, 171 B.R. 799, 805 (Bankr. E.D. Mich. 1994).
[202] *Id.*
[203] *In re Pinkins*, 213 B.R. 818 (Bankr. E.D. Mich. 1997).
[204] *State Bar of Michigan v Cramer*, 249 N.W.2d 1 (Mich. 1976), *abrogated on other grounds by Dressel v. Ameribank*, 664 N.W.2d 151 (Mich. 2003).

Further, in RI-125,[205] the State Bar of Michigan advised that, while the lawyer must supervise the legal assistant in the performance of her services and is ultimately responsible for such services, as long as the necessary disclosures are made to the client, the legal assistant may be assigned to perform the services required to represent the lawyer's client in the administrative proceeding.[206]

The State Bar of Michigan Board of Commissioner approved the following guidelines for the use of legal assistants on April 23, 1993.[207] While the guidelines refer to legal assistants,[208] they also state that many of the guidelines apply to the utilization of any other nonlawyer assistants.

> Guideline 1: A lawyer shall make reasonable efforts to ensure that the conduct of a legal assistant under the lawyer's direct supervision is compatible with the lawyer's professional obligations under the Michigan Rules of Professional Conduct. Such efforts should include training in the requirements of those Rules that most directly relate to communications with persons other than the lawyer's clients.[209]
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> Guideline 2: A lawyer may ethically assign responsibility to a legal assistant for the performance of tasks relating to the representation of a client and the law firm's delivery of legal services, commensurate with the experience and training of the legal assistant, and where the lawyer directly supervises the legal assistant and reviews the legal assistant's work product before it is communicated outside the law firm, provided that:
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> a. The legal assistant's participation as a nonlawyer is clear;
>
> b. The legal assistant does not convey to persons outside the law firm the legal assistant's opinion regarding the applicability of laws to the particular legal situation of another, the legal effect of acts or omissions of another, or the legal rights, responsibilities, or obligations of another person regarding their particular legal matter.
>
> c. The legal assistant does not appear on behalf of any person or entity in proceedings before state or federal courts, administrative agencies, and tribunals, and including participation on behalf of another in

[205] S*ee Upjohn Co. v. Aetna Cas. & Sur. Co.,* 768 F.Supp. 1186, 1214 (W.D. Mich. 1990) (Although ethics opinions are not binding on state or federal courts, they do provide guidance in resolving issues of professional responsibility).
[206] State Bar of Michigan's Opinions Interpreting MRPC, RI-125, April 17, 1992, available at http://www.michbar.org/opinions/ethics/numbered_opinions?OpinionID=995&Type=4.
[207] *Role of Nonlawyers in Law Practice: Guidelines for Utilization of Legal Assistant Services*, State Bar of Michigan, available at https://www.michbar.org/opinions/ethics/utilization.
[208] *Id.* (The term "legal assistant" is defined as "[a]ny person currently employed or retained by a lawyer, law office, governmental agency or other entity engaged in the practice of law, in a capacity or function which involves the performance under the direction and supervision of an attorney of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent that legal assistant, the attorney would perform the task, and which work is not primarily clerical or secretarial in nature....").
[209] *Id.* Consistent with Guideline 1, before performing each project, Lawclerks must certify that they have reviewed the applicable state's rules of professional conduct and will comply with such rules.

depositions, discovery, and settlement negotiation, except to the extent that a nonlawyer is authorized by law to represent the interests of another person or entity and the lawyer has obtained the other person's or entity's consent to the legal assistant's participation as representative in those proceedings.[210]

Guideline 3: A lawyer may not delegate to a legal assistant:

Responsibility for establishing a lawyer-client relationship.

Responsibility for establishing the fee arrangement with a client.[211]

Guideline 4: A lawyer may identify legal assistants by name and title on the lawyer's letterhead and on business cards identifying the lawyer's firm.[212]

Guideline 5: In employing a legal assistant, or assigning a legal assistant to any particular client matter, a lawyer should take reasonable measures to ensure that no conflict of interest is presented arising out of the legal assistant's current or prior employment or from the legal assistant's other business or personal interests.[213]

Guideline 6: In establishing a fee arrangement with a client, a lawyer may include a reasonable charge for work performed by a legal assistant, provided that the client consents after consultation.[214]

Guideline 7: A lawyer may not split legal fees with a legal assistant nor pay a legal assistant for the referral of legal business. A lawyer may compensate a legal assistant based on the quantity and quality of the legal assistant's work and the value of that work to the law practice. A lawyer may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.[215]

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[210] *Id.* Consistent with Guideline 2, in the Lawclerk Marketplace, the Lawyer supervises the Lawclerk, the Lawclerks serves in the capacity of a paraprofessional, the Lawclerk conveys opinions and work product to the Lawyer, but not the client or the public. The Lawclerk has no contact with the Lawyer's client, and the Lawclerk does not appear in any court, judicial, or administrative proceeding.

[211] *Id.* Consistent with Guideline 3, in the Lawclerk Marketplace, the Lawyer (not the Lawclerk) establishes the attorney-client relationship and establishes the fee arrangement with the client.

[212] *Id.* Guideline 4 is inapplicable in the Lawclerk Marketplace.

[213] *Id.* Consistent with Guideline 5, and as discussed above, the Lawclerk Marketplace employs a two-part conflicts check to ensure that Lawclerks do not have any conflicts with regard to the project or projects for which they are being engaged.

[214] *Id.* Consistent with Guideline 6, at LAWCLERK, Attorneys must establish how they will bill their clients for the services performed by the Lawclerk.

[215] *Id.* Consistent with Guideline 7, in the Lawclerk Marketplace, the Lawyer does not split legal fees with the Lawclerk, does not pay referral fees, and compensates the Lawclerk on a flat fee basis based on the complexity of the project delegated to the Lawclerk.

> Guideline 8: A lawyer who employs a legal assistant should facilitate the legal assistant's participation in appropriate continuing education and public service activities.

As the foregoing cases, ethical opinions, and guidelines for the utilization of legal assistants establish, LAWCLERK imposes greater restrictions than the Michigan State Bar and by such rules does not engage in the unauthorized practice of law.

Minnesota.

The Minnesota Supreme Court has recognized that the "line drawn between the work of a law clerk and an attorney is a fine one."[216] As long as the nonlawyer's work is of a preparatory nature, such as legal research, drafting legal pleadings for lawyer review emphasis, and investigation, such that the work merges with the work of the supervising lawyer, it is not the practice of law.[217] Conversely, where the nonlawyer "acts in a representative capacity in protecting, enforcing, or defending the legal rights of another, and advises and counsels that person in connection with those rights, the non-lawyer steps over that line."[218] Consistent with the foregoing types of services that may be provide by paraprofessionals, Lawclerks have no direct contact with the Attorney's client and the Lawclerk's services are only provided to the supervising Attorney who is solely responsible for the Lawclerk's work product.

Citing Rules 5.3 and 5.5 of the Minnesota Rules of Professional Conduct, the Minnesotan Attorneys Professional Responsibility issued Opinion No. 8, which confirms that "[n]on-lawyers must be supervised by an attorney who is responsible for their work."[219] Again, LAWCLERK satisfies this requirement as the Lawclerk only performs the services delegated to him/her by the Attorney. Moreover, the Lawclerk is required to complete a conflicts check and confirm that all work will comply with the applicable state's rules of professional conduct before commencing each assignment. Moreover, LAWCLERK precludes all Lawclerks from contacting anyone other than the Attorney. The Lawclerk may not appear or file any documents with any judicial or administrative body, and the Attorney remains entirely responsible for the Lawclerk's work product.

2020 UPDATE: Minnesota courts have reiterated the foregoing in recent cases. In one case, an attorney's lack of supervision allowed the non-lawyer assistant to engage in theft.[220] In another case, the lawyer "failed to diligently and competently supervise the contract attorney."[221]

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[216] *Matter of Discipline of Jorissen*, 391 N.W.2d 822, 825 (Minn. 1986) (disbarring a lawyer who, while suspended, continued to represent clients in court, act on behalf of clients, and failed to correct opposing counsel and courts who held the mistake behalf that he was admitted to practice law); *see also In re Disciplinary Action Against Ray,* 452 N.W.2d 689, 693 (Minn. 1990) (citing *Jorissen* and explaining that the respondent may not have engaged in the unauthorized practice of law where there was no evidence submitted that the draft will had not been submitted to the supervising attorney for review and signature); *In re Petition for Disciplinary Action against Albrecht*, 845 N.W.2d 184 (Minn. 2014); *In re Petition for Disciplinary Action against Jaeger*, 834 N.W.2d 705 (Minn. 2013).

[217] *Jorissen*, 391 N.W.2d at 824 (citing *State v. Schumacher*, 519 P.2d 1116, 1124 (Kan. 1974); *In re Easler*, 272 S.E.2d 32, 32-33 (S.C. 1980)).

[218] *Id.* (citing Fitchette v. Taylor, 254 N.W. 910, 911 (Minn. 1934).

[219] Lawyers Professional Responsibility Board Opinion No. 8, as amended January 26, 2006, available at https://www.revisor.mn.gov/court_rules/pr/subtype/lawy/id/8/.

[220] *In re Udeani*, No. A18-2139 (Minn. July 1, 2020).

[221] *In re Friedrichs*, 937 N.W.2d 415 (Minn. 2020)

The use of LAWCLERK serves, rather than contradicts, the policies outlined in these cases. Notably, the Minnesota Supreme Court did not disfavor the use of a contract attorney. However, the court did object to the failure to supervise the contract attorney's work. LAWCLERK's terms of service require Attorneys to supervise Lawclerks at all times. Moreover, the Attorney retains full responsibility for reviewing and filing the final work product. As such, LAWCLERK accords with the Minnesota courts' guidance.

Mississippi.

Applying Rules 5.3 and 5.5 of the Mississippi Rules of Professional Conduct, the United States Bankruptcy Court for the Northern District of Mississippi determined that outsourced paraprofessionals had not engaged in the unauthorized practice of law when they drafted a motion and order, communicated with the lawyer's client to determine information pertinent to the motion, and assisted in filing the motion because the motion, order, and entire proceeding had been reviewed, signed, and supervised by the lawyer that had engaged the contract paraprofessionals.[222] The court emphasized that the use of contract (verses employed) paraprofessionals is of no substantive impact; the "use of paralegal employees, whether outsourced or 'in house," reduces the time that must be devoted by a licensed attorney, and, in turn, reduces the costs to all parties."[223] Consistent with the foregoing decision, the Mississippi Supreme Court has emphasized that for it, like other jurisdictions, where a lawyer fails to supervise the nonlawyer, the lawyer violates Rule 5.3 by assisting in the unauthorized practice of law.[224]

Mississippi, like many other states, has held that a suspended or disbarred lawyer may serve as a law clerk as long as the suspended or disbarred lawyer: (i) does not have any client contact; (ii) is engaged under the supervision of a lawyer in good standing; and (iii) is totally separate from his prior law practice.[225]

These decisions demonstrate that LAWCLERK does not violate the prohibition on the unauthorized practice of law as the Attorney delegates and supervises the work of the Lawclerk, the Attorney is solely responsible for the Lawclerk's work product, the Lawclerk does not have any client or court contact, and only the Attorney provides legal advice to the client.

2020 UPDATE: In a recent case, *Gaines*, the Mississippi Supreme Court considered the case of a paralegal alleged to have engaged in the unauthorized practice of law. In the case, the paralegal testified that "he merely reviewed files for the different attorneys and recommended to his supervising attorneys which types of coverage would apply to certain damages. He also looked

[222] *In re Thorne*, 471 B.R. 486, 507 (Bankr. N.D. Miss. 2012).
[223] *Id.*
[224] *Mississippi Bar v. Thompson*, 5 So.3d 330, 338 (Miss. 2008) (citing *People v. Smith*, 74 P.3d 566, 572 (Col. 2003)); *In re Sledge*, 859 So.2d 671, 684-86 (La. 2003); *In re McMillian*, 596 S.E.2d 494 (S.C. 2004); *In re Complaint of Jones,* 779 P.2d 1016 (Or. 1989)).
[225] *In re Reinstatement of Parsons*, 890 So.2d 40, 45 (Miss. 2003) (citing *Wilkinson*, 834 P.2d 1356, 1362 (Kan. 1992); *In re Mitchell*, 901 F.2d 1170 (3rd Cir. 1990) (allowing attorney suspended from court of appeals to be employed as a law clerk); *In re Mekler*, 672 A.2d 23 (Del. 1995); *State ex. rel. Oregon State Bar v. Lenske,* 584 P.2d 759 (Or. 1978)).

for claims that had been double-paid."[226] After reviewing the facts, the court ruled that the paralegal did not engage in the unauthorized practice of law.[227]

Like the paralegal in *Gaines*, Lawclerks at LAWCLERK must have their work reviewed by the assigning Attorney and it is the assigning Attorney that maintains the attorney-client relationship and makes all determinations on the legal advice and strategy for their client's case. The Attorney must review the work and make the final decision. Just as the court held in *Gaines*, the conduct engaged in by Lawclerks and Attorneys through LAWCLERK does not constitute the unauthorized practice of law.

Missouri.

Section 848.010(1) of the Missouri Annotated Statutes defined the practice of law as follows:

> [T]he appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies.[228]

The foregoing statute should be construed to effect the legislative intent "to protect the public from the rendition of services deemed to require special fitness and training by those not possessing the required legal qualifications."[229]

Applying 848.010, the Missouri Supreme Court held that a company that marketed and drafted living trusts and related legal documents prepared by nonlawyers engaged in the unauthorized practice of law, where the nonlawyers gave legal advice to individuals concerning their need for living trusts, gathered information from the clients that the nonlawyer used to determine and advise as to the appropriate type of trust for the client, prepared trust documents, and collected the fees for the services.[230] The fact that the company engaged an in-house lawyer and would refer customers to certain selected lawyers for document review, such supervision was insufficient where: (i) the nonlawyer had already provided legal advice to the client regarding the client's legal affairs, recommended and sold the trust instrument, and received payment for the trust, and drafted the client-specific trust *before* the participation of the reviewing lawyer; (ii) the company discouraged individualized contact between the client and the recommended lawyers; and (iii) the company policies included directives to dissuade clients from engaging their own lawyers to review the documents.[231]

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[226] *Gaines v. Miss. Bar*, 268 So.3d 484 (Miss. 2018).
[227] *See id.*
[228] Mo. Ann. Stat. § 484.010.
[229] *Bray v. Brooks*, 41 S.W.3d 7, 13 (Mo. Ct. App. 2001) (citing *State ex inf. Miller*, 74 S.W.2d 348, 357 (Mo. 1934)) (In *Bray*, the court found that a broker had engaged in the unauthorized practice of law by drafting a number of legal documents for the broker's client).
[230] *In re Mid-Am. Living Trust Associates, Inc*., 927 S.W.2d 855, 870 (Mo. 1996).
[231] *Id.*

The Missouri courts have repeatedly held that while non-lawyers may fill in blanks in approved real estate documents and sell generalized legal publications and kits, nonlawyers may not, without the direct supervision of an independent licensed lawyer, select a specific legal document for a client, draft a legal document, or provide any personal advice as to the legal remedies or consequences flowing from such documents.[232] Conversely, at LAWCLERK, it is the Attorney, and only the Attorney, that has client contact, makes legal strategy decisions, and provides legal advice to the Attorney's clients.

Montana.

Section 37-61-201 of the Montana Code defines when someone is considered to be practicing law as follows:

> Any person who holds out to the public or advertises as an attorney or who appears in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who engages in the business and duties and performs acts, matters, and things that are usually done or performed by an attorney at law in the practice of that profession for the purposes of parts 1 through 3 of this chapter is considered to be practicing law.[[233]]

Section 37-60-101 defines "paralegal" or "legal assistant" as follows:

> a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work. [[234]]

Discussing each of these statutes, the Montana Supreme Court found that a nonlawyer had engaged in the unauthorized practice of law where: (i) a nonlawyer advertised as an "independent paralegal" under the "attorney" heading in the yellow pages stating that he is "Licensed to Practice Law in Blackfeet Tribal Court" and that he is a "MEMBER: Child & Family Section of the Montana State Bar;" (ii) the nonlawyer was receiving private personal and legal matters from his clients despite the fact that there could not have an attorney-client relationship as the nonlawyer was not acting under the supervision of a lawyer that established the attorney-client relationship; and (iii) the nonlawyer prepared legal documents and provided legal advice to the clients without the requisite supervision. Conversely, at LAWCLERK, the Lawclerks solely perform the services delegated to them by the Attorney, the Attorney maintains the attorney-client relationship, only

[232] *Janson v. LegalZoom.com, Inc*., 802 F.Supp.2d 1053 (W.D. Mo. 2011) (collecting cases); *Robert McKeage v. TMBC, LLC*, 15-3191 (8th Cir. 2017).
[233] Mont. Code Ann. § 37-61-201.
[234] Mont. Code Ann. § 37-60-101.

the Attorney provides legal advice to the client, and the Attorney is solely responsible for the Lawclerk's work product.[235]

2020 UPDATE: Since the first guidance was released, Montana has made significant changes. These changes took effect on January 1, 2020. Montana's Rule 5.5 on the unauthorized practice of law was one of the rules that changed. The state bar noted that the rule was adopted for the following reasons:

> Rules 5.5 and 8.5 were referred to a special subcommittee of the Ethics Committee ….. This special subcommittee agreed that the ABA's Model Rule 5.5 was an improvement from Montana's current rule.
>
> Model Rule 5.5 addresses many of the "where's the line?" [questions] on unauthorized practice of law issues, including pro hac vice, administrative law, arbitration, mediation, contract work and other services. It also addresses the foreign lawyer boundaries. [[236]]

The new version of Montana's Rule 5.5 states, in pertinent part:

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:
(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another

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[235] *Montana Supreme Court Comm'n on Unauthorized Practice of Law v. O'Neil*, 147 P.3d 200, 204 (Mont. 2006); *see also In re Dissolving Commission on Unauthorized Practice of Law*, 242 P.3d 1282 (Mont. 2010).; *In re Petition of State Bar*, AF 09-0688 (Mont. 2019).

[236] *See* State Bar of Montana, Montana Lawyer: Extensive updates to Montana Rules of Professional Conduct adopted effective Jan. 1, 2020, https://www.montanabar.org/news/443124/Extensive-updates-to-Montana-Rules-of-Professional-Conduct-adopted-effective-Jan.-1-2020.htm

> jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
>
> (4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. [237]

LAWCLERK complies with the new version of Montana's Rule 5.5. Just as the rule requires, LAWCLERK's terms of service demand that Attorneys supervise Lawclerks at all times with respect to the assigned work. Further, LAWCLERK does not permit Attorneys to engage Lawclerks for any task that might involve contact with the client, opposing counsel, or the courts. Thus, there is no danger that a member of the public will misperceive a Lawclerk working for an Attorney through LAWCLERK as a member of the Montana bar. Thus, LAWCLERK is compliant in this jurisdiction.

Nebraska.

Article 10 of the Rules of the Supreme Court of Nebraska is entitled the "Unauthorized Practice of Law" and contains a fulsome set of rules clarifying what constitutes the unauthorized practice of law, the purpose of which "is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law."[238] These rules defined the practice of law as:

> [T]he application of legal principles and judgment with regard to the circumstances or objectives of another entity or person which require the knowledge, judgment, and skill of a person trained as a lawyer. This includes, but is not limited to, the following:
>
> (A) Giving advice or counsel to another entity or person as to the legal rights of that entity or person or the legal rights of others for compensation, direct or indirect, where a relationship of trust or reliance exists between the party giving such advice or counsel and the party to whom it is given.
>
> (B) Selection, drafting, or completion, for another entity or person, of legal documents which affect the legal rights of the entity or person.
>
> (C) Representation of another entity or person in a court, in a formal administrative adjudicative proceeding or other formal dispute resolution process, or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

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[237] *See id.*

[238] Neb. R. Ct. Ch. 3, art. 10, Statement of Intent.

> (D) Negotiation of legal rights or responsibilities on behalf of another entity or person.
>
> (E) Holding oneself out to another as being entitled to practice law as defined herein.[239]

Under these rules, a "nonlawyer" is a "person not duly licensed or otherwise authorized to practice law in the State of Nebraska. The term also includes any entity or organization not authorized to practice law by specific rule of the Supreme Court whether or not it employs persons who are licensed to practice law."[240] Section 3-1005 expressly states that ***"[n]othing in these rules shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Neb. Ct. R. of Prof. Cond. § 3-505.3***," which mirrors Model Rule 5.3 prior to the most recent nonsubstantive amendments.[241]

In *Thierstein*, the Nebraska Supreme Court found that a suspended lawyer was not acting in the role of a paralegal where the alleged supervising lawyer had never seen the documents drafted by the suspended lawyer, the alleged supervising lawyer had not directed the suspended lawyer to draft them, and only the suspended lawyer had met the client.[242] In explaining the difference between the permissible work of a nonlawyer and the unauthorized practice of law by a nonlawyer, the court emphasized that a nonlawyer's work "must lose its identity as work of the paralegal and become the work product of the attorney."[243] Consistent with this distinction, at LAWCLERK, the Attorney maintains the client contact, the Attorney assigns the project to the Lawclerk, and the Attorney retains sole responsibility for the Lawclerk's work product such that becomes the work product of the Attorney.

It is noteworthy that in suspending a lawyer, the Nebraska Supreme Court expressly permitted the suspended lawyer to function in a nonlawyer capacity as a paralegal or law clerk.[244] Additionally, Nebraska Ethics Advisory Opinion for Attorneys No. 11-01 applies the foregoing statutes and states that a suspended lawyer may be "employed or serve as a nonlawyer assistant or paralegal" under the supervision of a lawyer pursuant to Neb. Ct. R. Prof. Cond. § 3-505.3 and subject to the following limitations: (i) all work must be of a preparatory nature only and reviewed by the supervising lawyer; (ii) any client who has contact with the suspended lawyer must be informed that the suspended lawyer is not authorized to practice law; (iii) any contact with clients must occur on the business premises of the supervising lawyer and under the lawyer's supervision; and (iv) the suspended lawyer should not otherwise engage in activities that give the appearance of practicing law.

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[239] Neb. R. Ct. § 3-1001.
[240] Neb. R. Ct. § 3-1002.
[241] Neb. R. Ct. § 3-1005 (emphasis added).
[242] *State of Nebraska v. Thierstein*, 371 N.W.2d 746, 748 (Ne. 1985).
[243] *Id.*
[244] *State ex rel. Nebraska State Bar Ass'n v. Fitzgerald*, 416 N.W.2d 28, 30 (Neb. 1987); *see also State ex rel. Counsel for Discipline of Supreme Court v. Jorgenson*, 922 N.W.2d 753 (Neb. 2019).

Nevada.

What constitutes the practice of law in Nevada is determined on a case-by-case basis "bearing in mind the overarching principle that the practice of law is involved when the activity requires the exercise of judgment in applying general legal knowledge to a client's specific problem."[245] In determining what constitutes the practice of law, the public interest is further of primary concern—both protection from incompetent legal services and also ensuring that regulation of the practice of law is not so strict that the public good suffers.[246]

Nevada courts have held that an individual engages in the unauthorized practice of law when he performs activities customarily executed by licensed lawyers, such as engaging in discovery proceedings, evaluating legal claims, filing documents, and appearing in court on behalf of someone else.[247] In a thorough opinion, the Supreme Court of Nevada determined that a lawyer that was not barred by the State of Nevada engaged in the unauthorized practice of law where the unbarred lawyer provided the following services: (i) conducted initial client consultations; (ii) evaluated the clients' claims' merits; (iii) served as the clients' sole contact with the firm; and (iv) negotiated the claims with the defendants' insurance carriers.[248] In reaching its determination, the Nevada Supreme Court cited cases from Florida, Maryland, Connecticut, New Jersey, and Kansas providing that the barred and licensed lawyer must maintain the direct relationship with the client.[249]

LAWCLERK prohibits the Lawclerk from having any contact with the Attorney's client and engaging in any negotiations or other contact with any parties to the anticipated or pending litigation or administrative proceeding. Additionally, the Attorney is solely responsible for the attorney-client relationship, including providing legal advice, and is further solely responsible for the Lawclerk's work product.

When applying NRS 7.285(1)[250] and Rule 5.5 of the Nevada Rules of Professional Conduct, the Nevada courts have consistently held that a person violates NRS 7.285(1) where a

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[245] *In re Discipline of Lerner*, 197 P. 3d 1067, 1069 (Nev. 2009).

[246] *Id.* at 1072, ("the overarching reason for requiring that only lawyers engage in the practice of law is to: ensure that the public is served by those who have demonstrated training and competence and who are subject to regulation and discipline."); *see also Handley v. Bank of America, N.A.*, 2010 WL 4607014 *2 (D. Nev. 2010).

[247] *Arteaga v. Hutchins Drywall, Inc.,* 2011 WL 219918 *2 (D. Nev. 2011) (citing *Guerin v. Guerin*, 993 P.2d 1246, 1258 (Nev. 2000), *Martinez v. Eighth Jud. Dist. Ct.*, 729 P.2d 487, 488 (Nev. 1985), *In re Discipline of Lerner*, 197 P. 3d 1067, 1071 (Nev. 2009)); *see also In re Discipline of Crowley*, 406 P.3d 958 (Nev. 2017); *In re Discipline of Lozensky*, 385 P.3d 606 (Nev. 2016).

[248] *In re Discipline of Lerner*, 197 P. 3d 1067, 1071 (Nev. 2009).

[249] *Id.*

[250] NRS 7.285, Unlawful practice of law; criminal penalties; initiation of civil action by State Bar of Nevada, provides:

1. A person shall not practice law in this state if the person:

(a) Is not an active member of the State Bar of Nevada or otherwise authorized to practice law in this state pursuant to the rules of the Supreme Court; or

(b) Is suspended or has been disbarred from membership in the State Bar of Nevada pursuant to the rules of the Supreme Court.

2. A person who violates any provision of subsection 1 is guilty of:

(a) For a first offense within the immediately preceding 7 years, a misdemeanor.

(b) For a second offense within the immediately preceding 7 years, a gross misdemeanor.

(c) For a third and any subsequent offense within the immediately preceding 7 years, a category E felony and shall be punished as provided in NRS 193.130.

nonlawyer provides legal advice directly to another person, represents a litigant at a deposition or in a court or administrative proceeding, and drafts pleadings on behalf of a litigant. For example, Nevada courts have held that the following conduct violates NRS 7.285(1): (i) a nonlawyer inmate law library assistant appearing at a deposition to represent the *pro se* inmate defendant;[251] (ii) a nonlawyer filing a complaint and appearing for a plaintiff as an attorney-in-fact pursuant to a power of attorney;[252] (iii) a nonlawyer filing and prosecuting an appeal on behalf of a trust;[253] (iv) a nonattorney president of the plaintiff corporation substituting in as counsel for the plaintiff corporation in the pending litigation;[254] (v) a nonlawyer representing an unemployment compensation claimant in his appeal from the Employment Security Departments' denial of requested unemployment benefits;[255] and (vi) a nonlawyer bankruptcy petition preparer preparing and filing a motion and order seeking the release of the debtor's funds on behalf of a debtor that had appeared in her Chapter 7 case *pro se*.[256] None of the Nevada cases citing NRS 7.285(1) have found that a person violated NRS 7.285(1) where the person was engaged to provide legal services to an admitted lawyer in good standing with the Nevada State Bar where the person had no contact with the lawyer's clients.

LAWCLERK does not run afoul of Nevada's prohibition on the unauthorized practice of law because the Lawclerk does not have any client contact, the Lawclerk cannot sign or file any documents, the Lawclerk cannot appear in any court or other judicial or administrative proceeding, only the Attorney provides legal advice to clients, and the Lawclerk only provides the services delegated to him/her by the Attorney and under the Attorney's supervision.

New Hampshire.

Rule 35 of the Rules of the Supreme Court of the State of New Hampshire is titled "Guidelines for the Utilization by Attorneys of the Services of Legal Assistants Under the New Hampshire Rules of Professional Conduct" and provides the following rules:

> Rule 1 - It is the responsibility of the lawyer to take all steps reasonably necessary to ensure that a legal assistant for whose work the lawyer is responsible does not provide legal advice or otherwise engage in the unauthorized practice of law; provided, however, that with adequate lawyer supervision the legal assistant may provide information concerning legal matters and otherwise act as permitted under these rules.[257]

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3. The State Bar of Nevada may bring a civil action to secure an injunction and any other appropriate relief against a person who violates this section.

[251] *Denson v. Gillispie*, 2013 WL 662967 *7 (D. Nev. 2013).

[252] *Handley v. Bank of America, N.A.*, 2010 WL 4607014 *2 (D. Nev. 2010).

[253] *Guerin v. Guerin* 993 P.2d 1256, 1258 (Nev. 2000).

[254] *Sunde v. Contel of California*, 915 P.2d 298, 299 (Nev. 1996) ("Requiring attorney representation also protects the public by helping to ensure that its interests are competently litigated.").

[255] *Martinez v. Eighth Judicial District Court of the State of Nevada, in and for Clark County*, 729 P.2d 487 (Nev. 1986).

[256] *In re Camella Brown*, 2014 WL 3962821 (Bankr. D. Nev. 2014) (wherein the Nevada Bankruptcy Court issued an order to show cause why the non-attorney bankruptcy petition preparer should not be sanctioned and/or enjoined from engaging in similar conduct in the future and why the matter should not be referred to the Clark County Prosecutor for potential prosecution under NRS 7.285).

[257] NH R S CT Rule 35, Rule 1, Cmt. 1 (The comments to Rule 1 provide in relevant part that "[a] lawyer may, however, allow a Legal Assistant to perform services for the lawyer in connection with the lawyer's representation of

Rule 2 - A lawyer may not permit a legal assistant to represent a client in judicial or administrative proceedings or to perform other functions ordinarily limited to lawyers, unless authorized by statute, court rule or decision, administrative rule or regulation or customary practice.

Rule 3 - Except as otherwise provided by statute, court rule, or decision, administrative rule or regulation, or by the Rules of Professional Conduct, a lawyer may permit a legal assistant to perform services for the lawyer in the lawyer's representation of a client, provided:

A. The services performed by the legal assistant do not require the exercise of professional legal judgment;

B. The lawyer maintains a direct relationship with the client;

C. The lawyer supervises the legal assistant's performance of his or her duties; and

D. The lawyer remains fully responsible for such representation, including all actions taken or not taken by the legal assistant in connection therewith.

Rule 4 - A lawyer should exercise care that a legal assistant for whose work the lawyer is responsible does not:

(A) Reveal information relating to representation of a client, unless the client expressly or implicitly consents, after consultation with the supervising lawyer and with knowledge of the consequences, or except as otherwise required or permitted, in the judgment of the supervising lawyer, by statute, court order or decision, or by the Rules of Professional Conduct; or

(B) Use such information to the disadvantage of the client unless the client consents after consultation with the supervising lawyer and with knowledge of the consequences.

Rule 5 - A lawyer shall not form a partnership with a legal assistant if any of the activities of the partnership consist of the practice of law, nor practice with or in the form of a professional corporation or association authorized to practice law for a profit if a legal assistant owns an interest therein, is a corporate director or officer thereof or has the right to direct or control the professional judgment of a lawyer.

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a client (including, without limitation, the provision directly to clients of information concerning legal matters); provided that adequate lawyer supervision of the assistant's activities is provided for and the requirements of these rules are otherwise complied with.").

> Rule 6 - A lawyer shall not share fees with a legal assistant in any manner, except that a lawyer or law firm may include the legal assistant in a retirement plan even if the plan is based in whole or in part on a profit-sharing arrangement.
> Rule 7 - A legal assistant's name may not be included on the letterhead of a lawyer or law firm. A legal assistant's business card may indicate the name of the lawyer or the law firm employing the assistant, provided that the assistant's capacity is clearly indicated and that the services of the assistant are not utilized by the lawyer or firm for the purpose of solicitation of professional employment for the lawyer or firm from a prospective client in violation of the relevant statutes or the Rules of Professional Conduct.
>
> Rule 8 - A lawyer shall require that a legal assistant, when dealing with clients, attorneys or the public, disclose at the outset that he or she is not a lawyer.
>
> Rule 9 - A lawyer should exercise care to prevent a legal assistant from engaging in conduct which would involve the assistant's employer in a violation of the Rules of Professional Conduct. [258]

Consistent with these rules, the Attorney supervises the Lawclerk and maintains full responsibility for the Lawclerk's work, the Attorney has sole responsibility for the attorney-client relationship, the Lawclerk has no client contact, the Lawclerk shall not appear before a court or tribunal, the Lawclerks do not share fees with the Attorneys, conflicts checks are undertaken in advance of any engagement, and the Lawclerk must affirm that the applicable rules of professional conduct have been reviewed that such rules with be complied with at all times (including maintaining client confidences).

In Advisory Opinion 2011-12/5, the New Hampshire Bar Association Ethics Committee addressed the outsourcing of legal and non-legal support services generally, as well as the more specific question of whether a New Hampshire lawyer may outsource litigation support services, such as document scanning and document review for relevance, confidentiality, and privilege, to a company located overseas on a temporary or ongoing basis.[259] The Committee provided the following short answer:

> Such engagement of support services does not of itself violate the Rules of Professional Conduct. The New Hampshire attorney must ensure that the individuals or companies providing the services maintain client confidences (Rule 1.6) and do not create conflicts of interest (Rule 1.7). The New Hampshire attorney must also ensure that the charges for these services do not result in an unreasonable fee or unreasonable expenses (Rule 1.5), and must not share fees with non-attorneys (Rule 5.4). The New Hampshire attorney must notify the client of the engagement of such services (Rules 1.2 and 2.1), must be competent

[258] NH R S CT Rule 35.
[259] New Hampshire Bar Association Ethics Committee, Ethics Committee Advisory Opinion No. 2011-12/05, Outsourcing Legal and Non-Legal Support Services, December 14, 2011, available at https://www.nhbar.org/ethics/opinion-2011-12-05.

(Rule 1.1) to review the services provided (Rules 5.1 and 5.3), and must avoid the assistance of the unauthorized practice of law (Rule 5.5).[260]

Before delving into the specific question presented, the Committee noted that lawyers regularly engage companies to provide support services, such as outsourcing their libraries, litigation and trial support services, and accounting and financial services. The Committee also cited to ABA Op, 08-451 (2008), wherein the ABA called such outsourcing "a salutary one for our globalized economy" and one that may reduce costs to clients.[261]

Addressing the issue of scanning, the Committee referred to its prior opinions where it determined that outsourcing of non-legal support services, including word processing services, credit card services, microfilming services, and off-site storage retrieval service, does not create an ethical problem as long as the lawyer takes all reasonable measures to ensure that the companies involved maintain client confidentiality. Related to the scanning and document review, the Committee further explained that the lawyer should take protective measures to either protect the files themselves (by encryption) or to protect the method of transmission (by using a secured protocol) when transmitting large amounts of data over the internet.

Turning to the issue of outsourcing document review by nonlawyers, the Committee explained that such outsourcing is permitted; however, the lawyer must be mindful of the following ethical considerations:

> *Disclosure of the arrangement to the client under Rule 1.2 (Scope of representation) and Rule 7.1 (Communications concerning a lawyer's services).* Even sophisticated clients may not anticipate that a lawyer will outsource document review. Accordingly, the lawyer should discuss the arrangement, all risks and benefits, and any possible alternatives with the client before outsourcing document review.
>
> *Maintenance of client confidences under Rule 1.6.* The New Hampshire attorney should insist upon a provision in any outsourcing agreement that requires confidentiality, and should consider requiring the company to make the confidentiality requirement part of its employee manual.
>
> *Avoidance of conflicts of interests under Rule 1.7.* The New Hampshire attorney should routinely require the service company to perform a conflicts check if it has more than one client.
>
> *Avoidance of sharing of fees with non-lawyers under Rule 5.4.* A fixed fee agreement should help avoid the sharing of fees.
>
> *Avoidance of assisting in the unauthorized practice of law under Rule 5.5.* The outsourcing of a limited function, such as document review, will probably not

[260] *Id.*

[261] *Id.*(citing ABA Op. 08-451 (2008) (Lawyer's Obligations When Outsourcing Legal and Nonlegal Support Services).

create an issue, but the New Hampshire attorney should nevertheless be mindful of not stepping over the line if outsourcing additional legal support services.

Responsibilities under Rule 5.1 (for lawyers) and Rule 5.3 (for non-lawyer assistants). The Supreme Court will not likely sanction an overseas company or its employees for any violations of the Rules of Professional Responsibility. Accordingly, the Court will likely place the responsibility on the New Hampshire attorney to oversee the work performed overseas, and ensure that it is performed competently and in an ethical manner. At a minimum, this will require that the attorney maintain independence of judgment under Rule 2.1, and be competent, under Rule 1.1, to review the work. [[262]]

Consistent with the guidance provided in Opinion No. 2011-1215, LAWCLERK advises the Attorneys to disclose their use of the Lawclerks to their clients, the Lawclerks must affirm that they will review and comply with the Rules of Professional Conduct, including maintaining client confidences, conflicts checks are performed before a Lawclerk is engaged, the Lawclerk is paid by a fixed fee, the Lawclerk only performs the services delegated by the Attorney and the Attorney retains responsibility for the services rendered by the Lawclerk, and only the Attorney provides legal advice to the client.

In Advisory Opinion 1995-96/3, the Committee was asked to opine regarding the propriety of an employment agency that employs licensed attorneys, law graduates, and law students to provide temporary legal and quasi-legal services to law firms and other businesses, as well as to act as a placement agency.[263] Responding that law firms may hire/lease lawyers through such an agency so long as the temporary lawyers, employment agency, and law firm: (i) comply with the rules regarding the unauthorized practice of law and interference with professional judgment; (ii) take appropriate steps to disclose the existence of a lawyer leasing arrangement to the client to the extent appropriate and necessary; and (iii) comply with the rules prohibiting conflicts of interest and breach of client confidences.[264] The Committee expounded that the agency must never learn confidential information of a firm client and must implement procedures to avoid breaches of confidence by the temporary lawyer, including among the employees of the agency. Additionally, the temporary lawyer, law firms, and employment agency must take measures to avoid conflicts of interest problems. Beyond these categorical issues, the Committee advised that:

The employment agency should:

a. Structure its activities and fee arrangements such that it is not involved in the practice of law.
b. Avoid interference with the independent judgment of the temporary lawyers.

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[262] *Id.*

[263] New Hampshire Bar Associations Ethics Committee, Ethics Committee Advisory Opinion No. 1995-96/3, , November 8, 1995, available on Casemaker.

[264] *Id.* (citing See N.H. Ethics Committee Opinion #1989-90/9, July 25, 1990; accord, ABA Ethics Opinion 88-356(1988); California Ethics Opinion 1992-126 (1992), Illinois Ethics Opinion No. 92-7 (1993); South Carolina Ethics Opinion 91-09 (1991); North Carolina Ethics Opinion 104 (1991); *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576 (Mich. 1971)).

c. Provide appropriate disclosures concerning its relationship with the temporary lawyers and its customers.
d. Establish procedures to prevent disclosure of client confidences to agency employees or other temporary lawyers.

The temporary lawyers should:

a. Preserve his/her independent judgment in providing legal services.

b. Provide appropriate disclosures concerning his/her relationship with the agency.

c. Provide appropriate disclosure for conflict evaluation purposes and routinely monitor for conflicts.

d. Avoid inadvertent disclosure of client confidences and inadvertent receipt of confidential information.

The law firm customer of the agency should:

a. Provide appropriate disclosures concerning the relationship with the temporary lawyer and agency.

b. Monitor the temporary lawyers performance for compliance with ethical rules and quality of legal services.

c. Perform appropriate conflict evaluation discussions and routinely monitor for conflicts.

d. Establish procedures to prevent disclosure of client confidences to the temporary lawyer. [265]

As discussed above, LAWCLERK complies with the guidelines enunciated in Opinion No. 24.

New Jersey.

In 1990, the New Jersey Supreme Court Committee on the Unauthorized Practice of Law concluded in Advisory Opinion No. 24 that paralegals and legal assistants that are retained on a limited basis, unlike paralegals and legal assistants that are employed full-time by a lawyer, are engaged in the unauthorized practice of law."[266] This determination was challenged by several independent paralegals whom lawyers did not employ, but retained on a temporary basis. The New Jersey Supreme Court reversed, finding that there was no rational basis to treat employed paralegals disparately from independent paralegals.[267]

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[265] *Id.*
[266] *In re Opinion No. 24 of the Comm. on the Unauthorized Practice of Law*, 607 A.2d 962 (N.J. 1992).
[267] *Id.* at 973.

In addressing the issue, the New Jersey Supreme Court explained that "[u]nder both federal law and New Jersey law, and under both the ABA and the New Jersey ethics Rules, lawyers may delegate legal tasks to paralegals if they maintain direct relationships with their clients, supervise the paralegal's work and remain responsible for the work product."[268]

Refuting the concern that independent paralegals have a "physical distance" from the lawyer that may impede the lawyer's ability to supervise the paralegal, the New Jersey Supreme Court responded as follows:

> We recognize that distance between the independent paralegal and the attorney may create less opportunity for efficient, significant, rigorous supervision. Nonetheless, the site at which the paralegal performs services should not be the determinative factor. In large law firms that have satellite offices, an employed paralegal frequently has less face-to-face contact with the supervising attorney than would a retained paralegal.
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> Moreover, in this age of rapidly-expanding instant communications (including fax tele-transmissions, word processing, computer networks, cellular telephone service and other computer-modem communications), out-of-office paralegals can communicate frequently with their supervising attorneys. Indeed, as technology progresses, there will be more communication between employers and employees located at different sites, even different states. That arrangement will be helpful to both the paralegal and the attorney. Parents and disabled people, particularly, may prefer to work from their homes. Sole practitioners and small law firms will be able to obtain the services of paralegals otherwise available only to large firms.
>
> Moreover, nothing in the record before the Committee suggested that attorneys have found it difficult to supervise independent paralegals. Indeed, the paralegals testified that the use of word processing made an attorney's quick review of their work possible. Most of the independent contractors who testified worked under the supervision of attorneys with whom they had regular communication.[[269]]

Consistent with the paralegal analysis, when analyzing the unauthorized practice of law, the New Jersey Supreme Court has drawn a distinction between lawyers providing law clerk services supervised by a barred lawyer and lawyers employed as associates of a firm that are not barred by New Jersey. In *Jackman*, the New Jersey Supreme Court found that a lawyer had engaged in the unauthorized practice of law where the lawyer seeking admission had provided all of the services of a senior associate at a New Jersey law firm for eight years despite only being barred in Maryland on inactive status, including interviewing and counseling clients, preparing and signing documents on behalf of clients, and negotiating on mergers and acquisition matters.[270] The court juxtaposed the full lawyer services that the associate had provided with those of a law

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[268] *Id.* at 969.
[269] *Id.*
[270] *In the matter of the Application of Jackman for Admission to the Bar*, 761 A.2d 1103, 1107 (N.J. 2000)

clerk who prepares legal research and documents for review and action by another responsible lawyer licensed in New Jersey.[271]

2020 UPDATE: New Jersey courts have decided several cases since the first draft of this document.

In *In re Verrastro*, the Supreme Court of New Jersey found that a lawyer who worked with a suspended attorney did not help that suspended attorney engage in the unauthorized practice of law. The court found that the lawyer spoke to the suspended attorney for the "limited purpose of being 'brought up to speed' on the background of the matters for which he was assuming responsibility, and not for the purpose of seeking legal advice or direction from [the suspended attorney."[272] In other cases, the New Jersey courts frowned upon paralegals filing legal documents without supervision [273] and lawyers failing to supervise paralegals.[274]

LAWCLERK comports with this guidance. *Verrastro* and related cases prove that there is no unauthorized practice where a lawyer consults with a nonlawyer for the purpose of being brought up to speed. LAWCLERK promotes the policy behind this rule by allowing Lawclerks to work on projects under the direct supervision of attorneys. Moreover, in accord with other New Jersey cases, LAWCLERK's terms of service require Attorneys to supervise Lawclerks at all times and assume all responsibility for the work product prepared by the Lawclerks. Therefore, the possibility of unsupervised work product is not present at LAWCLERK.

New Mexico.

While Rule 16-505 of the New Mexico State Court Rules provides that only lawyers that have passed the bar may practice law, this rule "does not limit a lawyer's ability to hire paralegals, as long as a lawyer supervises the delegated tasks and assumes responsibilities for their actions."[275] As the Supreme Court of New Mexico previously recognized, "[t]he utilization of legal assistants is firmly established in our legal system. It is a practice that can provide cost savings to clients by allowing certain tasks to be performed by non-lawyers that otherwise would be performed by the lawyer."[276] However, the lawyer must not abdicate all responsibilities to legal assistants and must maintain the primary responsibility for interacting with clients.[277]

New York.

In Ethics Opinion No. 1079, the New York State Bar Association affirmatively cited the ABA Guidelines' definition of "legal assistant" as follows: "[a] legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically

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[271] *Id.*
[272] *In re Verrastro*, No. DRB 19-193 (N.J. Jan. 10, 2020).
[273] *Baron v. Karmin Paralegal Servs*. No. A-1025-18T1 (N.J. Super. App. Div. October 29, 2019); *In re Winograd*, No. DRB 19-025 (N.J. March 28, 2019).
[274] *In re Al-Misri*, No. DRB 18-344 (N.J. April 25, 2019); *In re Ehrlich*, No. 17-347 (N.J. April 4, 2018).

[275] *In re Montoya*, 266 P.3d 11, 19 (N.M. 2011).
[276] *In re Houston*, 985 P.2d 752, 755 (N.M. 1999).
[277] *Id.*

delegated substantive legal work for which a lawyer is responsible."[278] The Opinion then went on to explain that:

> The only requirement in the Rules pertaining to the work of paralegals is that an employing law firm must ensure that the work of nonlawyers who work for the firm is 'adequately supervised, as appropriate.' Rule 5.3(a). The degree of supervision required is that which is 'reasonable under the circumstances, taking into account such factors as the experience of the person whose work is being supervised, the amount of work involved and the likelihood that ethical problems might arise in the course of working on the matter.'[279]

In *Parker*, the New York Supreme Court recognized that the "appropriate use of legal assistants facilitates the delivery of legal services at a reasonable cost in fulfillment of the obligations of lawyers to make legal counsel available to the public."[280] However, where the barred lawyer had allowed a resigned lawyer working in the capacity of a legal assistant to draft and finalize a contract for sale and an affidavit and to appear on behalf of the client and negotiate and execute the forbearance agreement, the barred lawyer had aided the nonlawyer in the unauthorized practice of law.[281] Consistent therewith, a lawyer was held to have assisted a nonlawyer in the unauthorized practice of law where the lawyer hired a disbarred lawyer to serve as a legal assistant, but, the lawyer: (i) relied upon the disbarred lawyer's legal knowledge and expertise in giving the disbarred great autonomy in the performance of his work on clients' legal matters; (ii) delegated to the disbarred lawyer the responsibility of being the principal contact with his clients with little or no supervision; and (iii) endorsed the disbarred lawyer's use of a false identity when communicating with clients, presumably to deceive them as to his status as a disbarred lawyer.[282] Similarly, a lawyer was determined to have assisted a nonlawyer paralegal in the unauthorized practice of law where the lawyer he relied on the paralegal to prepare pleadings and filed them with the court without reviewing them or otherwise supervising the paralegal's work.[283]

2020 UPDATE: Several developments have occurred in New York since the first draft of this document. First, New York has issued an ethics opinion on freelance legal work establishing further recognition of the benefits of allowing attorneys to engage freelance lawyers. The digest to this opinion states:

> A New York attorney seeking to market services as a "freelance attorney" to provide contract or per diem services to other attorneys or law firms may use the

[278] Ethics Opinion No. 1079, issued December 16, 2015, N.Y. State Bar Association, available at http://www.nysba.org/CustomTemplates/Content.aspx?id=60760.
[279] Id. at para. 6.
[280] *Matter of Parker,* 241 A.D.2d 208 (N.Y.1998).
[281] *Id.*
[282] *In re Weber*, 134 A.D.3d 13, 17 (N.Y. App. Div. 2015); *see also In re Rozenzaft*, 143 A.D.3d 65 (N.Y. App. Div. 2016 (wherein a lawyer failed to adequately supervise two paralegals allowing them to conduct hundreds of real estate closings without his supervision and allowed them to use his signature stamp and/or sign his name on real estate documents and to issue checks from his operating and escrow accounts); *In re Herzberg*, 163 A.D.3d 220 (N.Y. 2018); *In re Sishodia*, 154 A.D.3d 123 (N.Y. 2017).
[283] *In re Sobolevsky*, 96 A.D.3d 60, 62 (N.Y. 2012).

> name and domain name Surname Esquire. Depending on the nature of services provided, the lawyer need not comply with the strict rules on maintaining separate bank accounts but may need to comply with certain recordkeeping requirements. The lawyer is otherwise subject to the ethical rules, including the obligation to check for and avoid conflicts of interest. [284]

LAWCLERK complies with this guidance. New York clearly acknowledges the importance of freelance legal services to providing cost-effective legal services to the public. LAWCLERK's terms of service dispense with any need to maintain bank accounts. Moreover, LAWCLERK has a two-level process for evaluating potential conflicts of interest. Therefore, LAWCLERK comports with the ethical opinion.

In addition, several cases from New York have clarified the bounds of Rules 5.3 and 5.5. The courts found that the rules were violated when: (i) an attorney did not supervise a legal intern who had not passed the bar exam;[285] (ii) an attorney allowed a nonlawyer to accept fees for representing a criminal defendant;[286] (iii) an attorney allowed an unlicensed law school graduate to sign orders as 'attorney for plaintiff,' and to appear for a client at a deposition;[287] and (iv) an attorney who failed to supervise nonlawyer staff during a personal injury case.[288]

These cases stand for the proposition that attorneys must competently and completely supervise nonlegal staff. LAWCLERK aids this purpose. LAWCLERK's terms of service require Attorneys to supervise Lawclerks, to maintain full responsibility for reviewing and submitting the final work product, and for maintaining the attorney-client relationship. In fact, LAWCLERK's terms of service preclude Lawclerks from engaging with Attorneys clients, opposing counsel, and the courts.

North Carolina.

"It was not the purpose and intent of the [unauthorize practice of law] statute to make unlawful all activities of lay persons which come within the general definition of practicing law ... its purpose is for the better security of the people against incompetency and dishonesty in an area of activity affecting general welfare."[289] Consistent therewith, nonlawyers have been held to have engaged in the unauthorized practice of law where they, without lawyer supervision, move beyond the permissible scope of scrivener to providing legal advice.[290] By way of example, a bankruptcy

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[284] New York State Bar Association Committee on Professional Ethics, Opinion No. 1184 (Mar. 10, 2020).
[285] *In re Rain*, 162 A.D.3d 1458, 79 N.Y.S.3d 387 (N.Y. App. Div. 2018).
[286] *In re Radlin*, 178 A.D.3d 61, 108 N.Y.S.3d 11 (N.Y. App. Div. 2019)
[287] *In re Braverman,* 178 A.D.3d 35, 109 N.Y.S.3d 47 (N.Y. App. Div. 2019).
[288] *In re Mauser*, 2020 NY Slip Op 3294 (N.Y. App. Div. 2020).
[289] *State v. Williams*, 650 S.E.2d 607, 611 (Ct. App. N.C. 2007) (quoting State v. Pledger, 27 S.E.2d 337, 339 (N.C. 1962)) (In *Williams*, the letter that the defendant wrote to a victim of crimes allegedly committed by a fellow inmate and pages that accompanied the letter were insufficient to support a conviction for practicing law without a license, even though the accompanying pages were a blank affidavit form and a suggested paragraph for the victim to include in the affidavit where the defendant did not hold himself out as an attorney or as having a law degree, and the defendant's counsel was limited to general advice to come to court, to tell the truth, to consider executing an affidavit, which affidavit and paragraph were handwritten on jail-supplied paper, and the defendant repeatedly urged victim not to rely on him and to seek advice from an attorney); *see also North Carolina State Bar v. Ely*, 810 S.E.2d 346 (N.C. 2018).
[290] *In re Springs*, 358 B.R. 236, 245 (Bankr. M.D.N.C. 2006).

petition preparer was held to have engaged in the unauthorized practice of law when, in preparing the debtor's petition and schedules, the petition preparer, without lawyer supervision, provided legal advice and case citations to relevant case law concerning exemptions that the debtor may claim on his schedules.[291] Similarly, a commercial lien-filing service that did not employ a lawyer was held to have engaged in the unauthorized practice of law in preparing claims of lien, which was a "legal document" because it was prepared to enforce a claimant's statutory lien rights, and the service's efforts in preparing that document on their clients' behalf exceeded the limited protection given scriveners.[292] Conversely, at LAWCLERK, legal advice is solely provided to the Attorney's client by the Attorney. The Lawclerk has no client contact and cannot provide advice to the Attorney's client.

The Formal Ethics Opinions of the Council of the North Carolina State Bar further establish that while a nonlawyer may not give legal advice to a lawyer's client, a nonlawyer (such as a paralegal, law clerk, or legal assistant) may provide assistance to the lawyer in the provision of legal services to a client as long as the lawyer maintains the attorney-client relationship and supervises the nonlawyer. For instance, 1998 Formal Ethics Opinion 7 provides that a law firm may employ a disbarred lawyer as a paralegal, law clerk, or some other capacity other than as a lawyer provided it is not the same firm at which the misconduct occurred and the new law firm does not accept any new clients that were clients of the disbarred lawyer's prior firm during the period of the misconduct.[293]

In 2002 Formal Ethics Opinion 9, the North Carolina State Bar was asked to address the following inquiry:

> In connection with a residential real estate transaction, a lawyer is retained to ensure that the documents are properly executed and that the loan and sale proceeds are properly distributed, in addition to other services, if any, that the lawyer is retained to provide. May the lawyer assign to a nonlawyer assistant the tasks of presiding over the execution of the documents and the disbursement of the closing proceeds necessary to complete the transaction? [[294]]

The North Carolina Bar responded, "Yes. The lawyer may delegate the direction of the execution of the documents and disbursement of the closing proceeds to a nonlawyer who is supervised by the lawyer provided, however, the nonlawyer does not give legal advice to the parties."[295] In reaching this conclusion, the North Carolina State Bar noted that it is common for lawyers, exercising their sound legal discretion, to delegate to their nonlawyer assistants other tasks in connection with residential real estate transactions, including researching public records

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[291] *Id.*

[292] *N. Carolina State Bar v. Lienguard, Inc.,* No. 2014 WL 1365418, at *11 (N.C.2014).

[293] North Carolina State Bar 98 Formal Ethics Opinion 7, Employment of Disbarred Lawyer, April 16, 1998, available at https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/98-formal-ethics-opinion-7/?opinionSearchTerm =paralegal.

[294] North Carolina State Bar, 2002 Formal Ethics Opinion 9, Delegation to Nonlawyer Assistant of Certain Tasks Associated with a Residential Real Estate Transaction, January 24, 2003, available at https://www.ncbar.gov/for-lawyers/ethics/adopted-opinions/2002-formal-ethics-opinion-9/.

[295] *Id.*

and recording documents.[296] The North Carolina State Bar further explained that "[a]s is the case with any task that a lawyer delegates to a nonlawyer, competent practice requires that the lawyer determine that delegation is appropriate after having evaluated the complexity of the transaction, the degree of difficulty of the particular task, the training and ability of the nonlawyer, the client's sophistication and expectations, and the course of dealings with the client."[297]

Consistent with these Formal Ethics Opinions, LAWCLERK allows an Attorney, after exercising professional judgment and determining the complexity of the transaction and the training and ability of the Lawclerk, to determine which tasks to assign to the Lawclerk. However, adding further protection, the Lawclerk has no contact with the Attorney's client and it is only the Attorney that provides legal advice to the Attorney's clients.

North Dakota.

North Dakota's prohibition of the unauthorized practice of law "is aimed at preventing the harm caused by unqualified persons performing legal services for others."[298] Consistent therewith, Rule 5.3(d) of the North Dakota Rules of Professional Conduct provides:

> (1) A lawyer may delegate to a legal assistant[[299]] any task normally performed by the lawyer except those tasks proscribed to one not licensed as a lawyer by statute, court rule, administrative rule or regulation, controlling authority, or these Rules.
>
> (2) A lawyer may not delegate to a legal assistant:
>
> > (i) responsibility for establishing a lawyer-client relationship;
> >
> > (ii) responsibility for establishing the amount of a fee to be charged for a legal service;
> >
> > (iii) responsibility for a legal opinion rendered to a client; or
> >
> > (iv) responsibility for the work product.

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[296] *Id.*
[297] *Id.*
[298] *Ranta v. McCarney*, 391 N.W.2d 161, 163 (N.D. 1986) (quoting *State v. Niska*, 380 N.W.2d 646, 648 (N.D. 1986)).
[299] The North Dakota Supreme Court has repeatedly indicated that a lawyer may serve in a legal assistant, paralegal, or other non-lawyer capacity. *See In re Application for Reinstatement of Varriano,* 872 N.W.2d 338, 339 (N.D. 2015) (discussing how the services rendered by a suspended lawyer serving as a paralegal did not constitute the unauthorized practice of law); *see also In re Reinstatement of Ellis*, 721 N.W.2d 693, 696 (N.D. 2006) (discussing that a suspended lawyer properly provided services as a paralegal under the direct supervision of a barred lawyer during her suspension with the one exception of when she met in person with a client); *see also* State Bar Association of North Dakota Ethics Committee Opinion Number 2001-02, dated May 24, 2011, https://www.sband.org/page/ethics_opinions (lawyer who has been suspended from the practice of law may act as a paralegal, legal assistant, or other type of support staff to a licensed attorney, so long as the suspended lawyer complies with the strictures of *In re Application of Christenson*, 215 N.W. 2d 970 (N.D. 1974) (meaning, the suspended attorney does not obtain clients, retain former clients, service claims with the connivance of another lawyer and through the use of another lawyer's name, or receives a law clerks salary as a surrogate for legal fees), and Rule 5.3 of the North Dakota Rules of Professional Conduct); *In re Petition for Leave to Appeal by Gerber*, 868 N.W.2d 861 (N.D. 2015).

(3) The lawyer shall make reasonable efforts to ensure that clients, courts, and other lawyers are aware that a legal assistant is not licensed to practice law.[300]

Importantly, LAWCLERK prohibits Lawclerks from providing any of the services set forth in Rule 5.3(d)(2) of the North Dakota Rules of Professional Conduct.

Applying Rule 5.3, the North Dakota Supreme Court held that a lawyer violated Rule 5.3 when he employed a paralegal and put the paralegal primarily in charge of a client's file when the paralegal had previously worked for the opposing counsel on the other side of the same litigation matter.[301] Notably, the court held that nonlawyer employees may work for an opposing firm if appropriate screening processes are put in place.[302] To preclude similar conflicts issues, LAWCLERK employs a two-tier conflicts check. The first is an internal conflicts check that removes any Lawclerk from selection that has previously worked on matters involving the opposing party to the engagement for which they are being considered. In the second phase of the conflicts check, Lawclerks must affirm that they have no connections to the other parties to the project for which they are being considered for engagement.

Ohio.

Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio is titled "Unauthorized practice of law" and provides in pertinent part that:

(A) The unauthorized practice of law is:
(1) The rendering of legal services for another by any person not admitted to practice in Ohio under Rule I of the Supreme Court Rules for the Government of the Bar unless the person is:

(a) Certified as a legal intern under Gov. Bar R. II and rendering legal services in compliance with that rule;

(b) Granted corporate status under Gov. Bar R. VI and rendering legal services in compliance with that rule;

(c) Certified to temporarily practice law in legal services, public defender, and law school programs under Gov. Bar R. IX and rendering legal services in compliance with that rule;

(d) Registered as a foreign legal consultant under Gov. Bar R. XI and rendering legal services in compliance with that rule;

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[300] ND R RPC Rule 5.3(d); *see also In re Reinstatement of Ellis*, 721 N.W.2d 693, 696 (N.D. 2006) (discussing that a suspended lawyer properly provided services as a paralegal under the direct supervision of a barred lawyer during her suspension with the one exception of when she met in person with a client).
[301] *In re Disciplinary Action Against Johnston*, 872 N.W.2d 300, 307 (N.D. 2015), reh'g denied (Jan. 14, 2016).
[302] *Id.*

(e) Granted permission to appear pro hac vice by a tribunal in a proceeding in accordance with Gov. Bar R. XII and rendering legal services in that proceeding;

(f) Rendering legal services in accordance with Rule 5.5 of the Ohio Rules of Professional Conduct (titled "Unauthorized practice of law; multijurisdictional practice of law").

(2) The rendering of legal services for another by any person:

(a) Disbarred from the practice of law in Ohio under Gov. Bar R. V;

(b) Designated as resigned or resigned with disciplinary action pending under former Gov. Bar R. V (prior to September 1, 2007);

(c) Designated as retired or resigned with disciplinary action pending under Gov. Bar R. VI.

(3) The rendering of legal services for another by any person admitted to the practice of law in Ohio under Gov. Bar R. I while the person is:

(a) Suspended from the practice of law under Gov. Bar R. V;

(b) Registered as an inactive attorney under Gov. Bar R. VI;

(c) Summarily suspended from the practice of law under Gov. Bar R. VI for failure to register;

(d) Suspended from the practice of law under Gov. Bar R. X for failure to satisfy continuing legal education requirements;

(e) Registered as retired under former Gov. Bar R. VI (prior to September 1, 2007).

(4) Holding out to the public or otherwise representing oneself as authorized to practice law in Ohio by a person not authorized to practice law by the Supreme Court Rules for the Government of the Bar or Prof. Cond. R. 5.5.[303]

The Supreme Court of Ohio held that a paralegal working through his own company, Alpha Legal Services, that did not employ any lawyers engaged in the unauthorized practice of law where the paralegal (not a lawyer) made initial contact with the clients, entered into engagement

[303] S.C. R. Gov't of the Bar of Ohio, R. VII, Sec. 2, available at http://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf.

agreements with the clients, advised a criminal client on his plea, researched and filed a motion to suppress evidence on behalf of a client, drafted a motion for full custody and a motion for continuance which were signed by the client and filed by the paralegal, all of which was taken without any lawyer supervision.[304] In reaching this conclusion, the court considered representations that a now-deceased lawyer had supervised the paralegal (and therefore the paralegal had not engaged in the unauthorized practice of law), but determined that such representations were not credible as none of the clients had met the lawyer, the engagement agreement did not name the lawyer, and none of the legal documents included the name of the lawyer in the caption or the signature block.[305]

The Supreme Court of Ohio has also held that when nonlawyers give legal advice and counsel to defendants in collection proceedings in an attempt to settle those cases without the supervision of a barred lawyer, the nonlawyers engage in the unauthorized practice of law.[306] Similarly, when nonlawyer document preparation companies use computer software and official court forms to prepare legal documents and pleadings for customers, which necessarily includes providing legal advice in the selection and completion of the forms, the companies engage in the unauthorized practice of law.[307]

Unlike in *Davie, Telford,* and *Cohen*, at LAWCLERK, the Lawclerks do not have any client contact and only act at the direction of, and under the supervision of, the Attorney.

2020 UPDATE: Two Ohio cases are notable. In *Disciplinary Counsel v. Spicer*, the court said, "[W]e have explained that although an unlicensed person may assist in the provision of legal services, 'the individual's actions must be closely supervised and approved by a licensed attorney.'"[308] In *Disciplinary Counsel v. Smidt*, the court noted that although a paralegal claimed that she filed legal documents under the supervision of an attorney, there was unauthorized practice of law where the attorney was unaware of the paralegal's activities and they were not taken at the attorney's direction.[309]

LAWCLERK's Attorneys and Lawclerks act in accord with this guidance. LAWCLERK's terms of service require Attorneys to supervise Lawclerks at all times and to take full responsibility for any work product that is presented to a court or a client. The Lawclerk has no interaction with a client at any time and is precluded from signing or filing any documents with the courts. Moreover, at LAWCLERK, the Attorney will always be aware of the actions taken by a Lawclerk because they will be taken solely at the Attorney's direction.

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[304] *Cleveland Metro. Bar Assn. v. Davie*, 977 N.E.2d 606, 610 (Ohio 2012).
[305] *Id.*
[306] *Cincinnati Bar Assn. v. Telford,* 707 N.E.2d 462 (1999); *see also Ohio State Bar Association v. Klosk*, 122 N.E.3d 107 (Ohio 2018); *Ohio State Bar Association v. Century Negotiations, Inc.*, 92 N.E.3d 866 (Ohio 2017).
[307] *Ohio State Bar Ass'n. v. Cohen*, 836 B.E.2d 1219 (Ohio 2005).

[308] *Disciplinary Counsel v. Spicer*, No. 2020-0034 (Ohio May 26, 2020).
[309] *Disciplinary Counsel v. Smidt*, No. 2019-0827 (Ohio June 11, 2020).

Oklahoma.

Applying Rules 5.3 and 5.5 of the Oklahoma Rules of Professional Conduct, the Oklahoma Supreme Court held that a lawyer assisted a nonlawyer in the unauthorized practice of law where the lawyer employed a nonlawyer that operated a business separate from the lawyer's law firm, but that used the lawyer's name and where all payroll and expenses were run through the lawyer's accounts.[310] Through the business that employed the nonlawyer, without the lawyer's knowledge or supervision, the nonlawyer: (i) entered into a retention agreement with a client for the provision of legal services; (ii) told the client that the lawyer would argue the appeal despite the lawyer not being aware of the client; (iii) conducted legal research; and (iv) drafted a motion for post-conviction relief and a petition for writ of certiorari to the United States Supreme Court.[311]

Responding to the inquiry of whether a disbarred or suspended lawyer may question witnesses at a deposition while supervised by a lawyer, the Oklahoma Bar Association Ethics Counsel opined that "[a] licensed supervising attorney may delegate to non-lawyers clerical assignments such as researching case law, finding and interviewing witnesses, examining court records, and delivering papers or messages. However, a licensed supervising attorney must not delegate to a non-lawyer, including a disbarred or suspended lawyer, tasks such as providing legal advice to clients, preparing legal documents for clients, or conducting court proceedings."[312] Further, discussing whether a disbarred lawyer should be reinstated, the Oklahoma Supreme Court affirmatively cited, among other facts supporting reinstatement, that after the nonlawyer was released from prison, he worked as a law clerk for three different lawyers where, under the supervision of the lawyers, he performed legal research and writing, trial preparation, and clerical work.[313]

The ethics opinion and the *Cohen* and *Martin* cases illustrate why LAWCLERK does not engage in the unauthorized practice of law in Oklahoma. At LAWCLERK, Attorneys maintain the attorney-client relationship, all legal advice is provided to the client by the Attorney, the Lawclerk only performs the services delegated to him/her by the Attorney and supervised by the Attorney, the Attorney retains full responsibility for the Lawclerk's work, and the Lawclerk cannot have any client contact, contact with any other parties to the case, and cannot appear in court or any other tribunal.

2020 UPDATE: In November 2019, the Oklahoma Supreme Court issued an order modifying Oklahoma's Rule 5.5. The order modified the rule as follows, in pertinent part:

> (d) A lawyer admitted in another United States jurisdiction that has reciprocity with the State of Oklahoma, and not disbarred or suspended from practice in any jurisdiction, and is in compliance with Rule 2, Section 5 of the Rules Governing Admission to the Practice of Law in the State of Oklahoma, may provide legal services in this jurisdiction that:

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[310] *State ex rel. Oklahoma Bar Ass'n v. Martin*, 240 P.3d 690, 698 (Okla. 2010).
[311] *Id.*; *see also State ex rel. Oklahoma Bar Association v. Gaines*, 431 P.3d 63 (Okla. 2018).
[312] Ethics Opinion No. 319, issued by the Oklahoma Bar Association Ethics Counsel, available at https://www.okbar.org/ethics/ethics-opinion-no-319/.
[313] *In re Reinstatement of Blake,* 371 P.3d 465, 468 (Okla. 2016).

(1) are provided to the lawyer's employer or its organizational affiliates in connection with the employer's matters, provided the employer does not render legal services to third persons and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction. [314]

LAWCLERK complies with this revised rule. LAWCLERK does not allow disbarred or suspended attorneys to serve as Lawclerks. Moreover, LAWCLERK does not permit Attorneys to engage Lawclerks for any activities that would allow a Lawclerk to render legal services directly to third persons. Thus, the use of LAWCLERK complies with Oklahoma law.

Oregon.

In 1937, the Oregon legislature deleted the definition of the "practice of law" from the unauthorized practice of law statutes.[315] Thus, since 1937, the determination of the practice of law has been determined on a case-by-case basis with an understanding that the "practice of law" includes the "exercise of professional judgment in applying legal principles to address another person's individualized needs through analysis, advice, or other assistance."[316]

Applying these strictures, the Oregon appellate court held that nonlawyers selling "do-it-yourself" divorce kits do not engage in the unauthorized practice of law; however, nonlawyers providing consultation, explanation, recommendation, advice, or other assistance in selecting particular forms, filling out the forms, or advising how the forms should be used in solving the particular customer's marital problems does constitute the unauthorized practice of law.[317] Similarly, a nonlawyer was held to have engaged in the unauthorized practice of law where he provided, without the supervision of a lawyer, legal advice to his own clients regarding immigration matters, including which application to file, to file a request for re-entry, to travel to Mexico for an embassy interview, and that his client's immigration application would be treated more favorably if he were to marry.[318]

Attorneys have further been held to have assisted nonlawyers in the unauthorized practice of law where they have: (i) given a paralegal significant freedom with the lawyer's clients resulting in the paralegal, without lawyer supervision, examining wills and interpreting them for the lawyer's clients, discussing a client's assets to determine whether a living will would be an appropriate device for the client's use, and providing advice regarding the usefulness of trusts;[319] and (ii) allowed a nonlawyer to use pleading paper and a letterhead stamp with the lawyer's name on it in the nonlawyer's dissolution-processing business were the lawyer knew that the nonlawyer

[314] Order re Okla. Rules of Professional Conduct Nov. 12, 2019.
[315] *Oregon State Bar v. Smith*, 942 P.2d 793, 797 (Or. Ct. App. 1997).
[316] *Id.* at 800.
[317] *Oregon State Bar v. Gilchrist,* 538 P.2d 913 (Or. 1975).
[318] *Oregon State Bar v. Ortiz,* 713 P.2d 1068, 1070 (Or. Ct. App. 1986).
[319] *In re Conduct of Morin*, 878 P.2d 393, 401 (Or. 1994).

had been previously warned by the bar not to practice law and with the only lawyer supervision being an instruction to the nonlawyer to bring any legal questions she had to the lawyer.[320]

Conversely, where a secretary, paralegal, law clerk, or a disbarred lawyer composes and types legal documents, such as contracts, affidavits, and correspondence, at the direction of a barred lawyer, but is not the person "actually acting as the attorney for a client," such conduct does not constitute the unauthorized practice of law.[321] Additionally, Formal Opinion No. 2005-24 issued by the Oregon Board of Governors provides that a lawyer may employ a suspended or disbarred lawyer to assist the lawyer in performing functions that do not include giving legal advice and can lawfully be performed by nonlawyers, such as legal assistants or law clerks.[322] Consistent with these decisions, LAWCLERK allows Attorneys to obtain paraprofessional assistance from the Lawclerks without the Lawclerks having any contact with the Attorney's client and ensures that all legal advice is provided to the client by the Attorney (not the Lawclerk).

Pennsylvania.

The Pennsylvania Supreme Court has "not attempted to provide a comprehensive statement of what activities comprise the practice of law," instead holding that what specific activities constitute the practice of law must be determined on a case by case basis.[323] However, the court has expressed that the "practice of law is implicated by the holding out of oneself to the public as competent to exercise legal judgment and the implication that he or she has the technical competence to analyze legal problems and the requisite character qualifications to act in a representative capacity."[324] The prohibition on the unauthorized practice of law serves to protect Pennsylvania's citizens, to protect the public's interest in competent legal representation, and to insure the integrity of the legal system.[325]

Consistent therewith, the Pennsylvania Bar Association's Unauthorized Practice of Law Committee (the "PUPLC") has issued the following opinions that support the determination that LAWCLERK does not engage in the unauthorized practice of law. For instance, in Opinion 96-103, the PUPLC opined that "an organization of paralegals who form for the sole purpose of providing services only to legal counsel admitted to practice before the Supreme Court of Pennsylvania is not in violation of the Unauthorized Practice of Law statutes of the

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[320] *In re Jones*, 779 P.2d 1016 (Or. 1989).

[321] *State ex rel. Oregon State Bar v. Lenske,* 584 P.2d 759, 763 (Or. 1978).

[322] Formal Ethics Opinion No. 2005-24, approved August 2005, available at http://www.osbar.org/_docs/ethics/2005-24.pdf#xml=http://www.osbar.org/sitesearch/searchengine.asp?cmd=pdfhits&DocId=25&Index=C%3a%5cSearchData%5cOSB%2dEthics&HitCount=20&hits=14+16+1d+20+3b+4a+71+89+9b+b9+df+e2+f9+10e+137+157+163+16e+176+187+&hc=6335&req=non%2Dlawyer.

[323] *Office Of Disciplinary Counsel v. Marcone*, 855 A.2d 654, 660 (Pa. 2004) (holding that a suspended lawyer engaged in the unauthorized practice of law where he maintained a law office in Pennsylvania, held himself out to the public as one competent to provide legal services, and provided legal advice and documents to clients in federal court (but not state court) cases).

[324] *Id.* (citing *Dauphin County Bar Association v. Mazzacaro,* 351 A.2d 229, 232-233 (1976)).

[325] *Id.* at 661; *see also Shortz v. Farrell,* 193 A. 20, 24 (Pa. 1937) ("The object of the legislation forbidding practice to laymen is not to secure to lawyers a monopoly, however deserved, but, by preventing the intrusion of inexpert and unlicensed persons in the practice of law, to assure to the public adequate protection in the pursuit of justice, than which society knows no loftier aim.").

Commonwealth of Pennsylvania."[326] The PUPLC then expounded that should the paralegals offer their services to the general consumer public with regard to the preparation of legal documents or advice, then they would engage in the unauthorized practice of law.[327] Similarly, at LAWCLERK, Lawclerks solely provide services to barred Attorneys and have no contact with the Attorney's clients.

Like Connecticut, North Carolina, and other jurisdictions, the PUPLC has opined that companies such as LegalZoom, Legal Documentation Preparation Services, and We the People that offer legal document preparation services beyond supplying preprinted forms selected by the consumer, whether online or at a site in Pennsylvania, engage in the unauthorized practice of law, unless such services are provided by a person who is duly licensed to practice law in Pennsylvania retained directly for the subject of the legal services.[328] Quoting the Connecticut Bar's Informal Opinion, the PUPLC emphasized that while anyone may sell forms or provide solely clerical assistance in competing them, these companies' own advertisements evidence their engagement in the unauthorized practice of law: "…These services design, craft and select documents based on legal research and legal experience, and hold the documents out to be suitable for a particular customer's needs. Supervising attorneys or experts are also often available during the document preparation process. Their involvement would be an unnecessary expense to any stenographic activity. The involvement adds value only if they are giving legal advice. Attorneys, whether admitted in this state or elsewhere, are prohibited from engaging in the unauthorized practice of law in Connecticut by assisting another in doing so in this state."[329] Conversely, LAWCLERK prohibits Lawclerks from providing legal services or legal advice to an Attorney's clients; all legal advice is provided by the Attorney to the Attorney's clients.

Rhode Island.

The Rhode Island Supreme Court has held that the definition of the practice of law and the determination of who may practice law is explicitly within its province. The court has explained that the "practice of the law is affected with a public interest. It is, therefore, the right and duty of the state to regulate and control it so that the public welfare will be served and promoted. Assuring protection to duly licensed lawyers and counsellors against invasions of their franchise by unauthorized persons is only incidental or secondary to this primary purpose. Great and irreparable injury can come to the people, and the proper administration of justice can be prevented by the unwarranted intrusion of unauthorized and unskilled persons into the practice of the law."[330]

Consistent with this policy, the Rhode Island Supreme Court found that "Southside Professional Services" – a company whose business purpose is to refer its clients to lawyers with whom it has established relationships and to act as an intermediator between the clients and the lawyer during the case – and its owner had engaged in the unauthorized practice of law, where: (i)

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[326] Formal Opinion 96-103, Independent Paralegal Organization, available at http://www.pabar.org/public/committees/UNA01/Opinions/uplm96-103.asp.

[327] *Id.*

[328] Formal Opinion 2010-01, Legal Document Preparation by Online and In-Person Services, approved by the PUPLC on March 10, 2010, available at http://www.pabar.org/public/committees/UNA01/Opinions/2010-01LglDocumentPreparation.pdf.

[329] *Id.*

[330] *Creditors' Serv. Corp. v. Cummings*, 190 A. 2, 10 (R.I. 1937); *see also Cohen v. GTech Corp.*, 2006 WL 3059980, at *8 (R.I. 2006).

the marketing materials advertised that the company would provide specific legal services, including criminal defense and assistance with family court matters despite not employing a single lawyer; (ii) the company advertised under the "lawyers" section of the yellow pages; (iii) the owner of the company met with clients and quoted fees for legal services; and (iv) the owner of the company advised its clients about the legal process and provided preliminary legal advice before the client ever met with any lawyer.[331] Conversely, at LAWCLERK, the attorney-client relationship is established and maintained by the Attorney, all legal advice is provided by the Attorney, and the Lawclerk has no contact with the Attorney's client.

In Provisional Order No. 18, the Supreme Court of Rhode Island provided further guidance regarding the application of Rule 5.3 of the Rhode Island Rules of Professional Conduct, stating:

> These guidelines shall apply to the use of legal assistants by members of the Rhode Island Bar Association. A legal assistant is one who under the supervision of a lawyer, shall apply knowledge of law and legal procedures in rendering direct assistance to lawyers, clients and courts; design, develop and modify procedures, technique, services and processes; prepare and interpret legal documents; detail procedures for practicing in certain fields of law; research, select, assess, compile and use information from the law library and other references; and analyze and handle procedural problems that involve independent decisions. More specifically, a legal assistant is one who engages in the functions set forth in Guideline 2. Nothing contained in these guidelines shall be construed as a determination of the competence of any person performing the functions of a legal assistant, or as conferring status upon any such person serving as a legal assistant.
>
> GUIDELINE I
>
> A lawyer shall not permit a legal assistant to engage in the unauthorized practice of law. Pursuant to Rules 5.3 and 5.5 of the Rhode Island Supreme Court Rules of Professional Conduct, the lawyer shares in the ultimate accountability for a violation of this guideline. The legal assistant remains individually accountable for engaging in the unauthorized practice of law.
>
> GUIDELINE II
>
> A legal assistant may perform the following functions, together with other related duties, to assist lawyers in their representation of clients: attend client conferences; correspond with and obtain information from clients; draft legal documents; assist at closing and similar meetings between parties and lawyers; witness execution of documents; prepare transmittal letters; maintain estate/guardianship trust accounts; transfer securities and other assets; assist in the day-to-day administration of trusts and estates; index and organize documents; conduct research; check citations in briefs and memoranda; draft interrogatories and answers thereto, deposition notices and requests for production; prepare summaries of depositions and trial transcripts; interview witnesses; obtain records from doctors, hospitals, police departments, other agencies and institutions; and obtain information from courts. Legal

[331] *In re Medina*, 23 A.3d 650, 658 (R.I. 2011)

documents, including, but not limited to, contracts, deeds, leases, mortgages, wills, trusts, probate forms, pleadings, pension plans and tax returns, shall be reviewed by a lawyer before being submitted to a client or another party.

In addition, except where otherwise prohibited by statute, court rule or decision, administrative rule or regulation, or by the Rules of Professional Conduct, a lawyer may permit a legal assistant to perform specific services in representation of a client. Thus, a legal assistant may represent clients before administrative agencies or courts where such representation is permitted by statute or agency or court rules.

Notwithstanding any other part of this Guideline,

1) Services requiring the exercise of independent professional legal judgment shall be performed by lawyers and shall not be performed by legal assistants.

2) Legal assistant work under the direction and supervision of a lawyer, who shall be ultimately responsible for their work product.

3) The lawyer maintains direct responsibility for all aspects of a lawyer-client relationship, including responsibility for all actions taken by and errors of omission by the legal assistant, except as modified by Rule 5.3(c) of the Rules of Professional Conduct.

GUIDELINE III

A lawyer shall direct a legal assistant to avoid any conduct which if engaged in by a lawyer would violate the Rules of Professional Conduct. In particular, the lawyer shall instruct the legal assistant regarding the confidential nature of the attorney/client relationship, and shall direct the legal assistant to refrain from disclosing any confidential information obtained from a client or in connection with representation of a client.

GUIDELINE IV

A lawyer shall direct a legal assistant to disclose that he or she is not a lawyer at the outset in contacts with clients, courts, administrative agencies, attorneys, or when acting in a professional capacity, the public.

GUIDELINE V

A lawyer may permit a legal assistant to sign correspondence relating to the legal assistant's work, provided the legal assistant's non-lawyer status is clear and the contents of the letter do not constitute legal advice. Correspondence containing substantive instructions or legal advice to a client shall be signed by an attorney.

GUIDELINE VI

Except where permitted by statute, or court rule or decision, a lawyer shall not permit a legal assistant to appear in court as a legal advocate on behalf of a client.

Nothing in this Guideline shall be construed to bar or limit a legal assistant's right or obligation to appear in any forum as a witness on behalf of a client.

GUIDELINE VII

A lawyer may permit a legal assistant to use a business card, with the employer's name indicated, provided the card is approved by the employer and the legal assistant's nonlawyer status is clearly indicated.

GUIDELINE VIII

A lawyer shall not form a partnership with a legal assistant if any part of the partnership's activity involves the practice of law.

GUIDELINE IX

Compensation of legal assistants shall not be in the manner of sharing legal fees, nor shall the legal assistant receive any remuneration for referring legal matters to a lawyer.

GUIDELINE X

A lawyer shall not use or employ as a legal assistant any attorney who has been suspended or disbarred pursuant to an order of this Court, or an attorney who has resigned in this or any other jurisdiction for reasons related to a breach of ethical conduct.[332]

LAWCLERK complies with and is more restrictive than the foregoing guidelines as only the Attorney may provide legal advice to the Attorney's client, the Lawclerk is supervised by the Attorney who is ultimately responsible for the Lawclerk's work product. The Attorney maintains responsibility for the attorney-client relationship, the Lawclerk reviews the Rules of Professional Conduct and agrees to comply with the rules, including maintaining client confidences, before being engaged on each individual project, the Lawclerk does not have any contact with the Attorney's client or any other party involved in the matter, the Lawclerk may not sign any documents or pleadings, the Lawclerk may not appear in court, the Lawclerk may not share fees with the Attorney, and disbarred or suspended lawyers are prohibited from being Lawclerks.

2020 UPDATE: A recent Rhode Island case further elucidates the requirements regarding non-attorney assistants. In *Paplauskas*, the court stated the disciplined attorney:

> …did examine some, but not all, of the title searches conducted by [paralegals and title company]. In our opinion, those title examinations conducted by someone other than Attorney Pelletier or some other licensed attorney amount to the unauthorized practice of law. Accordingly, [Title Company] can continue to provide title examinations to its clients when it is issuing the title insurance policy, without engaging in the unauthorized practice of law, only as long as those title

[332] *Provisional Order No. 18*, 454 A.2d 1222, 1222-23 (R.I. 1983); RI R S CT ART V RPC Rule 5.3.

> examinations are conducted or reviewed by Attorney Pelletier or some other attorney employed in a similar manner.[333]

The use of LAWCLERK complies with this guidance. LAWCLERK's terms of service require Attorneys to supervise Lawclerks in their tasks. Further, Attorneys must take full responsibility for the review and submission of the work product. Therefore, LAWCLERK complies with Rhode Island law.

South Carolina.

South Carolina courts have recognized that the prohibition on the unauthorized practice of law serves to protect the public from unsound legal advice and incompetent representation.[334] What constitutes the unauthorized practice of law is fact-driven and must be determined on a case-by-case basis; however, case law provides general guidelines as to what constitutes the unauthorized practice of law.[335] Nonetheless, the South Carolina Supreme Court has acknowledged that the support function of paralegals has increased through the years and articulated a succinct standard of the proper role of paralegals:

> the activities of a paralegal do not constitute the practice of law as long as they are limited to work of a preparatory nature, such as legal research, investigation, or the composition of legal documents, which enable the licensed attorney-employer to carry a given matter to a conclusion through his own examination, approval or additional effort.[336]

The Court further explained that the role of the paralegal is to support the lawyer. A paralegal must work in conjunction with a licensed lawyer. [337] Paralegals cross the line into the unauthorized practice of law where they give legal advice to clients, consult with and offer legal explanations to clients, or make legal recommendations to clients.[338]

Consistent with the foregoing authority, the Lawclerk provides services such as legal research, investigation, or the composition of legal documents at the direction of, and under the supervision of, a barred Attorney who retains full responsibility for the Lawclerk's work product and the attorney-client relationship.

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[333] *In re Paplauskas, Jr.*, No. 2018-161-M.P. (R.I. May 29, 2020).

[334] *Doe v. Condon*, 532 S.E.2d 879, 881–82 (S.C. 2000) (determining that a non-lawyer employee of a law firm serving as a paralegal would engage in the unauthorized practice of law if the non-lawyer conducted unsupervised legal seminars on wills and trusts without the supervising lawyer being present and answered legal questions for the public or for the clients of lawyer/employer).

[335] *Id.*

[336] *Id.* (quoting *Matter of Easler*, 272 S.E.2d 32, 33 (S.C. 1980)).

[337] *State v. Robinson*, 468 S.E.2d 290, 291 (S.C. 1996) (holding that paralegal could not prepare and file legal documents and give legal advice to clients unless he first obtained leave of court); *In re Easler*, 275 S.C. 400 (S.C. 1980) (holding that a disbarred lawyer engaged in the practice of law by preparing, executing, and filing a deed without obtaining the review and approval of licensed attorney before recordation and without ensuring that the that parties to deed conferred with a licensed lawyer concerning the deed).

[338] *Doe v. Condon*, 532 S.E.2d 879, 881–82 (S.C. 2000) (citing *State v. Despain,* 460 S.E.2d 576 (S.C. 1995)); *see also Rogers Townsend & Thomas, PC v. Peck*, 797 S.E.2d 396 (S.C. 2017) .

South Dakota.

The Supreme Court of South Dakota has aptly described the policy behind its rules of professional conduct, including the prohibition on the unauthorized practice of law, as:

> Only those who meet this high fiduciary standard are allowed to assist those in need of competent legal representation:
>
> > A certificate of admission to the bar is a pilot's license which authorizes its possessor to assume full control of the important affairs of others and to guide and safeguard them when, without such assistance, they would be helpless. Moreover, in [South Dakota] it is a representation made by this court he [or she] is worthy of the unlimited confidence which clients repose in their attorneys; trustworthy to an extent that only lawyers are trusted, and fit and qualified to discharge the duties which devolve upon members of his profession.[339]

In *Bonner*, the South Dakota Supreme Court held that a law school graduate who had never been admitted to the bar engaged in the unauthorized practice of law where she, without any supervision from a barred lawyer: (i) interfered in a criminal matter by engaging in discussions with a defendant and preparing and having a man charged with homicide sign a power of attorney ostensibly to protect his communications with the nonlawyer (despite the objection of the man's lawyer) who then published a newspaper article about the man, which communications his appointed lawyer believed would not be deemed privileged and would be used against the man at trial; (ii) interfered in a criminal child abuse case by engaging in discussions with the parents and preparing "a report of the court concerning three children" stating the nonlawyer's opinions on the case, disclosed plea negotiations, and advised the court that the parents would be seeking to transfer the case to the Rosebud Sioux Tribe, all of which was undertaken without the consent of, or consultation with, the retained lawyer for the parents; (iii) "meddled in a case," gave advice, and attempted to file pleadings with the United States Federal District Court; and (iv) represented herself as an attorney and sought to represent a veteran in a benefit appeal despite the fact that the veteran was already represented by a nonlawyer advocate approved by the America Legion, which conduct delayed the veteran's benefits.[340]

While a unbarred lawyer may not practice law, the South Dakota Supreme Court has approved of an unbarred lawyer serving as a paralegal and, in such capacity, completing research, investigating matters, and preparing court documents under the supervision of barred lawyers.[341] Consistent with the *Bonner* and *Pier* decisions, at LAWCLERK, a Lawclerk does not provide any advice to clients, does not have any client contact, does not file documents with any court, and does not appear in any court. Instead, the Lawclerk serves in the role of a paraprofessional role assisting the Attorney, not the Attorney's client.

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[339] *Steele v. Bonner,* 782 N.W.2d 379, 384 (S.D. 2010) (quoting *In re Discipline of Laprath*, 670 N.W.2d 41, 66 (S.D. 2003) (quoting *In re Egan*, 402, 218 N.W. 1, 2–3 (S.D. 1928))).

[340] *Id.* at 381-82.

[341] *Petition of Pier*, 561 N.W.2d 297, 301 (S.D. 1997) (affirming a lawyer's work as a paralegal after disbarment).

Section 16-18-34.2 of the South Dakota Codified Laws is titled "Utilization of Legal Assistants" and provides:

> Utilization of legal assistants by licensed attorneys is subject to the following rules:
>
> (1) An attorney may permit a legal assistant to assist in all aspects of the attorney's representation of a client, provided that:
>
> > (a) The status of the legal assistant is disclosed at the outset of any professional relationship with a client, other attorneys, courts or administrative agencies, or members of the general public;
> >
> > (b) The attorney establishes the attorney-client relationship, is available to the client, and maintains control of all client matters;
> >
> > (c) The attorney reviews the legal assistant's work product and supervises
> > performance of the duties assigned;
> >
> > (d) The attorney remains responsible for the services performed by the legal assistant to the same extent as though such services had been furnished entirely by the attorney and such actions were those of the attorney;
> >
> > (e) The services performed by the legal assistant supplement, merge with and become part of the attorney's work product;
> >
> > (f) The services performed by the legal assistant do not require the exercise of unsupervised legal judgment; this provision does not prohibit a legal assistant appearing and representing a client at an administrative hearing provided that the agency or board having jurisdiction does not have a rule forbidding persons other than licensed attorneys to do so and providing that the other rules pertaining to the utilization of legal assistants are met; and
> >
> > (g) The attorney instructs the legal assistant concerning standards of client confidentiality.
>
> A legal assistant may not establish the attorney-client relationship, set legal fees, give legal advice or represent a client in court; nor encourage, engage in, or contribute to any act which would constitute the unauthorized practice of law.
>
> (2) A legal assistant may author and sign correspondence on the attorney's letterhead, provided the legal assistant's status is indicated and the correspondence does not contain legal opinions or give legal advice.

(3) An attorney may identify a legal assistant by name and title on the attorney's letterhead and on business cards identifying the attorney's firm.[342]

LAWCLERK complies with each of the foregoing requirements and is, in fact, more restrictive. LAWCLERK prohibits Lawclerks from having any client contact and cannot sign correspondence or be identified on the Attorney's letterhead or business cards.

2020 UPDATE: In July 2018, South Dakota amended its rules. Rule 5.3 states:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

LAWCLERK complies with this new rule. LAWCLERK's terms of service require Attorneys to engage in active, direct supervision of all projects undertaken by a Lawclerk. Therefore, LAWCLERK conforms to South Dakota law.

Tennessee.

The Tennessee Supreme Court has held that "[t]he purpose of our statutes regulating the practice of law is to prevent the public's being preyed upon by those who, for valuable consideration, seek to perform services which require skill, training and character, without adequate qualifications."[343] Stated otherwise, the "practice of law by untrained persons endangers the public's personal and property rights, as well as the orderly administration of the judicial system. [citation omitted] Thus, the purpose of the statutory prohibition against the unauthorized practice of law protects the public by ensuring that the public receives high quality legal services."[344] Consistent therewith, the Attorneys at LAWCLERK are solely responsible for the attorney-client relationship and all legal advice provided by the Attorney to the client.

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[342] S.D. Codified Laws § 16-18-34.2.

[343] *In re Rose,* 314 B.R. 663, 702–03 (Bankr. E.D. Tenn. 2004) (*quoting Old Hickory Eng'g & Mach. Co., Inc. v. Henry,* 937 S.W.2d 782, 786 (Tenn. 1996) (quoting *Third Nat'l Bank v. Celebrate Yourself Prod., Inc.,* 807 S.W.2d 704, 706 (Tenn. Ct. App. 1990)); *see also Hornbeck v. Board of Professional Responsibility*, 545 S.W.3d 386 (Tenn. 2018).

[344] *Fifteenth Judicial Dist. Unified Bar Ass'n v. Glasgow*, 1999 WL 1128847, at *6 (Tenn. Ct. App. Dec. 10, 1999) (citing *In re Petition of Burson*, 909 S.W.2d 768, 777 (Tenn. 1995); *Haverty Furniture Co. v. Foust*, 124 S.W.2d 694, 697 (Tenn. 1939), *Bar Ass'n of Tennessee, Inc. v. Union Planters Title Guar. Co.,* 326 S.W.2d 767, 779 (Tenn. App. Ct. 1959)).

In *Rose*, the United States Bankruptcy Court for the Eastern District of Tennessee determined that a nonlawyer who operated a franchise that provided preparation services for bankruptcy documents had engaged in the unauthorized practice of law where the customer packet regarding the preparation of the bankruptcy petition, schedules, and statements that she provided to the franchise's clients included legal information, legal conclusions, and legal advice in that it provided explicit instructions as to what the legal terms mean, how to fill the schedules out, and to remember cross-references between schedules, as well as provided customers statutory information regarding Tennessee's real and personal property exemptions.[345] Additionally, the nonlawyer bankruptcy petition preparer would review the completed packets and direct the clients to complete omitted sections and advised them about their rights with regard to collections once their bankruptcy petition had been filed, all without any lawyer supervision.[346] While the franchise paid a "supervising attorney" and included in the engagement agreement that the client may contact the "supervising attorney" by telephone and "he/she will provide general legal information to assist me in the handling of my legal matter on my own," it also stated that the client understands that the "supervising attorney does not represent me" and "can only answer general questions regarding the law and cannot give me specific advice on my matter."[347] This relationship inverts the permissible lawyer-nonlawyer relationship, because here it is the nonlawyer conducting all client communications and engaging the lawyer to provide limited services. The court further held that such conduct is unfair and deceptive to clients who believe that they are receiving specific legal advice regarding their bankruptcy issues because they are not.[348]

Similarly, in *Glasgow*, the Court of Appeals of Tennessee determined that the owner of a typing service engaged in the unauthorized practice of law where, without any lawyer supervision, she prepared divorce complaints, marital dissolution agreements, final divorce decrees, and quitclaim deeds, as well as advised her clients about what court and when to file the documents she prepared.[349]

Unlike in *Rose* and *Glasgow*, at LAWCLERK, the Attorney provides the legal advice and maintains the attorney-client relationship and all client contact, while the Lawclerk provides discrete services to the Attorney (not the client) for which the Attorney retains full responsibility. Because the Lawclerks solely assist Attorneys on specific tasks delegated to them by the Attorney and the attorney-client relationship and all client communications remain between the Attorney and the client, the practice of law is not being undertaken by "untrained persons endanger[ing] the public's personal and property rights, as well as the orderly administration of the judicial system."

Texas.

Section 81.101 of the Texas Government Code defines the "practice of law" as "the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a

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[345] *Id.* at 707.
[346] *Id.*
[347] *Id.* at 696.
[348] *Id.* at 710.
[349] *Fifteenth Judicial Dist. Unified Bar Ass'n v. Glasgow*, 1999 WL 1128847, at *4 (Tenn. Ct. App. 1999); *see also State v. Trotter*, E2018-00390-COA-R3-CV (Tenn. Ct. App. 2019).

service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined."[350]

The Texas Court of Appeals held that the publishing, marketing, and distribution of a manual entitled "You and Your Will: A Do-It-Yourself Manual" by a nonlawyer constituted the unauthorized practice of law where: (i) the will manual covered topics in which only a lawyer may advise a client, like specific bequests, residuary estates, executor powers, self-proving affidavits, intestacy, and attestation clauses; (ii) the manual contained fill-in-the-blank forms that can easily confuse nonlawyers; (iii) one section of the manual contained a "create-your-own-will" section advising its readers how to use the clauses contained in the manual to create their own wills; (iv) the manual contained certain wills that were not valid in Texas; (v) and the manual had not been reviewed by any lawyer for legal accuracy.[351] In reaching its conclusion, the court focused on the fact that the manual goes "well beyond simply layman's advice" by advising a layperson how to draft a will and leading the public to falsely believe that testamentary dispositions can be standardized.[352] "Reliance on his forms leads to a false sense of security and often unfortunate circumstances for the general public."[353]

Conversely, at LAWCLERK, the Lawclerks have no contact with the client or the public, all services provided by the Lawclerk are provided to the Attorney (not the public), the Lawclerk works under the Attorney's supervision, and only the Attorney provides legal advice to the client.

Utah.

In Utah, the practice of law, although difficult to define precisely, is generally acknowledged to involve the rendering of services that require the knowledge and application of legal principles to serve the interests of another with his consent. It not only consists of performing services in the courts of justice throughout the various stages of a matter, but in a larger sense involves counseling, advising, and assisting others in connection with their legal rights, duties, and liabilities. It also includes the preparation of contracts and other legal instruments by which legal rights and duties are fixed.[354] Applying this definition, the Utah Supreme Court explained that a paralegal engaged in the unauthorized practice of law by preparing, without a lawyer's supervision, wills, divorce papers, and pleadings and conducted legal research on behalf of his clients for a fee.[355] The critical fact was the lack of lawyer supervision. The Utah Supreme Court went on to explain that the paralegal was not "deprived of his right to perform law-related work" as he "may work as a paralegal under the supervision of an attorney."[356]

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[350] Tex. Gov't Code Ann. § 81.101.

[351] *Fadia v. Unauthorized Practice of Law Comm.,* 830 S.W.2d 162, 165 (Tex. App. 1992), writ denied (Sept. 9, 1992); *see also Wilkinson v. Commission for Lawyer Discipline*, 09-17-00444-CV (Tex. App. 2019) (Attorney committed unauthorized practice of law by drafting and executing a trust document and powers of attorney while actively suspended from the practice of law.)

[352] *Id.* at 164-65.

[353] *Id.* at 165.

[354] *Bd. of Comm'rs of Utah State Bar v. Petersen*, 937 P.2d 1263, 1268 (Utah 1997) (quoting *Utah State Bar v. Summerhayes & Hayden, Public Adjusters,* 905 P.2d 867 (Utah 1995)).

[355] *Id.* at 1265.

[356] *Id.* at 1269.

The *Petersen* decision underscores why LAWCLERK does not violate the prohibition on the unauthorized practice of law. At LAWCLERK, the Lawclerk solely operates at the direction of, and under the supervision of, the Attorney. The Lawclerk has no independent client contact and the Attorney remains solely responsible for the advice provided to the client.

The following ethics opinions further underscore that the use of paraprofessionals to assist Attorneys in their provision of services to their clients is proper and consistent with Rules 5.3 and 5.5 of the Utah Rules of Professional Conduct as long as the lawyer properly supervises the paraprofessional. The ethics opinions state:

> Attorneys often employ non-lawyer assistants, including secretaries, legal assistants, paralegals and student interns. Such assistants may perform a wide array of services, including interviewing clients, scheduling depositions, drafting documents or pleadings, and conducting legal research. Some of these activities might constitute the practice of law in a given situation if the persons performing them were to act independently of any supervision. As such, in general, a lawyer who negotiates or otherwise communicates with an opposing party's nonlawyer representative on substantive matters affecting the rights of parties to a particular matter is not assisting in the unauthorized practice of law if that representative is supervised by a lawyer as required under Rule 5.3. When a nonlawyer representative is employed in a lawyer's office, the lawyer communicating with such a representative may presume that the nonlawyer representative is supervised within requirements of Rule 5.3 of the Utah Rules of Professional Conduct, unless the lawyer is aware of facts and circumstances that impart knowledge that adequate supervision is lacking.[357]

> It is not unethical for a lawyer to use nonlawyer paraprofessionals to provide representation of clients in hearings before a government agency, such as the U.S. Social Security Administration, that authorizes nonlawyer representation. In particular, the lawyer does not assist the nonlawyer paraprofessional in the unauthorized practice of law under these circumstances.[358]

These opinions further indicate that Utah attorneys utilizing LAWCLERK will not engage in the unauthorized practice of law in that state.

Vermont.

The Vermont Supreme Court has held that the "prevention of the unauthorized practice of the law is a matter of public policy in all of the United States. This policy rests upon the necessity of protecting the public rather than the lawyer. It is essential to the administration of justice and the proper protection of society that only qualified persons duly licensed be permitted to engage

[357] Utah St. Bar Eth. Op. No. 1999-02, approved April 30, 1999, available at https://www.utahbar.org/wp-content/uploads/2017/12/1999-02.pdf.

[358] Utah St. Bar Eth. Op. No. 2003-03, 2003, issued June 23, 2003, available at https://www.utahbar.org/wp-content/uploads/2017/11/2003-03.pdf.

in the practice of law."[359] However, the Supreme Court of Vermont has also recognized that "[m]ore recent social and legal developments reflect a trend toward a somewhat more purpose-driven approach to defining the scope of the unauthorized practice of law."[360] "[T]hese developments suggest that the general scope of the prohibition against the unauthorized practice of law may not be solely a function of the tasks an individual performs but also reflects a balancing of the risks and benefits to the public of allowing or disallowing such activities."[361] After a detailed analysis of Vermont case law addressing the unauthorized practice of law, and weighing the risk that "jailhouse lawyers" pose to the individuals they are trying to help against the valuable service of promoting more meaningful access to justice for inmates, the Supreme Court of Vermont concluded that an inmate that provided free legal advice and drafted motions for fellow inmates did not engage in the unauthorized practice of law.[362]

The Vermont courts have found the unauthorized practice of law where: (i) a nonlawyer accountant held himself out as a lawyer, signed pleadings and other court filings on behalf of his debt collection business clients, and appeared in court on behalf of his clients;[363] (ii) a nonlawyer ran a debt collection agency in which, for a fee, he undertook enforced, secured, settled, adjusted, and compromised civil claims, drafted correspondence on behalf of clients threatening legal action, and filed a lawsuit on behalf of a client;[364] (iii) a law student, without lawyer supervision, for a fee, offered an individual advice about an ongoing dispute and negotiated a settlement for the individual;[365] (iv) a nonlawyer, under debt pooling plans, gave advice in connection with the execution of a note and mortgage, a conditional sale note, an assignment of wages to ward off creditors, and need for going into bankruptcy, and undertook to handle litigation against one of such person;[366] (v) a nonlawyer surveyor, who, for a fee, drafted deeds, advised parties with respect to certain rights-of-way created in the deeds, and advised parties "as to the type of estate and manner of holding" that would serve to meet their desires and needs;[367] and (vi) a nonlawyer stockholder and officer appeared in court to represent a corporation.[368]

Consistent with the foregoing policy analysis and case law, LAWCLERK does not run afoul of Vermont's prohibition on the unauthorized practice of law as the Attorney is responsible for the attorney-client relationship and all legal advice provided to the client. The Lawclerk has no client contact and may not appear in court or any other administrative proceeding, and the Attorney maintains sole responsibility for the services provided by the Lawclerk to the Attorney.

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[359] *In re Welch,* 185 A.2d 458, 459–60 (Vt. 1962).
[360] *In re Morales*, 151 A.3d 333, 335-36 (Vt. 2016).
[361] *Id.* at 339 (citing *In re Op. No. 26 of the Comm. on the Unauthorized Practice of Law*, 654 A.2d 1344, 1345–46 (N.J. 1995) ("The question of what constitutes the unauthorized practice of law involves more than an academic analysis of the function of lawyers, more than a determination of what they are uniquely qualified to do. It also involves a determination of whether non-lawyers should be allowed, in the public interest, to engage in activities that may constitute the practice of law.").
[362] *Id.* at 336. (The Court noted, however, that the outcome may vary if a fee had been charged for such services).
[363] *In re Morse*, 126 A. 550, 553 (Vt. 1924).
[364] *In re Ripley,* 191 A. 918 (Vt. 1937).
[365] *In re Flint*, 8 A.2d 655, 657 (Vt. 1937).
[366] *In re Pilini*, 173 A.2d 828 (Vt. 1961).
[367] *In re Welch*, 185 A.2d 458 (Vt. 1962).
[368] *LaBrie, Inc. v. Vermont Dep't of Envtl. Conservation*, 596 A.2d 354, 354 (Vt. 1991).

Virginia.

Section I of the Rules of the Supreme Court of Virginia is entitled "Unauthorized Practice Rules and Considerations" and includes nine rules addressing the unauthorized practice of law. They are:

- Unauthorized Practice Rule 1 – Practice Before Tribunals
- Unauthorized Practice Rule 2 – Lay Adjusters
- Unauthorized Practice Rule 3 – Collection Agencies
- Unauthorized Practice Rule 4 – Estate Planning and Settlement
- Unauthorized Practice Rule 5 – Tax Practice
- Unauthorized Practice Rule 6 – Real Estate Practice
- Unauthorized Practice Rule 7 – Title Insurance
- Unauthorized Practice Rule 8 – Trade Associations
- Unauthorized Practice Rule 9 – Administrative Agency Practice[369]

These Unauthorized Practice Rules preclude the type of conduct determined by case law in other jurisdictions to constitute the unauthorized practice of law. However, they do not preclude a lawyer from engaging a paraprofessional that has no client contact to assist the lawyer in providing services to clients. For example, UPC 4-5 provides that:

> The preparation of legal instruments such as wills, codicils and trusts by a non-lawyer for another, with or without compensation, goes beyond the area of permitted advice incident to the regular course of a non-lawyer's business. ***There is nothing improper, however, in the submission of suggested forms for various types of wills or trusts to lawyers for present or prospective customers of a non-lawyer.*** Distributing forms of separate administrative or dispositive provisions setting forth the proper name of a fiduciary, a charity or the like is not improper.[370]

The definition of the "practice of law" provided in the Unauthorized Practice Rules and Considerations further explains that the prohibition on engaging on the Unauthorized Practice of Law serves to protect the attorney-client relationship:

> (B) Definition of the Practice of Law. The principles underlying a definition of the practice of law have been developed through the years in social needs and have received recognition by the courts. It has been found necessary to protect the relation of attorney and client against abuses. Therefore, it is from the relation of attorney and client that any practice of law must be derived.
> The relation of attorney and client is direct and personal, and a person, natural or artificial, who undertakes the duties and responsibilities of an attorney is nonetheless practicing law though such person may employ others to whom may be committed the actual performance of such duties.

[369] Va. Sup. Ct. R. PT 6, § 1 Introduction.
[370] Va. Sup. Ct. R. PT 6, § 1 UPR 4 (emphasis added).

> The gravity of the consequences to society resulting from abuses of this relation demands that those assuming to advise or to represent others shall be properly trained and educated, and be subject to a peculiar discipline. That fact, and the necessity for protection of society in its affairs and in the ordered proceedings of its tribunals, have developed the principles which serve to define the practice of law.
>
> Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill. Specifically, the relation of attorney and client exists, and one is deemed to be practicing law whenever--
>
> (1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.
>
> (2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.
>
> (3) One undertakes, with or without compensation, to represent the interest of another before any tribunal--judicial, administrative, or executive--otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.
>
> (4) One holds himself or herself out to another as qualified or authorized to practice law in the Commonwealth of Virginia.[371]

Thus, LAWCLERK serves to preserve and protect the attorney-client relationship by precluding the Lawclerk from having any client contact while allowing Attorneys to obtain necessary and cost-effective assistance for specific, delegated services from law school graduates and licensed lawyers. LAWCLERK complies with not only the Supreme Court of Virginia's Unauthorized Practice of Law Rules, but also the policy behind the prohibition on the unauthorized practice of law.

Washington.

Like other jurisdictions, the Washington Supreme Court has held that the prohibition on the unauthorized practice of law serves to protect the public from actions by those who, because of lack of professional skill, may cause injury whether they are members of the bar or persons

[371] Va. Sup. Ct. R. PT 6, § 1 Practice of Law.

never admitted to the bar.[372] Consistent therewith, when examining whether nonlawyers are engaged in the unauthorized practice of law, the focus is on the nonlawyer's communications with the client and the level of lawyer supervision. For instance, a paralegal was held to have engaged in the unauthorized practice of law where she was the client's principal (or sole) contact, negotiated settlements on behalf of the client, sent letters rejecting a settlement without the client's knowledge, and sent demand and representation letters to opposing parties that often failed to identify her as a paralegal and suggested she was a lawyer, all of which was undertaken without any lawyer supervision.[373] Similarly, a nonlawyer was held to have engaged in the unauthorized practice of law where he represented his own clients without any supervision by a lawyer in the demand and negotiation of car accident injury claims against insured drivers, prepared pleadings in family court matters, and undertook debt collection efforts in court on behalf of his clients.[374]

Addressing an inquiry as to whether a lawyer could represent a collection agency that would prepare legal documents, such as complaints, writs of garnishment, and answers using forms prepared by the lawyer, where the lawyer would then review each individual document and sign them after reviewing the individual file in each case, the ethics committed advised that such conduct with be complaint with Rules 5.3 and 5.5 of the Washington Rules of Professional Conduct.[375] Similarly, the ethics committee advised that it believed the following arrangement was compliant with the Washington Rules of Professional Conduct because the lawyer would continue to exercise professional judgment prior to any pleadings being served or filed:

> The Committee reviewed your inquiry concerning your [barred lawyer's] conduct in representation of a property management firm which carries out evictions for landlord clients. The Committee understood the facts to be that the management company client would prepare a complaint which had been approved as to form by you, that the complaint would be reviewed and verified by the landlord and that the summons and complaint would then submitted to you for your review and signature. If the tenant filed an answer, it would be served upon you. Any motion and order to show cause would be prepared by you and you would appear at the show cause hearing with the landlord.
> If the tenant did not answer, the client prepares a motion for default and associated pleadings on forms provided and approved by you. You again would review those documents and present them in court. You would bill the client for your services according to an agreed upon fee schedule. [[376]]

The foregoing cases and ethics opinions illustrate why LAWCLERK does not violate Washington's rules against the unauthorized practice of law. While the Lawclerk will draft documents and/or conduct research in accordance with the directives provided by the Attorney,

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[372] *State v. Hunt,* 880 P.2d 96, 100 (Wash. Ct. App. 1994) (citing, among other cases, *Bowers v. Transamerica Title Ins. Co.,* 675 P.2d 193 (Wash. 1983)

[373] *Tegman v. Accident & Med. Investigations, Inc*., 30 P.3d 8, 14 (Ct. App. Wash. 2001).

[374] *State v. Hunt*, 880 P.2d 96, 97 (Ct. App. Wash. 1994); *see also State v. Yishmael*, 430 P.3d 279 (Wash. Ct. App. 2018) (Nonlawyer convicted of unauthorized practice of law when provided advice on adverse possession law.)

[375] Advisory Opinion 1116, issued in 1987 by the Committee on Professional Ethics of the Washington State Bar Association, available at http://mcle.mywsba.org/IO/print.aspx?ID=196.

[376] Advisory opinion 1339, issued in 1990 by the Committee on Professional Ethics of the Washington State Bar Association, available at http://mcle.mywsba.org/IO/print.aspx?ID=419.

the Lawclerk will never appear in court, will never have any client contact, and the Attorney is responsible in all respects for the attorney-client relationship and for the Lawclerk's work product.

West Virginia.

The West Virginia Supreme Court has explained that the unauthorized practice of law serves to protect the public, stating as follows:

> The justification for excluding from the practice of law persons who are not admitted to the bar and for limiting and restricting such practice to licensed members of the legal profession is not the protection of the members of the bar from competition or the creation of a monopoly for the members of the legal profession, but is instead the protection of the public from being advised and represented in legal matters by unqualified and undisciplined persons over whom the judicial department of the government could exercise slight or no control.... The licensing of lawyers is not designed to give rise to a professional monopoly but instead to serve the public right to protection against unlearned and unskilled advice and service in relation to legal matters. [377]

Consistent with other jurisdictions, the West Virginia courts have held that nonlawyers engage in the unauthorized practice of law when they provide legal advice to clients or appear in court or file pleadings on behalf of a corporation[378] or a third-party.[379]

In *Battistelli*, the West Virginia Supreme Court addressed a situation where a suspended lawyer who began working as a paralegal after his suspension was accused of engaging in the unauthorized practice of law.[380] In *Battistelli*, the suspended lawyer/paralegal was accused of holding himself out as a practicing lawyer and giving legal advice to a client regarding the client's testimony; however, the suspended lawyer/paralegal denied the accusations.[381] While the case was remanded for a factual determination of whether the suspended lawyer had engaged in the unauthorized practice of law, the court did not preclude the suspended lawyer from working as a paralegal. Instead, the court supplemented the suspension order to provide that the suspended lawyer could not have any client contact while he was working as a paralegal during his suspension.[382]

LAWCLERK meets the objectives of the prohibition on the unauthorized practice of law as only the Attorney, not the Lawclerk, has contact with the Attorney's client and the Attorney is responsible for the legal advice and services provided to the client. Further, Lawclerks do not have any client contact, Lawclerks only act at the direction of, and under the supervision of, the

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[377] *State ex rel. H.K. Porter Co. v. White*, 386 S.E.2d 25, 29 (W. Va. 1989) (quoting *W.Va. State Bar v. Earley*, 109 S.E.2d 420, 435 (W. Va. 1959)).
[378] *Shenandoah Sales & Serv., Inc. v. Assessor of Jefferson Cty*., 724 S.E.2d 733, 737 (W. Va. 2012).
[379] *Lawyer Disciplinary Bd. v. McCloskey*, 793 S.E.2d 23, 29 (W. Va. 2016) ("It is beyond cavil that the filing of legal documents with a circuit court on behalf of another person or entity, while identifying one's self as a lawyer representing that other person or entity, constitutes the practice of law.").
[380] *Office of Disciplinary Counsel v. Battistel*li, 465 S.E.2d 644 (W. Va. 1995).
[381] *Id.* at 646-47.
[382] *Id.* at 648.

Attorney, and the Lawclerks never appear in any tribunal or sign, serve, or file documents on behalf of an Attorney's client.

2020 UPDATE: The West Virginia Supreme Court acknowledged, with approval, that a formerly disbarred attorney had successfully worked as a paralegal during his disbarment.[383] The factor weighed in favor of reinstatement.

LAWCLERK's standards are stricter than this guidance. While the recent case demonstrates that disbarred West Virginia lawyers may work as paralegals under supervision, LAWCLERK does not permit disbarred or suspended attorneys to serve as Lawclerks. Thus, LAWCLERK comports with, and is more restrictive than, West Virginia law.

Wisconsin.

In *Gehl*, the Wisconsin Supreme Court discussed a lawyer's assistance of a nonlawyer in the unauthorized practice of law, where the lawyer engaged an unlicensed lawyer as a paralegal to draft pleadings and correspondence, conduct discovery, do research, handle communications with the lawyer's clients, and to make court appearances.[384] Similarly, in *Gibson*, the Wisconsin Supreme Court found that the lawyer had failed to supervise nonlawyers where he delegated the decision of whether and when to file pleadings to a nonlawyer employee and had the client sign blank schedules and statements that were subsequently filled in by the lawyer and/or the nonlawyer.[385] Consistent with other jurisdictions, Wisconsin courts have consistently held that nonlawyers engage in the unauthorized practice of law when they appear in court or file pleadings on behalf of a corporation,[386] a trust,[387] or a third-party. Conversely, at LAWCLERK, the Lawclerk has no contact with the client, cannot appear in court, and only acts under the direct supervision of the Attorney.

Wyoming.

In *Hardy*, the Wyoming Supreme Court examined whether a law clerk that prepared wills, some of which were reviewed as being "satisfactory" by a barred lawyer had engaged in the unauthorized practice of law.[388] In determining that the law clerk had engaged in the unauthorized practice of law, the court focused on the fact that: (i) the law clerk, not the lawyer, had interviewed the clients to obtain the information necessary to preparing the wills; (ii) the law clerk had represented to the clients that he had prepared more than 100 wills over 25 years, thereby holding himself out as being qualified to provide legal advice; (iii) the law clerk answered the client's questions, which questions would require the knowledge of a trained lawyer to accurately respond; and (iv) the law clerk did not have a barred lawyer review all of the wills he prepared.[389]

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[383] *In re Petition for Reinstatement Drake*, 242 W.Va. 109, 829 S.E.2d 267 (W. Va. 2019).
[384] *Matter of Disciplinary Proceedings Against Gehl,* 571 N.W.2d 673, 674 (Wis. 1997).
[385] *Matter of Disciplinary Proceedings Against Gibson*, , 570 N.W.2d 249, 250-51 (Wis. 1997).
[386] *Life Sci. Church, Bible Camp & Christian Liberty Acad. v. Shawano Cty.,* 585 N.W.2d 625, 626 (Wis. Ct. App. 1998).
[387] *Jadair Inc. v. U.S. Fire Ins. Co.,* 562 N.W.2d 401, 407 (Wis. 1997); *see also Ditech Financial, LLC v. Estate of Stacey*, 909 N.W.2d 180, 182 (Wis. Ct. App. 2018) (citing *Brown v. MR Group, LLC,* 683 N.W.2d 481 (Wis. Ct. App. 2004) ("A person not admitted to practice law has no authority to sign a pleading on behalf of another to invoke this court's jurisdiction.").
[388] *State ex rel. Wyoming State Bar v. Hardy,* 156 P.2d 309 (Wyo. 1945).
[389] *Id.* at 188-89.

Similarly, in *Herren*, the United States Bankruptcy Court for the District of Wyoming held that a nonlawyer document preparation company that exceeded the permissible scope of providing copies of official nonlawyer bankruptcy forms and providing tying services to providing legal advice as to how to complete the schedules and statements, how to select exemptions, and soliciting financial information from the client in order to prepare the schedules and statements for the client engaged in the unauthorized practice of law.[390] Unlike in *Hardy* and *Herren*, at LAWCLERK, the Lawclerk shall have no client contact, the Attorney shall maintain the client relationship and determine the scope of the assignments to be completed by the Lawclerk, and the Attorney maintains full responsibility for the services provided by the Lawclerk.

While the Wyoming case law discussing the unauthorized practice of law is fairly minimal, the Wyoming State Bar provides a *Discipline Summary* that identifies several examples of conduct that was determined to violate Rule 5.3 of the Wyoming Rules of Professional Conduct, including where: (i) a lawyer failed to adequately supervise a nonlawyer assistant, which failure resulted in the filing of motions for attorney's fees containing inaccurate billing entries in several cases; and (ii) a lawyer was negligent in supervising the office manager with respect to calendaring issues.[391] Because LAWCLERK requires the Attorney to retain full responsibility for the work performed by the Lawclerk, it does not run afoul of Rule 5.3 of the Wyoming Rules of Professional Conduct or permit conduct similar to that cited in the *Discipline Summary.*

[390] *In re Herren*, 138 B.R. 989, 994 (Bankr. D. Wyo. 1992).

[391] Wyoming State Bar, *Disciplinary Summary*, updated October 2016, pp. 68-69, available at https://www.wyomingbar.org/wp-content/uploads/Disciplinary_Summary.pdf.