



LAW CLERK

COMPLIANCE WITH THE PROHIBITION ON THE UNAUTHORIZED PRACTICE OF LAW

(A 50-STATE SURVEY)

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INTRODUCTION

What is LAWCLERK™?

LAWCLERK™ is an online legal marketplace. LAWCLERK allows lawyers who are admitted to and in good standing with their respective state's bar association ("Hiring Attorneys") to engage persons who are barred and in good standing in their jurisdiction ("Remote Associates") in a paraprofessional capacity to provide legal-related services (the "Work"). The Work includes any services provided under any of LAWCLERK's solutions as described herein.

The use of LAWCLERK by Remote Associates and Hiring Attorneys encourages cost-effective delivery of legal services and reduces the spiraling cost of civil litigation. Yet, Hiring Attorneys, Remote Associates, and others may be concerned that offering or accepting assignments through LAWCLERK may raise ethical concerns, specifically the unauthorized practice of law. This memo 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. Because of the divergent definitions of what constitutes the practice of law, this memorandum undertakes a state-by-state analysis of how LAWCLERK fits within the unauthorized practice of law framework for every state.

Section II of this memorandum 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. Consistent with the Model Rules and as shall be developed herein, LAWCLERK balances the need for Hiring 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.

¹ 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)).

² See, e.g., MODEL RULES OF PROF'L CONDUCT Comment 5.5 (2016) [hereinafter Model Rules].

³ See id.

Section III 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 memorandum 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 guide has made every effort to create an accurate guide. However, laws change frequently, and courts are constantly amending the rules of practice. Therefore, while this guide is intended to be helpful, Hiring Attorneys and Remote Associates using LAWCLERK remain solely responsible for complying with all applicable rules in each jurisdiction where they are barred.

What is a Remote Associate?

A Remote Associate is a freelance lawyer aka contract lawyer aka virtual associate who works for a Hiring Attorney on an independent contractor basis.

LAWCLERK Solutions:

Projects

With Projects, Hiring Attorneys will post a flat fee project like a pleading, research project, or contract to the marketplace and select from a pool of Remote Associates who apply to the project. This is best used when Hiring Attorneys have a discrete project for which you can reasonably estimate the scope of work and the duration of time necessary to complete the project.

Hourly Associate

With the Hourly Associate program, Hiring Attorneys will select a talented Remote Associate to work with on an on-going basis, payable by the hour. Hiring Attorneys will pay an evergreen retainer to LAWCLERK based on the anticipated level of help the Hiring Attorney needs. Once the Hiring Attorney has selected a Remote Associate, the Hiring Attorney will pay, and the Remote Associate will be paid, on a weekly basis for the hours worked with no obligation if some weeks there is not work to delegate. This is best used for ongoing (multiple week or month) projects when it is difficult or impossible to estimate the amount and scope of work the Hiring Attorney needs completed.

Subscription Associate

With our Subscription Associate program, Hiring Attorneys can hire a Remote Associate for a committed number of hours per month (minimum of 30 hours per month) and more fully integrate them into the Hiring Attorney's firm. This is best used when Hiring Attorneys and Remote Associates are looking for longer term work more akin to a traditional associate, but on a part time, remote basis. Subscription Associates work in a paraprofessional capacity.

Subscription Associate Plus

Subscription Associate Plus allows Hiring Attorneys to work with a Remote Associate (in office or remotely) to handle the written work, as well as client meetings, depositions, and court. The selected Remote Associate must be added to the Hiring Attorney's malpractice insurance. For Subscription Associate Plus, the Remote Associates must be licensed in the jurisdictions in which they are practicing or are otherwise authorized to practice law in the Hiring Attorney's jurisdiction by state laws governing supervised and visiting attorneys. They are often at least partially present in the state and must be covered by Hiring Attorney's malpractice insurance. Associate Plus is a traditional contract attorney relationship governed by the independent contractor rules in the Hiring Attorney's jurisdiction.

What can Remote Associates do?

At LAWCLERK, with the sole exception of Subscription Associate Plus, our Remote Associates work in a paraprofessional capacity under the supervision of the Hiring Attorneys posting and assigning the work. In furtherance of our commitment to ethical compliance, we provide the following guidelines, which each Hiring Attorney utilizing the services of a Remote Associate through LAWCLERK must agree:

1. The Hiring Attorney shall have sole professional responsibility for the work product of the Remote Associate.
2. The Hiring Attorney will supervise the Remote Associate's performance of services on the assigned Work to ensure compliance with the applicable Rules of Professional Conduct.
3. The Hiring Attorney will establish and maintain the relationship with his or her client.
4. The Remote Associate shall have no contact with the Hiring Attorney's client, including without limitation no

email, telephone, skype, web, social media, or in-person contact for Work. Certain communication are permitted for Hourly and Subscription Associates if the communication complies with Model Rules 5.3 and 5.5, which permits the Hiring Attorney to delegate work to the Remote Associate, including communicating with clients. However, those communications should be limited to research, investigation of details, gathering data, and similar work designed to assist the Hiring Attorney in rendering legal services to their clients.

5. The Remote Associate shall not provide legal advice to clients unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. It will be exclusively the Hiring Attorney's job to provide legal advice to clients and engage in the "practice of law".
6. The Remote Associate shall not appear in court or any other judicial or administrative body on behalf of the Hiring Attorney's client unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the representation is governed.
7. The Remote Associate shall not serve or otherwise disseminate their work product or any other documents to anyone other than the Hiring Attorney.
8. The Remote Associate shall not sign or file any documents with any court or administrative body in connection with Work unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the representation is governed.
9. The Remote Associate shall have no contact with opposing counsel, witnesses, or other persons potentially involved in the Work for which the Remote Associate has been engaged, including without limitation no email, telephone, skype, web, social media, or in-person contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.
10. The Hiring Attorney shall have sole responsibility for determining the fee charged to his or her client for legal services. The Remote Associate shall not have any involvement in determining the fee charged to the posting attorney's client for the Remote Associate's services.

Additionally, LAWCLERK imposes the following requirements on its Hiring Attorneys and Remote Associates:

- The Remote Associate shall hold a Juris Doctorate from an ABA accredited law school. Remote Associate services performed through the LAWCLERK platform shall solely be offered to Hiring Attorneys (not the public). The Hiring Attorneys shall be properly admitted and in good standing within their applicable jurisdiction(s).
- Lawyers disbarred or suspended in any jurisdiction may not serve as Remote Associates.
- For all Work in which a Remote Associate is engaged by a Hiring Attorney, the Remote Associate 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 Work; and (ii) execute a confidentiality and non-disclosure agreement.
- For conflict check purposes only, LAWCLERK will confidentially maintain a list of the Hiring Attorney's clients for which the Remote Associate has been engaged through LAWCLERK and will remove from the available list of Remote Associates any Remote Associate that has a conflict as a result of prior work performed through LAWCLERK.

LAWCLERK thereby requires that the Hiring Attorney agree to remain solely responsible for the attorney-client relationship and the legal advice provided by the Hiring Attorney to their client. Thus, while the Hiring Attorney may obtain a legal memorandum, a draft pleading, or other legal services from a Remote Associate, the Remote Associate will only have direct contact with the Hiring Attorney's client in adherence with our policies and applicable solutions, the Remote Associate will be supervised by the Hiring Attorney, and the Hiring Attorney will retain sole responsibility for the Remote Associate's work product and the Hiring Attorney's ultimate use of such work product.

SECTION II

GUIDANCE FROM THE MODEL RULES AND ELSEWHERE

The Model Rules provide important guidance. Every state has adopted some form of 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.⁴ 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.⁵

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.⁶

⁴The 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.

⁵The 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. ⁶Id., 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.

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.

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; 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.⁹

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.¹⁰

LAWCLERK complies with 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 a Hiring Attorney's clients, opposing counsel, witnesses, or any other party to the Work for which the Remote Associate has been engaged unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, 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 Remote Associate has reviewed and will comply with the applicable state's Rules of Professional Conduct, an agreement by the Hiring Attorney to supervise the Remote Associate, and an acknowledgement by the Hiring Attorney that the Hiring Attorney is solely responsible for the Remote Associate'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.

⁹ Id., Comment 5.3(3) (emphasis added).

¹⁰ See ABA Model Guidelines for the Utilization of Paralegal Services, n. 3, available at: https://www.americanbar.org/content/dam/aba/administrative/paralegals/lis_prlg_modelguidelines.pdf.

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:
 - (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
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.¹¹

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 5.3.¹²

In LAWCLERK, the Hiring Attorney has sole responsibility for the Remote Associate’s work product. The Remote Associate is precluded from having any contact with a Hiring Attorney’s clients, opposing counsel, witnesses, or any other party to the Work for which the Remote Associate has been engaged unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. As such, the Remote Associate is precluded from otherwise providing legal advice to a Hiring Attorney’s client, thereby satisfying both the requirements imposed in Model Rule 5.5, as well as the policy behind the rule.

¹¹ Model Rules, 5.5.

¹² Id., Comment 5.5(2) (emphasis added).

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

Beyond the Model Rules, the services to be provided by Remote Associates to Hiring Attorneys in 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. 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.^[13]*

Further, while paralegals and legal assistants may not serve as Remote Associates, the guidelines, rules, and case law analyzing the services that may be provided by legal assistants and paralegals are 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 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.¹⁴ 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.”¹⁵

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

¹³ 7 Am. Jur. 2d Attorneys at Law § 130 (emphasis added).

¹⁴ NALA Code, available at <https://www.nala.org/sites/default/files/codeofethics.pdf>; see also NALA Guidelines, available at <https://www.nala.org/sites/default/files/files/banner/Model%20Standards.pdf>.

¹⁵ NALA Guideline No. 2; NALA Code Canon 2.

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.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹

Consistent with the foregoing legal authorities and guidelines, LAWCLERK requires the Hiring Attorney to supervise the Remote Associate and to maintain responsibility for the Remote Associate’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 Remote Associates from engaging in any contact with clients, opposing counsel, witnesses, or any other party to the Work for which the Remote Associate has been engaged unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

¹⁶ See NALA Code Canons 2 and 3; NALA Guidelines 2 and 3.

¹⁷ See NALA Code Canon 4; see also 122 Am. Jur. Proof of Facts 3d § 279.

¹⁸ See ABA Guidelines, at Preamble and n. 1, available at: https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_modelguidelines.pdf.

¹⁹ See *id.* at Guideline No. 2 (emphasis added).

²⁰ See *id.* at Guideline No. 3.

²¹ See *id.* at Comment to Guideline No. 2.

SECTION III

50 STATE REVIEW AND ANALYSIS

Every state has adopted some form of Model Rules 5.3 and 5.5. While states adopted varying versions of these Model Rules, each state's laws were 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.²² 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.”²³

Alabama expressly authorizes eligible²⁴ 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.²⁵ Additionally, beyond Alabama’s adoption of Model Rule 5.3,²⁶ 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.²⁷

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,²⁸ 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,²⁹ parents prosecuting actions on behalf of their child without stating any claims of their own in the complaint,³⁰ and filing pleadings with the court on behalf of another person or corporation irrespective of the existence of a power of attorney.³¹

²² Ala. Code 1975, § 34-3-6(a)(b).

²³ *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).

²⁴ Alabama Rule for Legal Internship by Law Students (amendment effective September 19, 2006), available at: <http://judicial.alabama.gov/docs/library/rules/internl.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).

²⁵ *Id.*

²⁶ 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/).

²⁷ Available at: https://alabamaparalegals.starchapter.com/images/downloads/code_of_ethics.pdf.

²⁸ *Godwin v. McKnight*, 784 So.2d 1014 (Ala. 2000).

²⁹ *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).

³⁰ *Chambers v. Tibbs*, 980 So.2d 1010, (Ala. Civ. App. 2007).

³¹ *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 Remote Associates and Hiring 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.”³² Citing to Canons 35³³ and 47³⁴ of the Canons of Professional Ethics, ³⁵ 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

³¹ 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).

³² 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>.

³³ 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. . . .”

³⁴ 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.”

³⁵ 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/.

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 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.

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.^[36]

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.³⁷

The Alaska Supreme Court has reaffirmed that attorneys have an obligation to

³⁶ Alaska Bar Association Ethics Opinion 73-1, adopted October 6, 1973 (emphasis added).

³⁷ Welton v. State of Alaska, 2011 WL 2151850 *9 (Ala. Ct. App. 2011).

³⁸ In re Reger, 421 P.3d 25, 32 (Alaska 2018).

supervise any nonlawyer staff under Rule 5.3(a)(2).³⁸ 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.³⁹ This case further illustrates that the use of LAWCLERK will not violate Alaska's ethical rules. The Alaska Supreme Court did not forbid delegation. However, like other courts, it demands that a licensed attorney supervise all legal work. LAWCLERK's Terms of Service require all Hiring Attorneys to agree to supervise any tasks.

Consistent with the foregoing ethics opinion and case law, Remote Associates can only provide the services that are delegated to them and supervised by the Hiring Attorney. The Hiring Attorney always retains responsibility for the Remote Associate's work and only the Hiring Attorney may provide legal advice to the Hiring Attorney's client unless the Remote Associate's legal advice is given in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. 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

³⁹ Id.

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.

Restrictions on Disbarred Hiring 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.

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

⁴⁰ ER 5.3 is Arizona's adopted version of Model Rule 5.3.

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^[40] of the rules of professional conduct. This exemption is not subject to section I.

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^[41] of the rules of professional conduct.^[42]

Applying Rule 31, Arizona courts have found the unauthorized practice of law where:⁴³ (i) a nonlawyer represents a client in a judicial proceeding or mediation (a) in the capacity as guardian ad litem, (b) as an agent of a business⁴⁴; (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;⁴⁵ (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 jurisdiction, and presents himself on his letterhead and otherwise as a "J.D." or an "attorney";⁴⁶ 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."⁴⁷

Recent changes in Arizona rules have expanded the scope of non-lawyer responsibilities. In 2020, the state Supreme Court adopted rule changes that allow certified legal paraprofessionals ("LPs") to provide legal services in limited circumstances such as misdemeanor criminal cases.⁴⁸ LPs may undertake these tasks without attorney supervision.

While Arizona's LP program does not absolve lawyers of their obligation to supervise the non-lawyers in their employ, the change indicates a shift in the legal profession as other states have adopted similar programs or are considering doing so.⁴⁹ As more states broaden the rules to allow non-lawyers to provide unsupervised legal assistance, it will be more difficult to argue that platforms such as LAWCLERK – which require supervision at all times – violate the rules of professional responsibility.

⁴³ Byer-Watts v. Parker, 18 P.3d 1265 (Ariz. Ct. App. 2001).

⁴⁴ State v. Eazy Bail Bonds, 229 P.3d 239 (Ariz. Ct. App. 1 2010).

⁴⁵ 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).

⁴⁶ State Bar of Arizona v. Lang, 323 P.3d 740 (Ariz. Ct. App. 2014).

⁴⁷ In re Gallego, 2012 WL 5286893 *1 (Ariz. 2012).

⁴⁸ Arizona Supreme Court Administrative Order No. 2020-174 (Nov. 4, 2020), available at <https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-174F.pdf?ver=2020-11-05-110008-743>.

⁴⁹ See, e.g., the sections on California and Washington, *infra*.

Consistent with Rule 31 and the applicable case law, Remote Associates can only provide the services that are delegated to them and supervised by a Hiring Attorney, cannot appear in court, and cannot have any communication with the client or opposing counsel. The Hiring Attorney always retains responsibility for the Remote Associate's work and only the Hiring Attorney may provide legal advice to the Hiring 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 Remote Associates do not engage in the unauthorized practice of law by completing Work delegated to them by a Hiring Attorney that is responsible for their work product and for their supervision.

■ 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."⁵⁰ Finding that a lawyer had violated Rule 5.5(b), among others, the Supreme Court of Arkansas focused on the fact that the 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.⁵¹

Consistent with the Arkansas Supreme Court's Mays decision, LAWCLERK requires the Hiring Attorney's supervision of the Remote Associate, the Hiring Attorney retains ultimate responsibility for the Remote Associate's work, and prohibits the Remote Associate from having any direct contact with the Hiring Attorney's clients, opposing counsel, witnesses, or any other party to the Work for which the Remote Associate has been engaged unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

⁵⁰ Mays v. Neal, 938 S.W.2d 830, 835 (Ark. 1997).

⁵¹ Id. at 836. ⁵² Cal. Bus. & Prof. Code § 6125, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC§ionNum=6125.

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”⁵² 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.⁵³

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.⁵⁴ 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.’⁵⁵

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.⁵⁶

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.⁵⁷ 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).⁵⁸ However, because Landlords Professional Services’ nonlawyers interviewed their clients and provided client-

⁵³ 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>.

⁵⁴ *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal.4th 119 (Cal.1998).

⁵⁵ *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)).

⁵⁶ *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)).

⁵⁷ *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).

⁵⁸ *People v. Landlords Prof’l Servs.*, 215 Cal.App.3d 1599, 1604-10

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.⁵⁹ 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.⁶⁰

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

⁵⁹ Id. at 1608-09.

⁶⁰ Id. at 1603-04 (emphasis added).

In contrast, the trial court in *Meza v. Prepaid Hiring Attorney Services*⁶¹ found that a prepaid attorney services plan was not illegal and did not engage in the unauthorized practice of law. Prepaid Hiring Attorney Services, Inc. (PASI) was a California corporation which contracted with individuals for prepaid attorney services. The trial court found that:

- (1) the PASI agreements were not illegal under Business and Professions Code section 6125 (prohibiting the unlicensed practice of law) because they did not contemplate that PASI itself would practice law on behalf of any of its members;
- (2) although PASI's failure to register as a professional law corporation was a technical violation of law, the object of the PASI agreements was not a violation of law, and thus PASI's failure to register as a professional law corporation was not a defense to arbitration;
- (3) PASI appeared to be a valid group or legal services plan under California law;
- (4) PASI was not a lawyer referral service subject to Business and Professions Code section 6155; and
- (5) the PASI agreements were not void for fraud in the execution.⁶²

LAWCLERK offers a monthly subscription program where the Hiring Attorney selects the Remote Associate and the approximate hours the Hiring Attorney needs (in 10-hour increments). But PASI's only similarity to LAWCLERK's subscription plan is with the billing arrangement. With a Remote Associate subscription, only one Remote Associate is used, who has been vetted and selected by the Hiring Attorney. Neither the Hiring Attorney nor the Remote Associate is 'referred' to others under the LAWCLERK subscription; rather, the LAWCLERK subscription primarily serves an administrative function, not a substantive one. The Hiring Attorney hires the Remote Associate for one or more 4-week time periods, using the same Remote Associate for consistency, and to ease tasks such as billing, creating and posting separate projects. Furthermore, as LAWCLERK's Terms of Service clearly state, LAWCLERK is not a referral service nor referral agency; LAWCLERK is solely a marketplace.

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.⁶³ However,

⁶¹ *Meza v. Prepaid Attorney Services* No. B308033 (Cal. Ct. App. Oct. 26, 2021; case closed by Cal. Supr. Ct. No. S272182 [Cal. Mar. 9, 2022]).

⁶² *Id.* at *, at *1.

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.⁶⁴

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.⁶⁵

The Birbrower analysis underscores why LAWCLERK does not promote the unauthorized practice of law. In LAWCLERK, the attorney-client relationship occurs between a duly licensed Hiring Attorney in good standing and that attorney's California client. There is no contact between the Hiring Attorney's client and the Remote Associate unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. Further, the Remote Associate solely provides the services delegated by the Hiring Attorney, which services are solely provided to the Hiring Attorney (not the Hiring Attorney's client).

While Remote Associates 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.⁶⁶ Section 6450 of the California Business and Professions 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

⁶⁴ Id. at 128.

⁶⁵ Id. at 129-30.

⁶⁶ 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).

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).

⁶⁷ Cal. Bus. & Prof. Code § 6450 (emphasis added), available at: <https://codes.findlaw.com/ca/business-and-professions-code/bpc-sect-6450.html>.

[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).^[67]

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.⁶⁸

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

In May 2018, the California Supreme Court approved new rules.⁶⁹ These new rules became effective on November 1, 2018.⁷⁰ The numbers of the new rules more closely align with the ABA's Model Rules.⁷¹ The language tracks as well. The changes will be discussed below.

⁶⁸ In *Matter of Jorgensen*, 2016 WL 3181013, at *7 (Cal. Bar Ct. May 10, 2016).

⁶⁹ 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>.

⁷⁰ 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).

⁷¹ See *id.* (providing list comparing new numbering with old numbering of Ca. rules; new rules match numbering in ABA Model Rules.)

RULE 5.3

California's 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 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.^[72]

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.^[73]

⁷² Cal. R. Prof. Conduct 5.3.

⁷³ Cal. R. Prof. Conduct 5.3, cmt.

California's 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 Hiring Attorneys to supervise Remote Associates in their duties.

RULE 5.3.1

Notably, in a departure from the ABA Model Rules, California, like many other jurisdictions, 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.^[74]

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 Remote Associates who are admitted to any bar must be in good standing with those bars. Therefore, LAWCLERK complies with California law.

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

⁷⁴ See Cal. R. Prof. Conduct 5.3.1.

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 complies with the new California rules as well.

California may be joining the states that permit non-lawyers to provide legal services. In June 2021, the California Paraprofessional Working Group Staff drafted guidelines that would govern licensed paraprofessionals.⁷⁵ In September 2021, the Bar opened a public comment period on the rules which will close in early 2022.⁷⁶ Over 2,000 comments were received from 1,279 individual commenters, and.

While a decision to allow paraprofessionals to perform limited legal services does not amend existing rules that require lawyers to carefully supervise non-lawyer personnel, the shift means that it will be more difficult to argue that allowing non-lawyers to provide supervised legal services violates ethics rules.⁷⁷ We intend to further address this matter, when updates become available.

⁷⁵ State Bar of California Memorandum Re: Draft Rules of Professional Conduct for Paraprofessional Licensees (June 25, 2021), available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027657.pdf>.

⁷⁶ State Bar of California Memorandum Re: Public Comment re Proposed Paraprofessional Rules of Professional Conduct (September 25, 2021), available at <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000028104.pdf>.

⁷⁷ But see California Lawyers Association January 10, 2022 letter, questioning whether there is "adequate justification for creating an entirely new class of licensed professionals who would be authorized to provide legal services." Letter available at <https://calawyers.org/california-lawyers-association/letter-regarding-california-paraprofessional-program-working-group-report-and-recommendations/>

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....”⁷⁸ 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.”⁷⁹

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.⁸⁰ 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.⁸¹

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.”⁸² 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

⁷⁸ *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)).

⁷⁹ *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).

⁸⁰ *State of Colorado v. Stewart*, 892 P.2d 875, 876-878 (Colo. 1995).

⁸¹ *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).

⁸² 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.

potential tasks that can or should be performed by a supervised paralegal in an effort to assist with work flow.⁸³ 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 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, Shepardize, 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.
12. Supervise discovery and recommend further discovery.

C. PRE-TRIAL

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 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, Shepardize, 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.

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 Hiring 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. ^[85]

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. In LAWCLERK, the Remote Associate, who has superior legal knowledge to a paralegal, only engages with the Hiring Attorney and the Hiring Attorney is responsible for the Remote Associate'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,⁸⁵ further proving that Remote Associates do not engage in the unauthorized practice of law by completing projects delegated to them by the Hiring Attorney that is responsible for their work product and for their supervision.

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.^[86]

⁸⁴ Id., available at: <http://www.cobar.org/Portals/COBAR/Repository/ParalegalGuidelines/CivilLitigation.pdf>.

⁸⁵ 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)).

⁸⁶ 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>.

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

(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^[87]

LAWCLERK complies with both of these new rules. LAWCLERK complies with rule 5.3 because LAWCLERK's Terms of Service requires Hiring Attorneys to supervise Remote Associates' work at all times. Similarly, while Rule 5.5 allows disbarred attorneys to work on legal matters, LAWCLERK is more stringent. Unlike Colorado, LAWCLERK requires all barred Remote Associates to be in good standing in the jurisdictions where they are licensed.

Colorado courts have been consistent in requiring supervision. In *People v. Anthony Henry Veto*,⁸⁸ the attorney was disciplined because he allowed his paralegal – a Texas law student allowed to appear in Texas courts – to speak during a Colorado hearing.⁸⁹ The court noted that although the paralegal had been supervised, discipline was appropriate because the attorney helped the law student engage in the unauthorized practice of law.⁹⁰ The result in this case underscores the obligation to forbid those who are not licensed to appear in court. However, LAWCLERK's Terms of Service forbid attorneys from allowing non-lawyers to appear in court at any time unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the appearance is governed. As such, LAWCLERK complies with Colorado law.

⁸⁷ 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>.

⁸⁸ No. 21PDJ038 (Colo. Sup. Ct. June 23, 2021).

⁸⁹ *Id.*

⁹⁰ *Id.*

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.⁹¹ 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.
- (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.”⁹²

⁹¹ Conn. Gen. Stat. § 51-88.

⁹² Conn. R. Supr. Ct. Gen. § 2-44A, available at <https://www.jud.ct.gov/cbec/rules.htm#2-44A>.

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.⁹³ 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.”⁹⁴ 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.⁹⁵

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.⁹⁶ 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 of sound moral character, acting at all times under the heavy trust obligation to clients which rests upon all attorneys.”⁹⁷

As discussed above, LAWCLERK not only complies with Rule 5.3, but by precluding Remote Associates from having any client contact or contact with the opposing party unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed and requiring the Hiring Attorney to be responsible for the Remote Associate’s work product, LAWCLERK protects the public from the receipt of “erroneous advice given by persons untrained in the law.”

⁹² Conn. R. Supr. Ct. Gen. § 2-44A, available at <https://www.jud.ct.gov/cbec/rules.htm#2-44A>.

⁹³ *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.)

⁹⁴ *State v. Buyers Service Co. Inc.*, 357 S.E.2d at 18.

⁹⁵ *Saas v. Statewide Grievance Comm.*, 2013 WL 388204 at *11 (Conn. 2013).

⁹⁶ *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.”).

⁹⁷ *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)).

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’⁹⁸ ... 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.^[99]

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;¹⁰⁰ (ii) someone other than a lawyer licensed to practice law in Delaware conducts a closing of a sale or refinancing of Delaware real property¹⁰¹ or represents Delaware residents in motor vehicle accident matters;¹⁰² (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;¹⁰³ and (iv) nonlawyers represent third parties in judicial proceedings, including due process hearings before the Delaware Department of Public Instruction.¹⁰⁴

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 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;¹⁰⁵ 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.¹⁰⁶

⁹⁸ 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)).

⁹⁹ Id. (quoting Tumulty v. Rosenblum, 48 A.2d 850, 852 (N.J. 1946)).

¹⁰⁰ Alston v. Issa, 2012 WL 6845666 (Del.2012)

¹⁰¹ 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).

¹⁰² 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).

¹⁰³ In re Estep, 933 A.2d 763 (Del. 2007); In re Kingsley, 950 A.2d 659 (Del. 2008).

¹⁰⁴ In re Arons, 756 A.2d 867 (Del. 2000).

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.¹⁰⁷

In light of the COVID-19 pandemic, many attorneys worked remotely from states in which they were not barred. The Delaware State Bar considered whether a Delaware-licensed attorney may practice Delaware law while working remotely from another jurisdiction in which the lawyer is not licensed (such as from a home office), without engaging in the unauthorized practice of law in violation of Rule 5.5(a) of the Delaware Lawyers' Rules of Professional Conduct ("DLRPC"). In its advisory opinion, the Bar Committee concluded that lawyers licensed in Delaware may ethically engage in the practice of Delaware law, for clients with Delaware matters, while physically present in another jurisdiction in which they are not admitted unless a statute, rule, case law, or opinion of the local jurisdiction prohibits the conduct, provided that such lawyers may not hold themselves out as being licensed to practice in the local jurisdiction and may not advertise or otherwise hold themselves out as having an office in the local jurisdiction, or provide or offer to provide legal services for matters subject to the local jurisdiction, unless otherwise authorized.¹⁰⁸

LAWCLERK was created years before the extenuating circumstances of COVID-19. The LAWCLERK platform fosters creating a 'virtual practice' (whether for one or many projects) and is designed for remote work. LAWCLERK's Terms of Service impose many constraints upon both Hiring Attorneys and Remote Associates, to ensure they comply with law and their state's ethical rules. The Delaware State Bar Committee's advisory opinion is not only consistent with, but also reinforces, the nature of how Hiring Attorneys and Remote Associates work together.

Consistent with the foregoing authority, LAWCLERK does not engage in the unauthorized practice of law because all services provided by the Remote Associate are provided at the direction of, and under the supervision of a barred Hiring Attorney, the Remote Associate does not provide legal advice to the client or have any client contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the advising or communication is governed, and the Hiring Attorney retains sole responsibility for the Remote Associate's work product.

¹⁰⁵ In re Stone, BUPL No. UPL 91-2 (1991), available at <http://courts.delaware.gov/ODC/Digest/Download.aspx?id=424>.

¹⁰⁶ In re Gross, BUPL No. UPL 92-8 (1993), available at <http://courts.delaware.gov/ODC/Digest/Download.aspx?id=428>.

¹⁰⁷ 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).

¹⁰⁸ Opinion 2021-1: Rules Discussed: 5.5(a), 5.5(b)(1), available at <https://www.dsba.org/publications/ethics-opinions-index/>.

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.”¹⁰⁹ 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;
- (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.^[110]

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

¹³ 7 Am. Jur. 2d Attorneys at Law § 130 (emphasis added).

¹⁴ NALA Code, available at <https://www.nala.org/sites/default/files/codeofethics.pdf>; see also NULA Guidelines, available at <https://www.nala.org/sites/default/files/files/banner/Model%20Standards.pdf>.

¹⁵ NALA Guideline No. 2; NALA Code Canon 2.

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.¹¹¹ Consistent therewith, the Hiring Attorney selects the Remote Associate, the Hiring Attorney maintains the attorney-client relationship, and the Remote Associate 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.¹¹²

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 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.^[113]

In LAWCLERK, the Hiring Attorney establishes the payment for the services performed by the Remote Associate, which are not established based on the billable hour charged for a lawyer, and the Hiring Attorney's clients are not charged for the services based on the Hiring Attorney's billable hour. Thus, not only are Remote Associates "held out"

¹¹¹ 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

¹¹² 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

¹¹³ Id. at pp. 5-6.

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.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ This opinion further illustrates that LAWCLERK does not engage in the unauthorized practice of law as the Hiring Attorney selects the Remote Associate, the Remote Associate does not provide legal advice to the Hiring Attorney's clients unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, the Hiring Attorney supervises the Remote Associate, and LAWCLERK does not hold the Remote Associates out as being able to practice law unless the Remote Associate is in fact licensed in the relevant jurisdiction and participating in a LAWCLERK solution allowing such services to be rendered.

¹¹⁴ 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>

¹¹⁵ Id. at pp. 6-7.

¹¹⁶ Id. at pp. 7-8.

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 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.¹¹⁷

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.”¹¹⁸ 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.¹¹⁹

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.¹²⁰

¹¹⁷ 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)) (cited in contradiction in The Florida Bar v. TIKD Services, 326 So. 3d 1073 (Fla. 2021).

¹¹⁸ Id. (citing Florida Bar v. Schramerk, 616 So.2d 979, 983 (Fla. 1993)).

¹¹⁹ Id. at 596-97.

¹²⁰ 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).

By precluding any contact with the client or other parties to the applicable matter unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed and ensuring that the Hiring Attorney maintains full responsibility for the Remote Associate's work product, LAWCLERK allows Hiring 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 Hiring Attorney or a Remote Associate meeting the jurisdictional requirements to practice law. 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.

A 2021 decision reaffirmed that attorneys must be responsible for providing legal services. A company designed to help people fight traffic tickets advertised its legal services directly to the public.¹²¹ If a customer enrolled, the company would select an attorney for the case.¹²² The Supreme Court ruled that although the program was profitable, the company had engaged in the unauthorized practice of law because "as a nonlawyer" the company "lack[ed] the skill or training to ensure the quality of the legal services provided to the public through the licensed attorneys it contracts with.... By contrast, if this were a law firm, its owners would be ethically required to properly supervise any less-experienced lawyers to whom they assigned a legal matter and those owners would possess the legal training that would prepare them for that supervision."¹²³ Based on this case, the LAWCLERK platform does not create any concerns. LAWCLERK does not advertise directly to the public; rather, the platform allows supervising attorneys to find legal assistance. Moreover, LAWCLERK's Terms of Service require direct supervision by an attorney as encouraged by the opinion. LAWCLERK more than meets the rules set forth in this decision.

Additionally, Florida may join other states that allow paraprofessionals to provide limited legal services. In 2021, a bar committee recommended that the state implement a pilot program on a limited, trial basis.¹²⁴ If Florida does adopt such a program, it would not amend the existing ethics rules that require lawyers to provide careful supervision of non-lawyer personnel. However, the shift may make it more difficult to argue that allowing non-lawyers to provide supervised legal services violates ethics rules.

¹²¹ The Florida Bar v. TIKD Services LLC, No. SC18-149 at *8 (Fla. Sup. Ct., Oct.14, 2021.)

¹²² See *id.*

¹²³ See *id.* at *10.

¹²⁴ Final Report Of The Special Committee To Improve The Delivery Of Legal Services 14 (June 28, 2021).

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.^[125]

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;¹²⁶ (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.¹²⁷

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.”¹²⁸

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.¹²⁹ This is consistent with the Supreme Court of Georgia’s explanation of the public policy behind the prohibition on the unauthorized practice of law:

¹²⁵ Ga. Code Ann. § 15-19-50.

¹²⁶ In re UPL Advisory Opinion 2003-1, 623 S.E.2d 464, 465 (Ga. 2005).

¹²⁷ Lowe v. Presley, 71 S.E.2d 730 (1952).

¹²⁸ 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..>

¹²⁹ 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.

[130]

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.”¹³¹ 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.

¹³⁴ 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 affecting 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 in LAWCLERK unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed]:

(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.

⁸⁷ 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>.

⁸⁸ No. 21PDJ038 (Colo. Sup. Ct. June 23, 2021).

⁸⁹ Id.

⁹⁰ Id.

(7) Signature of pleadings, briefs or other legal documents for presentation to any court or explanation of legal documents to the client of the lawyer or to the opposite party in any negotiation or litigation.^[132]

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.^[133]

(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.^[134]

(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.^[135]

¹³² Notably, LAWCLERK similarly prohibits the duties set forth in subsections 1-7 above.

¹³³ The Remote Associates are prohibited from signing any documents.

¹³⁴ The Remote Associates are engaged on a project-by-project basis and their names do not appear on any letterhead, office doors, or business cards.

(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)]^[136]

(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] ^[137]

(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.^[138]

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.* ^[139]

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

¹³⁶ The Remote Associates are engaged on a project by project basis and are not partners in the engaging Hiring Attorney's law firm and they do not have a financial interest that amounts to a partnership interest in such firm.

¹³⁷ Prior to commencing an engagement, Remote Associates 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.

¹³⁸ *Id.*

¹³⁹ 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).

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.¹⁴⁰

Beyond the satisfaction of the public policy goals, LAWCLERK permits Hiring 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 supervision, to a paraprofessional. At all times, however, LAWCLERK prohibits any direct contact with the Hiring Attorney's client and opposing counsel unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, thereby ensuring that only the Hiring Attorney provides legal advice to the client. Additionally, the Hiring Attorney is solely responsible for the Remote Associate's work product and only the Hiring Attorney receives the Remote Associate'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, LAWCLERK's conflicts check system allows Hiring Attorneys to evaluate whether any actual or potential conflict will arise from the engagement of the Remote Associate prior to engaging the Remote Associate.

In *Barnwell v. Trivedi*, a Georgia-licensed attorney supervised a law student intern who conducted various depositions.¹⁴¹ The intern was not a Georgia-licensed attorney, and did not fit within any of the exceptions found in the Supreme Court of Georgia's Student Practice Rule. A grievance was filed and upheld against the supervising lawyer, for facilitating and promoting the unauthorized practice of law. Unlike in the *Barnwell* case, LAWCLERK permits only licensed attorneys (not law students) to use the platform, and a Remote Associate may not have contact with other attorneys or witnesses unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed (and therefore would be prohibited from conducting a deposition without meeting the jurisdictional requirements for the practice of law).

¹⁴⁰ 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>.

¹⁴¹ *Barnwell v. Trivedi*, No. A22A1466 (Ga. Ct. App. Nov. 15, 2022).

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.^[142]

Hawaii courts have found the unauthorized practice of law where a nonlawyer seeks to represent a corporation, a third party, or a trust.¹⁴³ 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 § 605-14¹⁴⁴ 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 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,

¹⁴² *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).

¹⁴³ 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.").

¹⁴⁴ 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."

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.^[145]

While this case is not directly applicable to all of LAWCLERK's solutions, 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.¹⁴⁶

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 Hiring Attorneys in need of paraprofessional assistance with available paraprofessionals that have legal training.

¹⁴⁵ 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).

¹⁴⁶ 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

IDAHO

While Idaho does not have a statute defining the unauthorized practice of law,¹⁴⁷ 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.^[148]

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.¹⁴⁹

As early as 1992, the Idaho State Bar adopted Model Guidelines for the Utilization of Legal Assistant Services. In its preface, the Idaho Bar recognized the need to use legal assistants, and emphasized the importance of proper supervision by a licensed attorney:

The following advisory guidelines were adopted by the Idaho State Bar membership during the 1992 resolution process. These guidelines are an attempt to identify the proper role of a legal assistant, and to define the lawyer's supervisory role. Because the Model Guidelines are advisory only, they do not conflict with the Idaho Rules of Professional Conduct. There are 10 guidelines, covering a lawyer's supervisory and training responsibilities, the permissible scope of delegation, how legal assistants are held out to clients, the courts and the public, and guidelines for the billing of a legal assistant's time.¹⁵⁰

¹⁴⁷ 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).

¹⁴⁸ 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).

¹⁴⁹ 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).

¹⁵⁰ Available at Idaho State Bar Unauthorized Practice of Law Page (<https://isb.idaho.gov/bar-counsel/unauthorized-practice-of-law/>)

Idaho's forward-thinking guidelines are consistent with LAWCLERK's emphasis on the Hiring Attorney's requisite supervision and sole responsibility for assigned Work.

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 Remote Associate's work product is solely provided to the Hiring Attorney, the Hiring Attorney is solely responsible for the work product, and precludes the Remote Associate from appearing in any judicial or administrative proceeding and from having any client contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the representation or communication is governed.

■ ILLINOIS

Under Illinois law, there is no bright line test to distinguish what constitutes the practice of law.¹⁵¹ Where a paralegal is engaged by a lawyer, the Illinois courts have held that the paralegal does not independently practice law, but simply see 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.
 - (3) The paralegal shall not sign pleadings or papers filed in a court or other

¹⁵¹ 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).

¹⁵² 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).

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.^[153]

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 a Hiring Attorney by a Remote Associate are far more restrictive and protective, ensuring that only the Hiring Attorney provides legal advice unless done so in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed 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.¹⁵⁴ While LAWCLERK precludes Remote Associate and client contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, thereby resolving these concerns, LAWCLERK additionally precludes suspended or disbarred lawyers from serving as Remote Associates.¹⁵⁵ Therefore, LAWCLERK's rules are more stringent than Illinois' rules.

An opinion from October 2019 directly addressed nonlawyer assistants.¹⁵⁶ 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

¹⁵³ Illinois Code of Paralegal Ethics, Rule One, available at https://ipaonline.clubexpress.com/content.aspx?page_id=22&club_id=812874&module_id=186420.

¹⁵⁴ *In re Discipio*, 645 N.E.2d 906 (Ill. 1994) (quoting *In re Kuta*, 427 N.E. 2d 136 (Ill. 1981)).

¹⁵⁵ Except in rare, unique circumstances, in LAWCLERK's sole judgment and discretion (see LAWCLERK's Terms of Service).

¹⁵⁶ Illinois State Bar Assoc., Op. No. 19-04 (October 2019), available at <https://www.isba.org/ethics/byyear>.

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.^[157]

LAWCLERK complies with this opinion. LAWCLERK's Terms of Service clearly state that the Hiring Attorney must disclose the use of LAWCLERK to the client. 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.^[158]

LAWCLERK complies with this requirement. As the opinion permits, LAWCLERK allows attorneys to engage recent graduates. Similarly, LAWCLERK requires Hiring Attorneys to disclose the work where required. Finally, LAWCLERK forbids Remote Associates from contacting clients or appearing in court unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the representation or communication is governed. Thus, LAWCLERK complies with the Illinois Bar's guidance.

In 2020, the Illinois State Bar issued an advisory opinion that may be of interest. The opinion concerned an attorney who was not licensed in Illinois but who wished to take a job with an Illinois firm where she would "support the firm's Illinois-licensed attorneys, but not to make an appearance in court herself." The opinion concluded that this would not result in any violations of the ethical rules.¹⁶⁰

¹⁵⁷ Id.

¹⁵⁸ Illinois State Bar Assoc., Op. No. 20-01 (May 2020), available at <https://www.isba.org/ethics/byyear>.

¹⁵⁹ Illinois State Bar Assoc., Op. No. 20-08 (October 2020), available at <https://www.isba.org/ethics/byyear>.

¹⁶⁰ Id.

Again, LAWCLERK complies with this guidance. At no time do Remote Associates hold themselves out to the public or to clients as attorneys unless they are in fact licensed in the applicable jurisdiction. Moreover, the opinion reaffirms that non-lawyers may provide support to lawyers with appropriate supervision. Because LAWCLERK's Terms of Service require supervision of non-lawyers at all times, LAWCLERK creates no ethical issues under Illinois' ethical rules.

In 2021, the Illinois State Bar issued another interesting advisory opinion. Per the opinion, a for-profit lawyer-client "match" service may comply with the Illinois Rules of Professional Conduct if: (1) the matches are automated and completed without discretion on the part of the service as to what lawyer to match with a potential client; (2) the service does not endorse or vouch for the lawyer's services, or hold itself out as such; (3) the service is not involved in any resulting attorney-client relationship that is formed after a "match"; and (4) any fees paid by the lawyer to the service are reasonable and unrelated to the services the lawyer provides to the client identified through the service.¹⁶¹ Rather than discourage "matching services" (which have become increasingly available), the Illinois State Bar is 'friendly' to the concept provided the service complies with certain requirements. But as described in the opinion, the service matched lawyers with clients, and the service acted as an intermediary to create the 'matches'. LAWCLERK is notably different. As its terms of service make clear, LAWCLERK is not a matching service, it is a marketplace for and between licensed attorneys only. Accordingly, that Opinion 22-02 is inapposite. If anything, LAWCLERK's stringent Terms of Service go well beyond the strictures of Opinion 22-02.

¹⁶¹ Illinois State Bar Assoc., Op. No. 22-02 (May 2021), available at <https://www.isba.org/ethics/byyear>.

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 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

¹⁵⁷ Id.

¹⁵⁸ Illinois State Bar Assoc., Op. No. 20-01 (May 2020), available at <https://www.isba.org/ethics/byyear>.

¹⁵⁹ Illinois State Bar Assoc., Op. No. 20-08 (October 2020), available at <https://www.isba.org/ethics/byyear>.

¹⁶⁰ Id.

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.¹⁶²

¹⁶² Guidelines available at https://www.in.gov/judiciary/rules/prof_conduct/#_Toc461714717.

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."¹⁶³ However, in response to commentators and others within the Indiana Bar,¹⁶⁴ 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 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:

¹⁶³ 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.

¹⁶⁴ 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.

*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.* ^[165]

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.¹⁶⁶

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.

¹⁶⁵ Ind. St. RPC Rule 5.3, Comment 1 (emphasis added) available at https://www.in.gov/judiciary/rules/prof_conduct/#_Toc461714693.

¹⁶⁶ *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).

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 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.^[167]

Iowa Ethics Opinion 13-03 advises that contract lawyers may be engaged by Iowa lawyers, but only with the consent of the client.¹⁹⁸ LAWCLERK advises Hiring Attorneys to advise their clients that a Remote Associate 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.

¹⁶⁷ *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).

¹⁶⁸ 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](http://205.209.45.153/iabar/ethics.nsf/e61beed77a215f6686256497004ce492/0c024e596ff08b0686257bdd005ca595/$FILE/IA%20Ethics%20Opinion%20%2013-03%20Use%20of%20Contracted%20Lawyers%20.pdf).

Two cases reaffirm that where attorneys hire non-lawyers, they do not violate rule 5.3 or rule 5.5, but the rules are violated when attorneys fail to adequately supervise their nonlegal staff.¹⁶⁹ However, the courts do not encourage lawyers to forego all nonlawyer assistance; rather, the attorneys were disciplined for failure to adequately supervise.

LAWCLERK complies with these decisions. LAWCLERK's Terms of Service require Hiring Attorneys to adequately supervise the Remote Associate's work and take sole responsibility for the created work product. LAWCLERK's supervision requirements ensure that both Hiring Attorneys and Remote Associates 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."¹⁷⁰ This is 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.¹⁷¹

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.¹⁷² 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.¹⁷³ In *Martinez*, an insurance claims consultant was determined to be engaged in the unauthorized practice of law where the claims consultant was not

¹⁶⁹ 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...").

¹⁷⁰ *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 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).

¹⁷¹ 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>.

¹⁷² *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)

¹⁷³ *Id.*

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.¹⁷⁴

Further illustrating that by prohibiting the Remote Associates from having any client contact and appearing in court or otherwise interacting with other parties to the Work unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, the Remote Associates 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 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.

¹⁷⁴ State ex rel. Stovall v. Martinez, 996 P.2d 371, 374-75 (Kan. 2000).

‘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.’ (later cited in *In re Holmes*)¹⁷⁵

In *In re Holmes*, the attorney faced a 1-year suspension resulting from an informal admonition. Although the attorney did not render legal advice during his suspension, he gave the impression that he would assist the potential client as soon as he was reinstated. Not only did creating that impression constitute the unauthorized practice of law, the Court was particularly concerned that the client might be irreparably injured by delaying her matter (especially given the time sensitivity of an adoption). The result in *In re Holmes* would not occur with LAWCLERK, whose Terms of Service clearly require that Remote Associate to be barred and in good standing.

¹⁷⁵ *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.”); see also *In re Holmes*, 118,310, at *21 (Kan. Dec. 2, 2022), citing *In re Wilkinson* (The petitioner has engaged in the unauthorized practice of law since his suspension as evidenced by his January 8, 2021, informal admonition. The petitioner told a former client’s spouse that he would represent the client once the petitioner’s one-year suspension concluded and he was reinstated. The petitioner gave the client’s wife ‘an impression that [his] reinstatement would be forthcoming and it would be quick, and that turned out not to be the case.’ Further, during the reinstatement hearing the petitioner seemed to not recognize that his conduct that resulted in the January 8, 2021, informal admonition constituted the unauthorized practice of law.).

¹⁷⁶ *In re Holmes*, 118,310, at *21 (Kan. Dec. 2, 2022).

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.^[177]

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.¹⁷⁸

Additionally, Rule 3.700 of the Kentucky Supreme Court Rules¹⁷⁹ 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,

¹⁷⁷ 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.

¹⁷⁸ *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.)

¹⁷⁹ 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>.

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.

¹⁵⁷ Id.

¹⁵⁸ Illinois State Bar Assoc., Op. No. 20-01 (May 2020), available at <https://www.isba.org/ethics/byyear>.

¹⁵⁹ Illinois State Bar Assoc., Op. No. 20-08 (October 2020), available at <https://www.isba.org/ethics/byyear>.

¹⁶⁰ Id.

SUB-RULE 1

A lawyer shall ensure that a paralegal in his employment does not engage in the unauthorized practice of law.

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.^[180]

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.

¹⁸⁰ 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.

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.^[181]

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

An Ohio-licensed attorney was employed by the Kentucky Department of Public Advocacy (DPA). She applied for licensure in Kentucky, based in part on reciprocity agreements with Ohio. While employed as a DPA attorney and despite being unauthorized to practice law in Kentucky, the attorney represented clients in court and provided legal advice. DPA apparently believed she either had a limited license to practice law or was authorized to practice with the supervision of a licensed attorney. The attorney herself indicated that she was confused about her ability to practice law in Kentucky and believed she was acting appropriately. She attributes this confusion to the following circumstances: She attributes this confusion to the following circumstances: she had a limited license to practice law in Ohio during her final year of law school; she was seeking admission to the Kentucky bar; and she was permitted to represent clients by her superiors at DPA. Despite her apparent good faith, and some confusion on both her and her employer's part, she still engaged in the unauthorized practice of law.

Unlike the disciplined attorney in *Rogalinski*, LAWCLERK does not permit its Remote Associates to appear in court, to work directly with clients, nor to render legal advice to clients unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the representation or communication is governed; all of those remain Hiring Attorney-only responsibilities.¹⁸²

¹⁸¹ 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](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 Responsibility that was in effect from 1971 to 1999 and has not been updated based on subsequent amendments.

¹⁸² *Rogalinski v. Ky. Bar Ass'n*, 647 S.W.3d 273 (Ky. 2022).

LOUISIANA

Louisiana courts have consistently held that limiting the unauthorized practice of law serves to protect the public.¹⁸³ 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.¹⁸⁴

Applying Louisiana Disciplinary Rule 3-101,¹⁸⁵ 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.¹⁸⁶ In reaching this conclusion, the Louisiana Supreme Court explained that the prohibition on the unauthorized

¹⁸³ 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).

¹⁸⁴ La. R. Prof. Conduct, R 5.5(e)(3), Unauthorized Practice of Law; Multijurisdictional Practice of Law, available at <https://lalegaethics.org/louisiana-rules-of-professional-conduct/article-5-law-firms-and-associations/rule-5-5-unauthorized-practice-of-law-multijurisdictional-practice-of-law/>.

¹⁸⁵ Louisiana Disciplinary Rule 3-101 provides that a lawyer shall not aid a non-lawyer in the unauthorized practice of law.

¹⁸⁶ 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).

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.¹⁸⁷

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.”¹⁸⁸

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).¹⁸⁹

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.¹⁹⁰ 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

¹⁸⁷ 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)).

¹⁸⁸ *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.”).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 300.

by a barred lawyer, determine probable insurance coverage, and obtain settlement authority from the client;¹⁹¹ 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.¹⁹² 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 registration statement to the Office of Disciplinary Counsel, on a registration form provided by the Louisiana Attorney Disciplinary Board, and approved by the Louisiana Supreme Court, a suspended lawyer.¹⁹³

The foregoing cases establish that LAWCLERK does not engage in the unauthorized practice of law. In LAWCLERK, only Hiring Attorneys establish and maintain the attorney-client relationship, and the Hiring Attorney – not the Remote Associate, provides legal advice to clients unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. In LAWCLERK, the Remote Associate solely performs the tasks delegated by the Hiring Attorney. The Hiring Attorney supervises the Remote Associate and remains solely responsible for the submitted work product. Finally, disbarred or suspended attorneys may not work as Remote Associates.

Several Louisiana decisions focus on supervision. The cases have reprimanded attorneys for “failure to supervise [] employees...,”¹⁹⁴ and failure to “request or require review and approval of a final draft of the [paralegal's] document prior to its submission.”¹⁹⁵

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

¹⁹¹ In re Guirard and Pittenger, 11 So. 3d 1017, 1023 (La. 2009).

¹⁹² 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.”).

¹⁹³ La. R. Prof. C., Rule 5.5(e) available at <https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf>.

¹⁹⁴ In re Dobbins, NO. 2019-B-1346 A (La. January 29, 2020).

¹⁹⁵ In re Butler, 283 So.3d 455 (La. 2019).

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.^[196]

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.¹⁹⁷ Conversely, LAWCLERK prohibits Remote Associates from signing or filing documents and from appearing in any court or administrative proceedings unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

¹⁹⁶ Me. Rev. Stat. Tit. 4, § 807.

¹⁹⁷ 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 Env’tl. 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.¹⁹⁸

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.”¹⁹⁹ 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.”²⁰⁰ 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.²⁰¹

In *Hallmon*, the court determined that a lawyer had violated Rule 5.5(b) of the Maryland Hiring 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).²⁰²

Similarly, in *Barton*, the Maryland Court of Appeals determined that a lawyer had violated Rule 5.5(b) of the Maryland Hiring 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.²⁰³

¹⁹⁸ Md. Code Ann., Bus. Occ. & Prof. § 10-101(h)(1).

¹⁹⁹ 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)).

²⁰⁰ *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).

²⁰¹ *Id.* (citing *Firris v. Snively*, 19 P.2d 942, 945-46 (Wash. 1933)).

²⁰² *Id.* ²⁰³ Attorney Grievance Comm. Of MD v. *Barton*, 110 A.3d 668 (Md. Ct. App. 2015).

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 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.²⁰⁴

In LAWCLERK, contrary to Hallmon and Barton, it is the Hiring 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 unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. Further, consistent with R.G.S., in LAWCLERK, the Remote Associate is insulated from any contact with the Hiring Attorney's client and the court unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed and all services performed by the Remote Associate are performed at the direction of, and under the supervision of, the Hiring Attorney who remains solely responsible for the Remote Associate's work product.

A 2021 Maryland case reaffirms the need for lawyers to supervise non-attorneys. In Attorney Grievance Comm'n v. Fineblum,²⁰⁵ the attorney hired a paralegal firm but allowed the firm to engage in many activities – including settling cases – of which he had no knowledge.²⁰⁶ The Court found that counsel had violated rules 5.3 and 5.5.

LAWCLERK does not allow users to engage in the behaviors outlined in the case. The Terms of Use specify that the Remote Associates much be supervised by a licensed attorney at all times. Moreover, the Terms of Service forbid Remote Associates from engaging in face-to-face client contact or other behaviors that could be construed as the practice of law unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. As such, LAWCLERK's terms attempt to prevent the concerns raised in Fineblum.

²⁰⁴ In re Application of R.G.S., 541 A.2d 977 (Md. 1988).

²⁰⁵ 473 Md. 272, 250 A.3d 148 (Md. App. 2021).

²⁰⁶ See id. at 153, 163.

Attorney Grievance Comm'n of Md. v. Wemple is another supervision-related disciplinary proceeding. There, the Attorney Grievance Commission of Maryland disciplined an attorney for failing to properly supervise, and for assisting, an out-of-state attorney whose license was suspended; out-of-state attorney (unlicensed in Maryland) also met with clients and provided legal advice to them. Per LAWCLERK's Terms of Service, both Hiring Attorneys and Remote Associates must comply with all applicable laws and registration requirements. Hiring Attorneys agree to properly supervise their Remote Associates, and Remote Associates may not appear in court proceedings, hearings, or meet, consult or discuss matters with clients unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. LAWCLERK's strict rules proscribe the misconduct which occurred in Wemple.²⁰⁷

■ 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,²⁰⁸ 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.^[209]

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

²⁰⁷ MARPC 19-305.5 provides in pertinent part: "An attorney 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 ." The hearing judge concluded that the Respondent attorney violated this rule by assisting another attorney in practicing law while her license was suspended and by misleading the circuit court into granting out-of-state practice privileges, pro hac vice, through knowingly false statements concerning the other attorney's status as a suspended Maryland attorney. Attorney Grievance Comm'n of Md. v. Wemple, 479 Md. 167, 187 (Md. 2022).

²⁰⁸ 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).

²⁰⁹ 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)).

²¹⁰ Real Estate Bar Ass'n for Massachusetts, Inc. v. Nat'l Real Estate Info. Servs., 946 N.E.2d 665, 673 (Mass. 2011).

confined to lawyers.²¹⁰ “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.”²¹¹

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,²¹² have 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.²¹³ 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.²¹⁴ 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.²¹⁵ 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.²¹⁶

²¹¹ *Id.* (quoting *Lowell Bar Ass’n v. Loeb*, 52 N.E. 2d 27 (Mass. 1943)).

²¹² 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. 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).

²¹³ *In re Hrones*, 933 N.E.2d 622, 628 (2010).

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.* at 626.

A line of Massachusetts cases reinforces that ministerial tasks, such as filling out forms, do not constitute the unauthorized practice of law.²¹⁷ However, “[I]n general the practice of directing and managing the enforcement of legal claims and the establishment of the legal rights of others, where it is necessary to form and act upon opinions as to what those rights are and as to the legal methods which must be adopted to enforce them, ... and the practice ... of drafting documents by which such rights are created, modified, surrendered or secured are all aspects of the practice of law (emphasis added).”²¹⁸

In a 2021 case, the Supreme Judicial Court noted that a lawyer had violated Rule 5.3 by failing to supervise non-legal staff who took advantage of the lack of supervision to take money from client accounts.²¹⁹ LAWCLERK does not present such issues as the Terms of Use require licensed attorneys to supervise the Remote Associates at all times and make the attorney solely responsible for the final work product. Moreover, Remote Associates at LAWCLERK do not have access to client accounts or the Hiring Attorney’s trust accounts.

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.²²⁰

²¹⁷ For instance, “[f]illing out standard government forms for others is not necessarily the practice of law.” *Id.* at 525, 946 N.E.2d 665, citing *Loeb*, 315 Mass. at 185, 52 N.E.2d 27. See *LAS Collection Mgt. v. Pagan*, 447 Mass. 847, 850, 858 N.E.2d 273 (2006) (“there are circumstances where the mere preparing of forms is not the practice of law”). Here, as the school district asserts, all that the assistant principal did to apply for the CRA petition was “complet[e] a simple form provided by the Trial Court’s Juvenile Court Department.” See *Furtado*, 380 Mass. at 147, 402 N.E.2d 1024 (filing complaint is not unauthorized practice of law where it is done “pursuant to ... statutory duties”); see also *Real Estate Bar Ass’n for Mass.*, 459 Mass. at 525, 946 N.E.2d 665, and *LAS Collection Mgt.*, *supra* (simple act of filing form is not necessarily unauthorized practice of law). *Lexington Pub. Schs. v. K.S.*, 489 Mass. 309, 323-24 (Mass. 2022).

²¹⁸ *Lexington Pub. Schs. v. K.S.*, 489 Mass. 309, 324 (Mass. 2022).

²¹⁹ *In re Ablitt*, 486 Mass. 1011, 161 N.E.3d 421, 426 (Mass. 2021).

²²⁰ Massachusetts Ethics Opinion 75-8, available at <http://www.massbar.org/publications/ethics-opinions/ethics-opinions-1975-opinion-no-75-8>.

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.²²¹ 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.”²²²

In reaching its 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.

²²¹ Id.

²²² Id.

MICHIGAN

Michigan's prohibition on the unauthorized practice of law is intended to protect and secure the public's interest in competent legal representation.²²³ Courts construe Section 600.916 of Michigan's Compiled Laws – titled "Unauthorized Practice of Law" – with this purpose in mind.²²⁴ 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.²²⁵ 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.²²⁶

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;²²⁷ 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.²²⁸

²²³ *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).

²²⁴ Mich. Comp. Laws Ann. § 600.916.

²²⁵ *Matter of Bright*, 171 B.R. 799, 805 (Bankr. E.D. Mich. 1994).

²²⁶ *Id.*

²²⁷ *In re Pinkins*, 213 B.R. 818 (Bankr. E.D. Mich. 1997).

²²⁸ *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-125,²²⁹ 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.²³⁰

The State Bar of Michigan Board of Commissioner approved the following guidelines for the use of legal assistants on April 23, 1993.²³¹ While the guidelines refer to legal assistants,²³² 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.²³³

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:

- 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.

²²⁹ See *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).

²³⁰ 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.

²³¹ 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>.

²³² *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....").

²³³ *Id.* Consistent with Guideline 1, before performing each project, Remote Associates must certify that they have reviewed the applicable state's rules of professional conduct and will comply with such rules..

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 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.²³⁴

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.²³⁵

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.²³⁶

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.²³⁷

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.²³⁸

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.²³⁹

²³⁴ Id. Consistent with Guideline 2, in the LAWCLERK Marketplace, the Lawyer supervises the Remote Associate, the Remote Associate serves in the capacity of a paraprofessional, the Remote Associate conveys opinions and work product to the Lawyer, but not the client or the public. The Remote Associate has no contact with the Lawyer's client, and the Remote Associate does not appear in any court, judicial, or administrative proceeding.

²³⁵ Id. Consistent with Guideline 3, in the LAWCLERK Marketplace, the Lawyer (not the Remote Associate) establishes the attorney-client relationship and establishes the fee arrangement with the client.

²³⁶ Id. Guideline 4 is inapplicable in the LAWCLERK Marketplace.

²³⁷ Id. Consistent with Guideline 5, and as discussed above, the LAWCLERK Marketplace employs a two-part conflicts check to ensure that Remote Associates do not have any conflicts with regard to the project or projects for which they are being engaged.

²³⁸ Id. Consistent with Guideline 6, in LAWCLERK, Hiring Attorneys must establish how they will bill their clients for the services performed by the Remote Associate.

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.

A 2022 Michigan ethics opinion concludes that:

A lawyer may participate in a program that provides legal services, whether or not the program's administrators, governing boards, or governing board members are lawyers or non-lawyers. However, the program's administrators, governing boards, or governing board members may not interfere with the lawyer's independent professional judgment when handling a particular client's matter.

Lawyers participating in such a program must take appropriate measures to protect against the disclosure of client confidences and secrets to any person not involved in the delivery of legal services to the client, including lawyers and non-lawyers in supervisory positions and who are employed by the program.

The LAWCLERK platform comports with that ethics opinion. LAWCLERK is not a 'program which provides legal services', but rather, merely a marketplace. The supervising Hiring Attorney maintains sole control over the client and the services, guidance and advice given. The Hiring Attorney, not the Remote Associate, exercises her own professional judgment. Furthermore, Remote Associates are bound by their respective ethics rules, and rules regarding their professional responsibility and conduct, including maintaining client confidentiality.²⁴⁰

²³⁹ Id. Consistent with Guideline 7, in the LAWCLERK Marketplace, the Hiring Attorney does not split legal fees with the Remote Associate, does not pay referral fees, and compensates the Remote Associate on a flat fee or hourly basis based on the complexity of the Work delegated to the Remote Associate.

²⁴⁰ See Michigan ethics opinion RI-383 (May 20, 2022) which can be found at https://www.michbar.org/opinions/ethics/numbered_opinions/RI-383.

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.”²⁴¹ 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.²⁴² 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.”²⁴³ Consistent with the foregoing types of services that may be provide by paraprofessionals, Remote Associates have no direct contact with the Hiring Attorney’s client unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed and the Remote Associate’s services are only provided to the supervising Hiring Attorney who is solely responsible for the Remote Associate’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.”²⁴⁴ Again, LAWCLERK satisfies this requirement as the Remote Associate only performs the services delegated by the Hiring Attorney. Moreover, the Remote Associate is required to review LAWCLERK’s Terms of Service and confirm that all work will comply with the applicable state’s rules of professional conduct before commencing each assignment. Moreover, LAWCLERK precludes all Remote Associates from contacting anyone other than the Hiring Attorney unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. The Remote Associate may not appear or file any documents with any judicial or administrative body unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, and the Hiring Attorney remains entirely responsible for the Remote Associate’s work product.

²⁴¹ 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).

²⁴² 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)).

²⁴³ Id. (citing Fitchette v. Taylor, 254 N.W. 910, 911 (Minn. 1934)).

²⁴⁴ 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/.

Minnesota courts emphasize that rendering legal services while suspended constitutes the unauthorized practice of law.²⁴⁵ LAWCLERK's Terms of Service are intended to guard against that misconduct: neither a Hiring Attorney nor Remote Associate may use the platform unless they are barred and in good standing with their licensing jurisdictions.

Minnesota courts have reiterated the foregoing. In one case, an attorney's lack of supervision allowed the non-lawyer assistant to engage in theft.²⁴⁶ In another case, the lawyer "failed to diligently and competently supervise the contract attorney."²⁴⁷

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 Hiring Attorneys to supervise Remote Associates at all times. Moreover, the Hiring Attorney retains full responsibility for reviewing and filing the final work product. As such, LAWCLERK accords with the Minnesota courts' guidance.

In 2022, Minnesota initiated a pilot program that allows legal paraprofessionals to perform certain legal tasks while "under the supervision of a licensed Minnesota attorney."²⁴⁸ The program was expanded in October, 2022, to allow approved legal paraprofessionals who are on the roster to provide advice and representation in some family law cases that involve allegations of domestic abuse or child abuse and provide advice and representation for petitioners in some order for protection (OFP) and harassment restraining order (HRO) cases.²⁴⁹ Notably, LAWCLERK's Terms of Use do not allow Remote Associates to perform tasks without the supervision of a duly licensed attorney. As such, LAWCLERK's rules comply with Minnesota rules on supervision of non-lawyer legal assistants.

²⁴⁵ In re Swanson, 967 N.W.2d 644 (Minn. 2021).

²⁴⁶ In re Udeani, No. A18-2139 (Minn. July 1, 2020).

²⁴⁷ In re Friedrichs, 937 N.W.2d 415 (Minn. 2020).

²⁴⁸ See Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002, Order at 2-3 (Minn. filed Sept 29, 2019).

²⁴⁹ See Order Amending the Rules Governing the Legal Paraprofessional Pilot Project to Include Additional Areas of Representation and Education and Training Requirements for Rostered Paraprofessionals (October 17, 2022), available at <https://www.mncourts.gov/About-The-Courts/NewsAndAnnouncements/ItemDetail.aspx?id=2163>

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.²⁵⁰ The court emphasized that the use of contract (versus 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."²⁵¹ 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.²⁵²

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.²⁵³

These decisions demonstrate that LAWCLERK does not violate the prohibition on the unauthorized practice of law as the Hiring Attorney delegates and supervises the work of the Remote Associate, the Hiring Attorney is solely responsible for the Remote Associate's work product, and the Remote Associate does not have any client or court contact and only the Hiring Attorney provides legal advice to the client unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

In *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

²⁵⁰ *In re Thorne*, 471 B.R. 486, 507 (Bankr. N.D. Miss. 2012).

²⁵¹ *Id.*

²⁵² *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)).

²⁵³ *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)).

²⁵⁴ *Gaines v. Miss. Bar*, 268 So.3d 484 (Miss. 2018).

also looked for claims that had been double-paid.”²⁵⁴ After reviewing the facts, the court ruled that the paralegal did not engage in the unauthorized practice of law.²⁵⁵

Like the paralegal in Gaines, Remote Associates in LAWCLERK must have their work reviewed by the assigning Hiring Attorney. The Hiring Attorney must review the work and make the final decision. Just as the court held in Gaines, the conduct engaged in by Remote Associates and Hiring Attorneys in LAWCLERK does not constitute the unauthorized practice of law.

In 2021, the Supreme Court of Mississippi reaffirmed its commitment to preventing the unauthorized practice of law in *In Re Reinstatement of Roe*.²⁵⁶ In the case, the Court reinstated an attorney after noting that her work as a law clerk during her placement on disability inactive status did not constitute the unauthorized practice of law.²⁵⁷

In re Roe is interesting, in that it arose in the context of Roe’s petition for reinstatement as a licensed attorney. In 2002, Roe was suspended from practicing law for 90 days due to disciplinary infractions in three separate cases. Roe did not appear before the Mississippi Bar to defend the underlying cases. Her infractions, and failure to appear, resulted from severe depression and anxiety, causing impaired cognitive function. She also faced a significant personal crisis. Roe participated in 2 weeks of inpatient treatment for her depression, then participated in outpatient treatment. Over the years, she saw therapists, psychiatrists, and psychiatric nurse practitioners regarding her mental health condition; she tried several different medicines to treat her depression; and began voluntarily participating in the Lawyers and Judges Assistance Program (LJAP), despite not being required to do so. For several years, Roe held nonlegal employment, some part-time, then graduated to full-time nonlegal work. Eventually, she began to miss the challenges of the law and believed her mental health to be robust enough to attempt a return to legal work. To ease herself back in, she began working in various positions of legal assistant and office manager, and then began working as a paralegal. She testified that she began her transition back into the law via positions in which she was not responsible for final decision-making in cases to ensure her mental health was not negatively impacted. After success with gradually increasing her responsibility and challenges in the legal field, she began working full time as a law clerk, a position she still holds. **Roe has not engaged in the unauthorized practice of law.** On April 30, 2020, Roe petitioned this Court for an order reinstating her license to practice law.²⁵⁸

²⁵⁵ See *id.*

²⁵⁶ NO. 2020-BR-00430-SCT (Miss. Sup. Ct. May 27, 2021).

²⁵⁷ *Id.* at *3.

²⁵⁸ *In re Roe*, No. 2020-BR-00430-SCT (Miss. May 27, 2021); *Id.*, at *1.

Roe's rigorous supervision, and clear delineation between paraprofessional functions vs. those which wholly lie within the supervising attorney's responsibility, squarely fit within LAWCLERK's requirements, as amply described in its Terms of Service.

Roe indicates that LAWCLERK's Terms of Use comply with Mississippi ethics rules. The platform allows Remote Associates to work under the supervision of a licensed attorney. In fact, LAWCLERK may be stricter because LAWCLERK only allows attorneys in good standing to serve as Remote Associates.

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.²⁵⁹

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.”²⁶⁰

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.²⁶¹ 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.²⁶²

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

²⁵⁹ Mo. Ann. Stat. § 484.010.

²⁶⁰ *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).

²⁶¹ *In re Mid-Am. Living Trust Associates, Inc.*, 927 S.W.2d 855, 870 (Mo. 1996).

²⁶² *Id.*

such documents.²⁶³ Conversely, in LAWCLERK, it is the Hiring Attorney, and only the Hiring Attorney, that has client contact, makes legal strategy decisions, and provides legal advice to the Hiring Attorney's clients unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

The Missouri Bar issued an Informal Advisory Opinion, Number: 20060069, regarding the following question.²⁶⁴ May a non-attorney with experience in the insurance field use his experience and training to assist attorneys with preparing and settling insurance claims in the State of Missouri? The non-attorney would be acting independently, rather than under the attorney's control and supervision. The non-attorney would handle case preparation, including taking statements, obtaining medical records, correspondence regarding the case, and negotiation with insurers and others. The non-attorney would provide attorney with a recommended settlement value. The compensation schedule would be based on the amount of recovery. Not surprisingly, that would not be permissible. Under Missouri Rule 4-5.3, a non-attorney may not act without supervision by a licensed attorney. Furthermore, compensation based on the amount of the recovery constitutes fee sharing with a non-attorney, which Missouri Rule 4-5.4 prohibits.

LAWCLERK goes further, as its Terms of Service make it clear: the Hiring Attorney must supervise the Remote Associate; the Hiring Attorney has sole responsibility for the work product; the Remote Associate shall have no contact with the Hiring Attorney's client(s) unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed; and only the Hiring Attorney may determine the fee charged to his/her clients for legal services (the Remote Associate shall not have any involvement in determining the fee the Hiring Attorney charges his/her client(s)).

²⁶³ 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).

²⁶⁴ Opinion Number: 20060069, found at <https://mobar.org/public/ethics/InformalOpinionsIndex.aspx>.

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.^[265]

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.^[266]

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, in LAWCLERK, the Remote Associates solely perform the services delegated to them by the Hiring Attorney, the Hiring Attorney maintains the attorney-client relationship, only the Hiring Attorney provides legal advice to the client unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, and the Hiring Attorney is solely responsible for the Remote Associate’s work product.²⁶⁷

²⁶⁵ Mont. Code Ann. § 37-61-201.

²⁶⁶ Mont. Code Ann. § 37-60-101.

²⁶⁷ 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) (“Furthermore, what constitutes the practice of law, not to mention what practice is authorized and what is unauthorized is, by no means, clearly defined.” In re Dissolving Com. on the Unauthorized Prac. of Law, 356 Mont. 109, 110 (Mont. 2010); In re Petition of State Bar, AF 09-0688 (Mont. 2019).

Effective January 1, 2020, Montana revised its rules, including Montana's Rule 5.5 on the unauthorized practice of law. 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. ^[268]

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 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

²⁶⁸ 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>

(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. ^[269]

On its web page, the State Bar of Montana states generally who may practice law in Montana, and that a paralegal may not work directly with his/her own client, but rather, must work under the direct supervision of an attorney:

Who can practice law in Montana?

Only attorneys licensed and admitted to practice law in the State of Montana may practice law in Montana.

Can paralegals or legal assistants help me with my legal case?

No. Some paralegals do have private businesses where they contract their services to attorneys, but paralegals may not give legal advice, accept cases, set or charge fees, appear in court, make legal decisions, or plan strategies of a case. That being said, paralegals do play an important role in law offices and can assist clients while working under the direct supervision of an attorney. The only thing that a "non-lawyer" can legally do for you is sell you a pre-printed form and type in the information that you provide to them. They cannot tell you what information you should put on the form, what type of form to use, or fill out the form outside of the information that you provide to them.²⁷⁰

LAWCLERK complies with the new version of Montana's Rule 5.5 and the State Bar's guidelines. Just as the rule requires, LAWCLERK's Terms of Service demand that Hiring Attorneys supervise Remote Associates at all times in all aspects of legal work. Further, LAWCLERK does not permit Hiring Attorneys to engage Remote Associates for any task that might involve client contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. Thus, there is no danger that a member of the public will misperceive a Remote Associate not licensed in Montana but working for a Hiring Attorney in LAWCLERK as a member of the Montana bar. Thus, LAWCLERK is compliant in this jurisdiction.

²⁶⁹ See *id.*

²⁷⁰ Found at <https://www.montanabar.org/Public/Unauthorized-Practice>.

■ 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.”²⁷¹ 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.

(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.^[272]

²⁷¹ Found at <https://www.montanabar.org/Public/Unauthorized-Practice>.
Neb. R. Ct. Ch. 3, art. 10, Statement of Intent.

²⁷² Neb. R. Ct. § 3-1001

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.”²⁷³ 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.²⁷⁴

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.²⁷⁵ 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.”²⁷⁶ Consistent with this distinction, in *LAWCLERK*, the Hiring Attorney maintains the client contact, the Hiring Attorney assigns the Work to the Remote Associate, and the Hiring Attorney retains sole responsibility for the Remote Associate’s work product such that becomes the work product of the Hiring 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.²⁷⁷ Additionally, Nebraska Ethics Advisory Opinion for Hiring 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.

²⁷³ Neb. R. Ct. § 3-1002.

²⁷⁴ Neb. R. Ct. § 3-1005 (emphasis added).

²⁷⁵ *State of Nebraska v. Thierstein*, 371 N.W.2d 746, 748 (Ne. 1985).

²⁷⁶ *Id.*

²⁷⁷ *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.”²⁷⁸ 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.²⁷⁹

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.²⁸⁰ 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.²⁸¹ 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.²⁸²

LAWCLERK prohibits the Remote Associate from having any contact with the Hiring Attorney’s client and engaging in any negotiations or other contact with any parties to the anticipated or pending litigation or administrative proceeding unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. Additionally, the Hiring Attorney or Remote Associate authorized by the jurisdiction to do so is solely responsible for the attorney-client relationship, including providing legal advice, and Hiring Attorney is further solely responsible for the Remote Associate’s work product.

Remote Associates must be licensed attorneys, and in good standing in the state they are barred. In a Nevada Supreme Court disbarment order, the Court’s strong

²⁷⁸ In re Discipline of Lerner, 197 P. 3d 1067, 1069 (Nev. 2009).

²⁷⁹ 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).

²⁸⁰ *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).

²⁸¹ *In re Discipline of Lerner*, 197 P. 3d 1067, 1071 (Nev. 2009) (cited in contradiction in *Gonzalez v. Saul*, Case No.: 2:17-cv-03118-APG-NJK (D. Nev. Nov. 15, 2019)).

²⁸² Id.

language and admonition makes it clear that the unauthorized practice of law, or any attorney aiding/abetting it, will not be tolerated:

Orlandi knowingly violated duties owed to her clients, the legal system, and the profession. Orlandi's clients suffered actual injury because they unknowingly hired and paid a non-attorney to represent them, resulting in adverse consequences, with the potential for further serious injury.²⁸³

Orlandi's violations would not occur with LAWCLERK. LAWCLERK's Terms of Service make it abundantly clear: the Hiring Attorney must supervise the Remote Associate, not delegate the many responsibilities and duties that fall within his/her domain and takes responsibility for his/her [mis]conduct.

LAWCLERK emphasizes that Remote Associates must be licensed attorneys, and in good standing in the state in which they are admitted. A suspended Nevada lawyer is simply not an attorney, and among other reasons, the Nevada Supreme Court disbarred an attorney who filed lawsuits while suspended.²⁸⁴

When applying NRS 7.285(1)²⁸⁵ 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 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;²⁸⁶ (ii) a nonlawyer filing a complaint and appearing for a plaintiff as an attorney-in-fact pursuant to a power of attorney;²⁸⁷ (iii) a nonlawyer filing and prosecuting an appeal on behalf of a trust;²⁸⁸ (iv) a nonattorney president of the plaintiff corporation substituting in as counsel for

²⁸³ In re Orlandi, No. 85346, at *2 (Nev. Nov. 22, 2022).

²⁸⁴ In re Bergstrom, 510 P.3d 813 (Nev. 2022).

²⁸⁵ 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.

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.

²⁸⁶ Denson v. Gillispie, 2013 WL 662967 *7 (D. Nev. 2013).

²⁸⁷ Handley v. Bank of America, N.A., 2010 WL 4607014 *2 (D. Nev. 2010).

²⁸⁸ Guerin v. Guerin 993 P.2d 1256, 1258 (Nev. 2000).

the plaintiff corporation in the pending litigation;²⁸⁹ (v) a nonlawyer representing an unemployment compensation claimant in his appeal from the Employment Security Departments' denial of requested unemployment benefits;²⁹⁰ 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.²⁹¹ 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 unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed the Remote Associate does not have any client contact, the Remote Associate cannot sign or file any documents, the Remote Associate cannot appear in any court or other judicial or administrative proceeding, only the Hiring Attorney provides legal advice to clients, and the Remote Associate only provides the services delegated to them by the Hiring Attorney and under the Hiring Attorney's supervision.

²⁸⁹ *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.").

²⁹⁰ *Martinez v. Eighth Judicial District Court of the State of Nevada, in and for Clark County*, 729 P.2d 487 (Nev. 1986).

²⁹¹ *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).

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.^[292]

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.

²⁹² 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 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 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.

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.^[293]

²⁹³ NH R S CT Rule 35.

Consistent with these rules, the Hiring Attorney supervises the Remote Associate and maintains full responsibility for the Remote Associate's work, the Hiring Attorney has sole responsibility for the attorney-client relationship, the Remote Associate has no client contact and shall not appear before a court or tribunal unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, the Remote Associates do not share fees with the Hiring Attorneys, conflicts checks are undertaken in advance of any engagement, and the Remote Associate must affirm that the applicable rules of professional conduct have been reviewed that such rules will 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.²⁹⁴ 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 (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).^[295]

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.²⁹⁶

²⁹⁴ 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>.

²⁹⁵ *Id.*

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 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. ^[297]

Consistent with the guidance provided in Opinion No. 2011-1215, LAWCLERK advises the Hiring Attorneys to disclose their use of the Remote Associates to their clients, the Remote Associates must affirm that they will review and comply with the Rules of Professional Conduct, including maintaining client confidences, conflicts checks are performed before a Remote Associate is engaged, the Remote Associate is paid by a fixed fee, the Remote Associate only performs the services delegated by the Hiring Attorney and the Hiring Attorney retains responsibility for the services rendered by the Remote Associate, and only the Hiring Attorney or Remote Associate licensed in the applicable jurisdiction is allowed to provide 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.²⁹⁸ 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.²⁹⁹ 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:

²⁹⁷ Id.

²⁹⁸ New Hampshire Bar Associations Ethics Committee, Ethics Committee Advisory Opinion No. 1995-96/3, , November 8, 1995, available on Casemaker.

²⁹⁹ 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)).

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.
- 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. ^[300]

As discussed above, LAWCLERK complies with these guidelines.

³⁰⁰ Id.

■ 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.”³⁰¹ 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.³⁰²

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.”³⁰³

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.

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.

³⁰¹ In re Opinion No. 24 of the Comm. on the Unauthorized Practice of Law, 607 A.2d 962 (N.J. 1992).

³⁰² Id. at 973.

³⁰³ Id. at 969.

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.^[304]

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.³⁰⁵

The court juxtaposed the full lawyer services that the associate had provided with those of a law clerk who prepares legal research and documents for review and action by another responsible lawyer licensed in New Jersey.³⁰⁶

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].”³⁰⁷ In other cases, the New Jersey courts frowned upon paralegals filing legal documents without supervision³⁰⁸ and lawyers failing to supervise paralegals.³⁰⁹

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 Remote Associates to assist with Work under the direct supervision of attorneys. Moreover, in accord with other New Jersey cases, LAWCLERK's Terms

³⁰⁴ *Id.*

³⁰⁵ In the matter of the Application of *Jackman* for Admission to the Bar, 761 A.2d 1103, 1107 (N.J. 2000).

³⁰⁶ *Id.*

³⁰⁷ In *re Verrastro*, No. DRB 19-193 (N.J. Jan. 10, 2020).

³⁰⁸ *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).

³⁰⁹ In *re Al-Misri*, No. DRB 18-344 (N.J. April 25, 2019); In *re Ehrlich*, No. 17-347 (N.J. April 4, 2018).

of Service require Hiring Attorneys to supervise Remote Associates at all times and assume all responsibility for legal work drafted by the Remote Associate. Therefore, the possibility of unsupervised work product is not present in LAWCLERK.

In *re Robertelli*,³¹⁰ the lawyer did not supervise the paralegal, who then sent a Facebook message and friend request to the opposing party.³¹¹ The Court said, “[A]ttorneys are responsible for the conduct of the non-lawyers in their employ or under their direct supervision. Under RPC 5.3, attorneys must make reasonable efforts to ensure that their surrogates - including investigators or paralegals - do not communicate with a represented client, without the consent of the client's attorney...”³¹²

In an advisory opinion of note, the Committee on the Unauthorized Practice of Law (UPL Committee) considered a grievance about a company that offered legal services to customers to resolve their traffic ticket cases (similar to a Florida case previously discussed).³¹³ Customers paid the company a flat fee, and then the company “matches” the user with a lawyer to represent the customer in municipal court. The customer contracts for legal services with the company. Companies that are not law firms cannot provide legal services to customers of the companies, either through staff lawyers or by furnishing outside lawyers. The Advisory Committee on Professional Ethics found that lawyers who provide legal services to customers of such companies are assisting the company in the unauthorized practice of law, in violation of Rule of Professional Conduct 5.5(a)(2).³¹⁴

LAWCLERK usage does not present these issues. First, under LAWCLERK’s Terms of Use, all work done by Remote Associates must be supervised by and reviewed by licensed attorneys who retain the responsibility for the work product. LAWCLERK prohibits Remote Associates from engaging in direct client contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. As its Terms of Service clearly state, LAWCLERK is neither an employment agency, attorney referral service, nor a ‘matching company’ which obtains customers and then refers them to attorneys; to the contrary, the LAWCLERK platform is a marketplace, limited to use by licensed attorneys in good standing in their jurisdiction (i.e., nonlawyers are proscribed from registering with or using LAWCLERK). These restrictions help LAWCLERK users comply with the ethics rules in their jurisdiction.

³¹⁰ No. D-126 September Term 2019, 084373 (N.J. Sup. Ct. Sept. 21, 2021); *In re Robertelli*, 248 N.J. 293 (N.J. 2021).

³¹¹ See *id.*

³¹² *Id.*

³¹³ *Florida Bar v. TIKD Services LLC*, No. SC18-149 at *8 (Fla. Sup. Ct., Oct.14, 2021).

³¹⁴ NJ Committee on the Unauthorized Practice of Law Opinion 58 (June 21, 2021).

³¹⁵ NJ Committee on the Unauthorized Practice of Law Opinion 59 (Oct. 6, 2021),

Especially during the COVID-19 pandemic, licensed attorneys often worked remotely (sometimes as “work from home”). The NJ Committee on the Unauthorized Practice of Law Opinion opined that lawyers not licensed in New Jersey, who practice law from their New Jersey residences for out-of-state law firms or out-of-state companies, are not engaged in the unauthorized practice of New Jersey law. Looking beyond this factual scenario, the committee opined that the following factors might raise UPL red flags:

- Practicing law from a law office located in New Jersey.
- Advertising or other communications referring to a law office located in New Jersey for the purpose of meeting clients or potential clients in New Jersey.
- Advertising or other communications stating that mail or other deliveries should be made to a New Jersey address.
- Any other conduct suggesting that the lawyer is available to practice law in New Jersey.

Each LAWCLERK user must have an independent business, compliant with his/her respective licensing or registration requirements. Furthermore, Hiring Attorneys must comply with applicable state, federal and other applicable law concerning use of Remote Associates. When working on Work, both the Hiring Attorney and Remote Associate must adhere to, and are charged with, knowing their state’s laws, bar advisory opinions, cases, statutes, and Rules of Professional Conduct. By using LAWCLERK, each user must adhere to, and safeguard against violating, those requirements.

■ 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.”³¹⁶

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.”³¹⁷ However, the lawyer must not abdicate all responsibilities to legal assistants and must maintain the primary responsibility for interacting with clients.³¹⁸

In accord with New Mexico rules, LAWCLERK’s Terms of Service require Hiring Attorneys to supervise Remote Associates at all times and assume all responsibility for legal work drafted by the Remote Associate. Therefore, the possibility of unsupervised work product is not present in LAWCLERK.

³¹⁶ *In re Montoya*, 266 P.3d 11, 19 (N.M. 2011).

³¹⁷ *In re Houston*, 985 P.2d 752, 755 (N.M. 1999).

³¹⁸ *Id.*

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 delegated substantive legal work for which a lawyer is responsible."³¹⁹ 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.'³²⁰

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."³²¹ 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.³²² 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.³²³ Similarly, a lawyer was determined to have assisted a nonlawyer paralegal in the unauthorized practice of law where the lawyer

³¹⁹ Ethics Opinion No. 1079, issued December 16, 2015, N.Y. State Bar Association, available at <http://www.nysba.org/CustomTemplates/Content.aspx?id=60760>.

³²⁰ *Id.* at para. 6.

³²¹ *Matter of Parker*, 241 A.D.2d 208 (N.Y.1998).

³²² *Id.*

³²³ *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).

he relied on the paralegal to prepare pleadings and filed them with the court without reviewing them or otherwise supervising the paralegal's work.³²⁴

In 2020, New York issued an ethics opinion on freelance legal work. 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 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.^[325]

LAWCLERK complies with this guidance. New York clearly acknowledges the importance of freelance legal services to providing cost-effective legal services. 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 that 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;³²⁶ (ii) an attorney allowed a nonlawyer to accept fees for representing a criminal defendant;³²⁷ (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;³²⁸ and (iv) an attorney who failed to supervise nonlawyer staff during a personal injury case.³²⁹

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 Remote Associates. LAWCLERK requires Hiring Attorneys to take all responsibility for reviewing and submitting the final work product. Additionally, LAWCLERK does not allow Remote Associates to contact clients, appear in public, or otherwise hold themselves out as attorneys in any jurisdiction unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

³²⁴ In re Sobolevsky, 96 A.D.3d 60, 62 (N.Y. 2012).

³²⁵ New York State Bar Association Committee on Professional Ethics, Opinion No. 1184 (Mar. 10, 2020).

³²⁶ In re Rain, 162 A.D.3d 1458, 79 N.Y.S.3d 387 (N.Y. App. Div. 2018).

³²⁷ In re Radlin, 178 A.D.3d 61, 108 N.Y.S.3d 11 (N.Y. App. Div. 2019).

³²⁸ In re Braverman, 178 A.D.3d 35, 109 N.Y.S.3d 47 (N.Y. App. Div. 2019).

³²⁹ In re Mauser, 2020 NY Slip Op 3294 (N.Y. App. Div. 2020).

In December 2020, the Regulatory Innovation Working Group of the Commission to Reimagine the Future of New York's Courts issued a report with its findings and recommendations.³³⁰ One of the recommendations was that social workers should be allowed to provide limited legal services.³³¹

If New York joins the growing list of states that allow non-lawyers to provide legal services, it will greatly expand the responsibilities granted to non-lawyers. While such a program would not supersede Rule 5.3's requirements regarding the supervision of non-lawyer personnel, the shift may make it more difficult to argue that allowing non-lawyers to provide supervised legal services violates ethics rules.

³³⁰ Report and Recommendations of the Regulatory Innovation Working Group 3 (Dec. 2020), https://www.nycourts.gov/LegacyPDFS/publications/RWG-RegulatoryInnovation_Final_12.2.20.pdf.

³³¹ See *id.*

NORTH CAROLINA

“It was not the purpose and intent of the [unauthorized 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.”³³² 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.³³³ By way of example, a bankruptcy 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.³³⁴ 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.³³⁵ Conversely, in LAWCLERK, legal advice is solely provided to the Hiring Attorney’s client by the Hiring Attorney. The Remote Associate has no client contact and cannot provide advice to the Hiring Attorney’s client unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

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

³³² 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).

³³³ In re Springs, 358 B.R. 236, 245 (Bankr. M.D.N.C. 2006).

³³⁴ Id.

³³⁵ N. Carolina State Bar v. Lienguard, Inc., No. 2014 WL 1365418, at *11 (N.C.2014).

³³⁶ 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>.

accept any new clients that were clients of the disbarred lawyer's prior firm during the period of the misconduct.³³⁶

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? ^[337]

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."³³⁸ 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 and recording documents.³³⁹ 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."³⁴⁰

Consistent with these Formal Ethics Opinions, LAWCLERK allows a Hiring Attorney, after exercising professional judgment and determining the complexity of the transaction and the training and ability of the Remote Associate, to determine which tasks to assign to the Remote Associate. However, adding further protection, the Remote Associate has no contact with the Hiring Attorney's client and it is only the Hiring Attorney that provides legal advice to the Hiring Attorney's clients unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

³³⁷ 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/>.

³³⁸ Id.

³³⁹ Id.

³⁴⁰ Id.

In January 2021, the Justice for All Project submitted its proposals for closing the state's access to justice gap to the Supreme Court.³⁴¹ Among the recommendations was the adoption of a program that would allow paraprofessionals to handle a limited number of legal matters, in specific areas practice such as family law, landlord/tenant (unanimous), immigration, elder law, and veteran/military benefits (among other practice areas).³⁴² While the program has not yet been adopted, if it is, North Carolina will join the rapidly increasing list of states that allow non-lawyers to provide legal services. The program would not supplant Rule 5.3's requirements regarding the supervision of non-lawyer personnel, but the change could make it more difficult to argue that allowing non-lawyers to provide supervised legal services violates ethics rules.

³⁴¹ Justice for All Project, Proposal for a Limited Practice Rule to Narrow North Carolina's Access to Justice Gap (January 2021), available at <https://ncbarblog.com/wp-content/uploads/2021/03/Justice-for-All-Proposal-for-Limited-Practice-Rule-to-Supreme-Court-and-North-Carolina-State-Bar-Final.pdf>.

³⁴² See *id.* at 34.

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."³⁴³ Consistent therewith, Rule 5.3(d) of the North Dakota Rules of Professional Conduct provides:

- (1) A lawyer may delegate to a legal assistant ^[344] 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.
- (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.^[345]

Importantly, LAWCLERK prohibits Remote Associates from providing any of the services set forth in Rule 5.3(d)(2) of the North Dakota Rules of Professional Conduct unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

³⁴³ 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)).

³⁴⁴ 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 clerk's 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).

³⁴⁵ ND R RPC Rule 5.3(d); see also In re Reinstatement of Ellis, 721 N.W.2d 693, 696 (N.D. 2006) (as described in the previous footnote).

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.³⁴⁶ Notably, the court held that nonlawyer employees may work for an opposing firm if appropriate screening processes are put in place.³⁴⁷ To preclude similar conflicts issues, LAWCLERK employs a two-tier conflicts check. The first is an internal conflicts check that removes any Remote Associate 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, Remote Associates must affirm that they have no connections to the other parties to the Work for which they are being considered for engagement.

Per an Ethics Committee Opinion, a suspended lawyer may act as a paralegal, legal assistant, or other type of support staff to a licensed lawyer. Thus, that Ethics Committee recognized that although a suspended lawyer may not practice law during his/her suspension, the suspended lawyer is not proscribed from working as a paraprofessional or other support staff.³⁴⁸ LAWCLERK is more stringent: only licensed attorneys, in good standing in their barred jurisdiction, may use the LAWCLERK platform (i.e., except in certain special circumstances and in LAWCLERK's sole discretion, a disbarred or suspended attorney is not eligible to register on LAWCLERK or use the marketplace platform.

³⁴⁶ In re Disciplinary Action Against Johnston, 872 N.W.2d 300, 307 (N.D. 2015), reh'g denied (Jan. 14, 2016).

³⁴⁷ Id.

³⁴⁸ State Bar Association of North Dakota Ethics Committee Opinion Number 01-02 (May 24, 2001), available at https://www.sband.org/page/ethics_opinions.

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;
- (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.^[349]

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 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.³⁵⁰ 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.³⁵¹

³⁴⁹ 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>.

³⁵⁰ Cleveland Metro. Bar Assn. v. Davie, 977 N.E.2d 606, 610 (Ohio 2012).

³⁵¹ Id.

For general guidance, the Board on the Unauthorized Practice of Law delineated 6 separate areas of activity which the Board considered constitute the unauthorized practice of law when performed by a layperson on behalf of another:

1. Preparing, signing, and filing documents
2. Negotiating settlements and filing settlement paperwork
3. Examining witnesses through either direct or indirect examination, including cross-examination, at hearings,
4. Engaging in advocacy at hearings, including stating employer concerns, preparing and making arguments, determining the legal import of facts, commenting upon the evidence, and giving an evidentiary summation or closing statement
5. Giving recommendations as to whether to appeal or pursue other legal action
6. Making recommendations to retain counsel³⁵²

None of those concerns are present with the Hiring Attorney-Remote Associate relationship, which are proscribed under LAWCLERK's Terms of Service:

- (I) The Hiring Attorney shall have sole responsibility for the work product provided by the Remote Associate to the Hiring Attorney;
- (II) The Hiring Attorney shall supervise the Remote Associate with respect to the Assigned Work to ensure compliance with the applicable Rules of Professional Conduct;
- (III) the Hiring Attorney shall establish and maintain the relationship with the Hiring Attorney's client(s);
- (IV) the Remote Associate shall have no contact with the Hiring Attorney's client(s), including without limitation email, telephone, skype, web, social media, or in-person contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed;

²⁵² Cleveland Bar Assn. v. Compmangement, 111 Ohio St. 3d 444, 446-47 (Ohio 2006)

(V) the Remote Associate shall not appear in court or any other judicial or administrative body on behalf of the Hiring Attorney's client(s) unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed;

(VI) The Hiring Attorney shall not ask or otherwise cause the Remote Associate to serve or otherwise disseminate the Remote Associate's work product or any other documents to anyone other than the Hiring Attorney;

(VII) The Hiring Attorney shall not ask or otherwise cause the Remote Associate to sign or file any documents with any court or administrative body; and

(VIII) The Remote Associate shall have no contact with opposing counsel, witnesses, or other persons potentially involved in the Work for which the Remote Associate has been engaged unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

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.³⁵³ 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.³⁵⁴

Unlike in *Davie*, *Telford*, and *Cohen*, in *LAWCLERK*, the Remote Associates do not have any client contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed and only act at the direction of, and under the supervision of, the Hiring Attorney.

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.’”³⁵⁵ 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

³⁵³ *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).

³⁵⁴ *Ohio State Bar Ass'n. v. Cohen*, 836 B.E.2d 1219 (Ohio 2005).

³⁵⁵ *Disciplinary Counsel v. Spicer*, No. 2020-0034 (Ohio May 26, 2020).

of law where the attorney was unaware of the paralegal's activities and they were not taken at the attorney's direction.³⁵⁶ The Ohio Supreme Court has issued several additional opinions emphasizing the importance of providing non-lawyer assistants with adequate supervision from a licensed attorney.³⁵⁷ A 2021 advisory opinion further clarified that suspended and disqualified attorneys can perform legal work under the supervision of a duly licensed attorney.³⁵⁸

LAWCLERK's regulations are stricter than Ohio's. LAWCLERK's Terms of Service require Hiring Attorneys to supervise Remote Associates at all times and to take full responsibility for any work product that is presented to a court or a client. The Remote Associate has no interaction with a client at any time unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. Moreover, in LAWCLERK, the Hiring Attorney will always be aware of the actions taken by a Remote Associate because they will be taken solely at the Hiring Attorney's direction. Moreover, while Ohio allows disbarred (disqualified) or suspended attorneys to work with supervision, only attorneys in good standing can serve as Remote Associates in the LAWCLERK platform.

³⁵⁶ Disciplinary Counsel v. Smidt, No. 2019-0827 (Ohio June 11, 2020).

³⁵⁷ See, e.g., Cincinnati Bar Assn. v. Kathman, Slip Opinion No. 2021-Ohio-2189, *3 (Oh. Sup. Ct. June 30, 2021) (noting that attorney's paralegal "carried out her assigned duties with minimal or no oversight"); Cleveland Metro. Bar Assn. v. Heller, Slip Opinion No. 2021-Ohio-2211, *3 (Oh. Sup. Ct. July 1, 2021) (attorney admitted that "he exercised extremely poor supervision" over paralegal); Disciplinary Counsel v. Nordic Title Agency, Inc., and Hall, Slip Opinion No. 2021-Ohio-2210, *6 (Oh. Sup. Ct. July 1, 2021) ("A nonlawyer's preparation of deeds conveying real property without a lawyer's supervision constitutes the unauthorized practice of law."); Disciplinary Counsel v. Deters, Slip Opinion No. 2021-Ohio-2706, *8 (Oh. Sup. Ct. Aug 10, 2021) ("Laymen may assist lawyers in preparing legal documents and managing pending client matters, but their activities must be carefully supervised and approved by a licensed practitioner.").

³⁵⁸ Ohio State Bar Op. 2021-9 (Oct. 1, 2021), available at <https://ohioadvop.org/wp-content/uploads/2021/10/Adv.-Op.-2021-09-Final.pdf>.

■ 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.³⁵⁹ 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.³⁶⁰

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."³⁶¹ 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.³⁶²

The ethics opinion and the Cohen and Martin cases illustrate why LAWCLERK does not engage in the unauthorized practice of law in Oklahoma. In LAWCLERK, Hiring Attorneys maintain the attorney-client relationship, all legal advice is provided to the client by the Hiring Attorney, the Remote Associate only performs the services delegated to them by the Hiring Attorney and supervised by the Hiring Attorney, the Hiring Attorney retains full responsibility for the Remote Associate's work, and the Remote Associate cannot have any client contact, contact with any other parties to the case, and cannot appear in court or any other tribunal unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the representation and communication is governed.

³⁵⁹ State ex rel. Oklahoma Bar Ass'n v. Martin, 240 P.3d 690, 698 (Okla. 2010).

³⁶⁰ Id.; see also State ex rel. Oklahoma Bar Association v. Gaines, 431 P.3d 63 (Okla. 2018).

³⁶¹ Ethics Opinion No. 319, issued by the Oklahoma Bar Association Ethics Counsel, available at <https://www.okbar.org/ethics/ethics-opinion-no-319/>.

³⁶² In re Reinstatement of Blake, 371 P.3d 465, 468 (Okla. 2016).

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:

(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.^[363]

LAWCLERK complies with this revised rule. LAWCLERK does not allow disbarred or suspended attorneys to serve as Remote Associates. Moreover, LAWCLERK does not permit Hiring Attorneys to engage Remote Associates for any activities that would allow a Remote Associate to render legal services directly to third persons unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. For these reasons, the use of LAWCLERK complies with Oklahoma law.

In 2021, the Oklahoma Supreme Court re-emphasized the importance of supervision. In *Oklahoma Bar Association v. Jack*,³⁶⁴ a prosecutor continued to supervise subordinates who were not licensed in Oklahoma while they appeared on behalf of the state in various criminal proceedings.³⁶⁵ The court disciplined the attorney because she knew that those under her supervision were not admitted to the bar but allowed them to continue representing the state.³⁶⁶

LAWCLERK's platform does not pose these issues. The Terms of Use do not allow Remote Associates to appear in court on behalf of any client unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed. Therefore, unlicensed attorneys appearing before the court will not be an issue in the LAWCLERK service.

³⁶³ Order re Okla. Rules of Professional Conduct Nov. 12, 2019.

³⁶⁴ 481 P.3d 261 (2021).

³⁶⁵ See id. at 264-66.

³⁶⁶ See id. at 266-67.

OREGON

In 1937, the Oregon legislature deleted the definition of the “practice of law” from the unauthorized practice of law statutes.³⁶⁷ 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.”³⁶⁸

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.³⁶⁹ 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.³⁷⁰

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;³⁷¹ 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 where the lawyer knew that the nonlawyer 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.³⁷²

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.³⁷³

³⁶⁷ Oregon State Bar v. Smith, 942 P.2d 793, 797 (Or. Ct. App. 1997).

³⁶⁸ Id. at 800.

³⁶⁹ Oregon State Bar v. Gilchrist, 538 P.2d 913 (Or. 1975).

³⁷⁰ Oregon State Bar v. Ortiz, 713 P.2d 1068, 1070 (Or. Ct. App. 1986).

³⁷¹ In re Conduct of Morin, 878 P.2d 393, 401 (Or. 1994).

³⁷² In re Jones, 779 P.2d 1016 (Or. 1989).

³⁷³ State ex rel. Oregon State Bar v. Lenske, 584 P.2d 759, 763 (Or. 1978).

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.³⁷⁴ Consistent with these decisions, LAWCLERK allows Hiring Attorneys to obtain paraprofessional assistance from the Remote Associates without the Remote Associates having any contact with the Hiring Attorney's client and ensures that all legal advice is provided to the client by the Hiring Attorney (not the Remote Associate) unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

In 2021, the Oregon Bar issued an advisory opinion that considered whether a recent law graduate could work for a firm under the supervision of licensed attorneys.³⁷⁵ The Bar answered this question in the affirmative.³⁷⁶ LAWCLERK comports with the guidance in this opinion. Any work by non-lawyers on the platform must be supervised by a licensed attorney as suggested in the opinion.

Some states have 'reciprocal bar admission': if a lawyers relocates to another state, she may not be required to retake the bar exam. However, usually the applicant must still proceed through the through the character and fitness process of the new state, which can take months. So what can that applicant lawyer do during the interim period between (i) when he left his former job (in the state where licensed) and (ii) the time he becomes admitted in the new jurisdiction? In *Harris*³⁷⁷, a lawyer licensed in one state accepted a position to serve as general counsel in Oregon; but the Oregon State Bar charged him with the unauthorized practice of law (for the work he performed in Oregon prior to being admitted). Considering how harsh the many UPL cases can be, the outcome here was somewhat surprising: the Oregon Supreme Court held that because the lawyer applied for Oregon bar admission within a reasonable time after beginning work, he was entitled to claim "temporary" status and, thus, his practice of law was expressly permitted.

This case seems to be a 'common sense' result, and of course is fact-specific (e.g., what constitutes a 'reasonable time' to apply?). In this case, the now-Oregon resident applied for bar admission within 3 months. The Court focused on 1 specific issue: whether the lawyer fit within the "temporary basis" exception under RPC 5.5(c)? Although "temporary basis" is not defined, the Court answered "yes" (perhaps partially driven by the applicant's otherwise good faith efforts to comply)³⁷⁸.

³⁷⁴ Formal Ethics Opinion No. 2005-24, approved August 2005, available at chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/http://www.osbar.org/_docs/ethics/2005-24.pdf

³⁷⁵ Formal Ethics Opinion No. 2021-198, approved Sept. 2021), available at https://www.osbar.org/_docs/ethics/2021-198.pdf.

³⁷⁶ See *id.*

³⁷⁷ *In re Harris*, 366 Or. 475 (Or. 2020)

³⁷⁸ *In re Harris*, 366 Or. 475, 480 (Or. 2020)

While an interesting UPL case, that scenario would not occur under LAWCLERK. LAWCLERK's terms of service require a lawyer to be licensed, in good standing, and affirm that she will comply fully with all applicable law, including state bar rules. Since the Harris attorney was not yet admitted as an Oregon lawyer, he would not be eligible to use the LAWCLERK platform either as a Hiring Attorney or Remote Associate.

In a Formal 2021 Opinion, the Oregon State Bar addressed a different scenario: Can a law school graduate, who has not yet been admitted to the Oregon Bar, work at law firm and be assigned work similar to a 1st year associate? The Opinion expressly states "Yes", stating that the graduate is still a nonlawyer because only a person admitted to the bar is an Oregon lawyer; however, like other nonlawyer assistance, the Opinion gave examples of what the graduate could do:

Accordingly, law school graduates may undertake many activities relating to the law, as long as they are undertaken under the proper supervision of a licensed attorney. These activities may include conducting factual and legal research; drafting contracts, affidavits, and legal memoranda; interviewing witnesses and clients for information-gathering purposes; preparing documents for a lawyer's review and signature; filing executed legal documents; and offering legal conclusions to the attorney or firm. This list is not intended to be exhaustive. However, any other activities must not run afoul of the prohibition against the unauthorized practice of law.³⁷⁹

That Opinion is clear though: there must be adequate supervision at all times by a licensed lawyer. Again, this situation would not arise with LAWCLERK: a law student, who is not yet a member of his/her state bar and in good standing, cannot participate in LAWCLERK's platform, and may not apply for or receive any LAWCLERK Work.

³⁷⁹ Oregon Formal Ethics Opinion No 2021-198, found at <http://www.osbar.org/sitesearch/searchengine.asp?searchscope=ETHICS&maxFiles=10&cmd=search&request=unauthorized+practice+of+law&fuzziness=4&stemming=Yes&natLang=Yes>

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.³⁸⁰ 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.”³⁸¹ 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.³⁸²

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 Commonwealth of Pennsylvania.”³⁸³ 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.³⁸⁴ Similarly, in LAWCLERK, Remote Associates solely provide services to barred Hiring Attorneys and have no contact with the Hiring Attorney’s clients unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

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

³⁸⁰ 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).

³⁸¹ Id. (citing Dauphin County Bar Association v. Mazzacaro, 351 A.2d 229, 232-233 (1976)).

³⁸² 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 inexperienced 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.”).

³⁸³ Formal Opinion 96-103, Independent Paralegal Organization, available at <http://www.pabar.org/public/committees/UNA01/Opinions/uplm96-103.asp>.

³⁸⁴ Id.

who is duly licensed to practice law in Pennsylvania retained directly for the subject of the legal services.³⁸⁵ Quoting the Connecticut Bar's Informal Opinion, the PUPLC emphasized that while anyone may sell forms or provide solely clerical assistance in completing 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. Hiring 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."³⁸⁶ Conversely, LAWCLERK prohibits Remote Associates from providing legal services or legal advice to a Hiring Attorney's clients; all legal advice is provided by the Hiring Attorney to the Hiring Attorney's clients unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

³⁸⁵ 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/2010-01LgIDocumentPreparation.pdf>.

³⁸⁶ *Id.*

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.”³⁸⁷

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 intermediary between the clients and the lawyer during the case – and its owner had engaged in the unauthorized practice of law, where: (i) 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.³⁸⁸ Conversely, in LAWCLERK, the attorney-client relationship is established and maintained by the Hiring Attorney, all legal advice is provided by the Hiring Attorney, and the Remote Associate has no contact with the Hiring Attorney’s client unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed.

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

³⁸⁷ *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).

³⁸⁸ *In re Medina*, 23 A.3d 650, 658 (R.I. 2011)

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 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 IX

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.^[389]

LAWCLERK complies with and is more restrictive than the foregoing guidelines as only the Hiring Attorney or a Remote Associate qualified to practice law in the jurisdiction may provide legal advice to the Hiring Attorney's client and the Remote Associate is supervised by the Hiring Attorney who is ultimately responsible for the Remote Associate's work product. The Hiring Attorney maintains responsibility for the attorney-client relationship, the Remote Associate reviews the Rules of Professional Conduct and agrees to comply with the rules, including maintaining client confidences, before being engaged on each individual Work, and unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed the Remote Associate does not have any contact with the Hiring Attorney's client or any other party involved in the matter, the Remote Associate may not sign any documents or pleadings, the Remote Associate may not appear in court, the Remote Associate may not share fees with the Hiring Attorney, and disbarred or suspended lawyers are prohibited from being Remote Associates.

In a Formal Ethics Opinion, the Rhode Island State Bar acknowledged the important role of nonlawyer assistants. An elder law attorney wanted to hire a "geriatric case manager" as an employee. Per the Opinion, the attorney may hire a nurse-GCM provided he "directly and effectively supervise the GCM; instruct the GCM regarding the Rules of Professional Conduct; and ensure that client confidentiality is maintained, that clients and the public are not misled as to the GCM's nonlawyer status, that the GCM's compensation is not a fee-sharing arrangement, that the GCM complies with the prohibitions against the unauthorized practice of law and direct solicitation, and that the objectives of the Rules of Professional Conduct are otherwise met."³⁹⁰ As with similar opinions with hiring nonlawyers, the Opinion reasoned that:

³⁸⁹ Provisional Order No. 18, 454 A.2d 1222, 1222-23 (R.I. 1983); RI R S CT ART V RPC Rule 5.3.

³⁹⁰ Rhode Island Supreme Court Ethics Advisory Panel Opinion No. 2006-05 Request No. 922, Issued December 14, 2006 (found at <https://www.courts.ri.gov/AttorneyResources/ethicsadvisorypanel/Pages/Ethics%20Advisory%20Panel%20Opinions.aspx>).

Lawyers customarily employ various nonlawyers to assist them in the delivery of legal services to clients. The Panel is of the opinion that the inquiring attorney may hire a nurse-GCM as an employee of the law firm. The described services that the GCM would provide would appear to facilitate the role of the inquiring attorney in providing legal services to elderly clients, including services related to long-term care. This appears especially so in the case of clients who are in institutional settings. The GCM not only has expertise in geriatric care issues but would also relieve the inquiring attorney of day-to-day monitoring of client care to ensure quality care.

LAWCLERK surpasses that guidance: a nonlawyer may not use the LAWCLERK platform, so none of those factors even come into consideration. Further, LAWCLERK comports with the Opinion's emphasis on attorney supervision, by requiring that in LAWCLERK's terms of service.

In Paplauskas 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 examinations are conducted or reviewed by Attorney Pelletier or some other attorney employed in a similar manner.^[391]

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

³⁹¹ In re Paplauskas, Jr., No. 2018-161-M.P. (R.I. May 29, 2020).

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.³⁹² 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.³⁹³ 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.³⁹⁴

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.³⁹⁵ 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.³⁹⁶

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

³⁹² 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).

³⁹³ Id.

³⁹⁴ Id. (quoting Matter of Easler, 272 S.E.2d 32, 33 (S.C. 1980)).

³⁹⁵ 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 parties to deed conferred with a licensed lawyer concerning the deed).

³⁹⁶ 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.³⁹⁷

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.³⁹⁸

³⁹⁷ *Steele v. Bonner*, 782 N.W.2d 379, 384 (S.D. 2010) (quoting *In re Discipline of Lapraeth*, 670 N.W.2d 41, 66 (S.D. 2003) (quoting *In re Egan*, 402, 218 N.W. 1, 2–3 (S.D. 1928))).

³⁹⁸ *Id.* at 381–82.

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.³⁹⁹ Consistent with the Bonner and Pier decisions, in LAWCLERK, unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed a Remote Associate 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 Remote Associate serves in the role of a paraprofessional role assisting the Hiring Attorney, not the Hiring Attorney's client.

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;

³⁹⁹ Petition of Pier, 561 N.W.2d 297, 301 (S.D. 1997) (affirming a lawyer's work as a paralegal after disbarment).

(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.^[400]

LAWCLERK complies with each of the foregoing requirements and is, in fact, more restrictive. LAWCLERK prohibits Remote Associates from having any client contact unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed and cannot sign correspondence or be identified on the Hiring Attorney's letterhead or business cards.

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:

⁴⁰⁰ S.D. Codified Laws § 16-18-34.2.

(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 Hiring Attorneys to engage in active, direct supervision of all Work undertaken by a Remote Associate. 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.”⁴⁰¹ 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. 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.”⁴⁰² Consistent therewith, the Hiring Attorneys in LAWCLERK are solely responsible for the attorney-client relationship and all legal advice provided by the Hiring Attorney to the client.

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.⁴⁰³ 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.⁴⁰⁴ 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.”⁴⁰⁵ This relationship inverts the permissible lawyer-nonlawyer relationship, because here it is the nonlawyer conducting all client communications and engaging the lawyer

⁴⁰¹ *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).

⁴⁰² *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)).

⁴⁰³ *Id.* at 707.

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.* at 696.

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.⁴⁰⁶

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.⁴⁰⁷

Unlike in *Rose* and *Glasgow*, in *LAWCLERK*, the Hiring Attorney provides the legal advice and maintains the attorney-client relationship and all client contact, while the Remote Associate provides discrete services to the Hiring Attorney (not the client) for which the Hiring Attorney retains full responsibility. Because (i) the Remote Associates solely assist Hiring Attorneys on specific tasks delegated to them by the Hiring Attorney, and (ii) the attorney-client relationship and all client communications remain between the Hiring Attorney and the client unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, 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.”

During the COVID-19 pandemic, when “work from home” became normative for many lawyers, confusion and questions frequently arose regarding what a physically out-of-state lawyer could and could not do, before violating another state’s UPL statutes or attorney ethics rules. An out-of-state attorney, not licensed in Tennessee, may serve as in-house counsel for a Tennessee organization; and if that attorney “has a systematic and continuous presence in this jurisdiction pursuant to Tenn. Sup. Ct. R. 8, RPC 5.5(d)(1), [then he] shall register as in-house counsel within 180 days of the commencement of employment as a lawyer registration.”⁴⁰⁸ Per that opinion

a local office is not established “if the lawyer does not hold out to the public an address in the local jurisdiction as an office and a local jurisdiction address does not appear on letterhead, business cards, websites, or other indicia of a lawyer’s presence. Likewise, it does not ‘establish’ a systematic and continuous presence in the jurisdiction for the practice of law since the lawyer is neither practicing law of the local jurisdiction nor holding out the availability to do so.”⁴⁰⁹

⁴⁰⁶ *Id.* at 710.

⁴⁰⁷ 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).

⁴⁰⁸ Board of Professional Responsibility of the Supreme Court of Tennessee Formal Ethics Opinion 2022-F-168 (found at https://www.tbpr.org/ethic_opinions/2022-f-168).

⁴⁰⁹ *Id.*

While that Opinion focuses on in-house counsel working remotely, who was not a paraprofessional, the Opinion keeps pace with the evolving practice of working remotely (or “virtually”). LAWCLERK encourages and is built on that premise, that Hiring Attorneys and Remote Associates can work together on Work, regardless of where physically situated; but again, so long as the Hiring Attorney supervises the Remote Associate’s work, and both the Hiring Attorney and Remote Associate are barred and in good standing in their respective barred states.

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 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.”⁴¹⁰

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.⁴¹¹ 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.⁴¹² “Reliance on his forms leads to a false sense of security and often unfortunate circumstances for the general public.”⁴¹³

Conversely, in LAWCLERK, unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed the Remote Associates have no contact with the client or the public, all services provided by the Remote Associate are provided to the Hiring Attorney (not the public), the Remote Associate works under the Hiring Attorney’s supervision, and only the Hiring Attorney provides legal advice to the client.

A sales tax case presented an interesting issue: whether developing, programming and implementing a complex residential real estate loan package system, which generated forms the law firm reviewed and then ‘sold’ to its bank clients, constituted (i) the unauthorized practice of law and/or (ii) data processing services (which are

⁴¹⁰ Tex. Gov’t Code Ann. § 81.101.

⁴¹¹ *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.)

⁴¹² *Id.* at 164-65.

⁴¹³ *Id.* at 165.

subject to Texas sales tax). BMG was a law firm with a large volume of residential loan transactions, who worked closely with 2 vendors and their programmers to create the programs. The Texas Comptroller audited BMG, and assessed the law firm approximately \$160,000 in unpaid sales tax. BMG paid under protest and sued for a refund. The court reviewed BMG's contracts with its vendors, and determined that all contracts were carefully drafted to couch the services as "data processing" rather than providing legal services. That alone was fatal to BMG's arguments, and the sales tax refund was denied.

In the opinion, the court expressed concerns whether or not the computer programs and the forms they generated constituted the unauthorized practice of law. The court gave credence to the process: BMG worked closely with its vendors to instruct them how the forms are interrelated, how data needed to be mapped to fields in the forms, and there was considerable review of both the accuracy and the stability of the systems. BMG would then review the filled-out forms for accuracy, and if met with their approval, BMG would then sell to its clients. In just the month before trial, BMG purchased 11,500 packages. BMG had teams of staff to assist with preparing the forms and filling them out, and ultimately the BMG attorneys were responsible for approving or rejecting the filled-out loan forms. The court did not rule on whether or not BMG or the vendors engaged in the unauthorized practiced of law, focusing solely upon the tax-refund question at issue.⁴¹⁴

Remote Associates are not merely scriveners or paraprofessional who fill out forms, like the staff in BMG. Remote Associates are attorneys barred and in good standing in their respective jurisdictions, as the LAWCLERK terms of service require. Furthermore, Remote Associates unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed would not work with the end-client, and must be supervised by the Hiring Attorney, who has sole responsibility for the work product. The myriad of overlapping concerns in BMG would simply not be present when a Hiring Attorney hires a Remote Associate for Work.

⁴¹⁴ Hegar v. Black, Mann, & Graham, L.L.P., No. 03-20-00391-CV (Tex. App. Feb. 25, 2022)

■ 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.⁴¹⁵ 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.⁴¹⁶ 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."⁴¹⁷

The Petersen decision underscores why LAWCLERK does not violate the prohibition on the unauthorized practice of law. In LAWCLERK, the Remote Associate solely operates at the direction of, and under the supervision of, the Hiring Attorney. Unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, the Remote Associate has no independent client contact, and the Hiring 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

⁴¹⁵ 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)).

⁴¹⁶ Id. at 1265.

⁴¹⁷ Id. at 1269.

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.⁴¹⁸

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.⁴¹⁹

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

In September 2020, the Utah Supreme Court adopted rules that allow licensed paralegal practitioners ("LPPs") to engage in the limited legal tasks.⁴²⁰ This innovative new program does not absolve lawyers of their obligation to supervise non-lawyers as required by Rule 5.3. However, Utah and other states broaden the scope of what non-lawyers can do without supervision, it may become more difficult to argue that platforms such as LAWCLERK – which require supervision at all times – violate the rules of professional responsibility.

Part of Rule 14-802 is out for public comment (ending March 9, 2023); however, Rule 14-802 is expansive. Under R. 14-802(c):

(c) Licensed Paralegal Practitioners. A person may be licensed to engage in the limited practice of law in the area or areas of (1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, name or gender change, and petitions to recognize a relationship as a marriage; (2) forcible entry and detainer; and (3) debt collection matters in which the dollar amount in issue does not exceed the statutory limit for small claims cases.

⁴¹⁸ 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>.

⁴¹⁹ 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>.

⁴²⁰ Rule 14-802. Authorization to practice law (adopted September 11, 2020) (available at <https://www.utcourts.gov/resources/rules/ucja/view.html?title=Rule%2014-802.%20Authorization%20to%20practice%20law.&rule=ch14/08%20Special%20Practice/USB14-802.html>).

R. 14-802(d) is broad permits many activities which might otherwise be considered within a lawyer's purview, but which are permitted by a nonlawyer:

(d) Exceptions and Exclusions. Whether or not it constitutes the practice of law, the following activity by a nonlawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted [emphasis added]:

(1) Making legal forms available to the general public, whether by sale or otherwise, or publishing legal self-help information by print or electronic media.

(2) Providing general legal information, opinions, or recommendations about possible legal rights, remedies, defenses, procedures, options, or strategies, but not specific advice related to another person's facts or circumstances.

(3) Providing clerical assistance to another to complete a form provided by a municipal, state, or federal court located in Utah when no fee is charged to do so.

(4) When expressly permitted by the court after having found it clearly to be in the best interests of the child or ward, assisting one's minor child or ward in a juvenile court proceeding.

(5) Representing a party in small claims court as permitted by Rule of Small Claims Procedure 13.

(6) Representing without compensation a natural person or representing a legal entity as an employee representative of that entity in an arbitration proceeding, where the amount in controversy does not exceed the jurisdictional limit of the small claims court set by the Utah Legislature.

(7) Representing a party in any mediation proceeding.

(8) Acting as a representative before administrative tribunals or agencies as authorized by tribunal or agency rule or practice.

(9) Serving in a neutral capacity as a mediator, arbitrator, or conciliator.

(10) Participating in labor negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements or as otherwise allowed by law.

(11) Lobbying governmental bodies as an agent or representative of others.

(12) Advising or preparing documents for others in the following described circumstances and by the following described persons:

(A) A real estate agent or broker licensed in Utah may complete state-approved forms including sales and associated contracts directly related to the sale of real estate and personal property for their customers.

(B) An abstractor or title insurance agent licensed in Utah may issue real estate title opinions and title reports and prepare deeds for customers.

(C) Financial institutions and securities brokers and dealers licensed in Utah may inform customers with respect to their options for titles of securities, bank accounts, annuities, and other investments.

(D) Insurance companies and agents licensed in Utah may recommend coverage, inform customers with respect to their options for titling of ownership of insurance and annuity contracts, the naming of beneficiaries, and the adjustment of claims under the company's insurance coverage outside of litigation.

(E) Health care providers may provide clerical assistance to patients in completing and executing durable powers of attorney for health care and natural death declarations when no fee is charged to do so.

(F) Certified Public Accountants, enrolled IRS agents, public accountants, public bookkeepers, and tax preparers may prepare tax returns.

(13) Representing an Indian tribe that has formally intervened in a proceeding subject to the Indian Child Welfare Act of 1978, 25 U.S.C. sections 1901–63. Before a nonlawyer may represent a tribe, the tribe must designate the nonlawyer representative by filing a written authorization. If the tribe changes its designated representative or if the representative withdraws, the tribe must file a written substitution of representation or withdrawal.

⁴²¹ Rule 14-802 (Code of Judicial Administration), Authorization to Practice Law, found at <https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=14-802>

(14) Providing legal services under Utah Supreme Court Standing Order No. 15.⁴²¹

This Rule expands the types of services permitted to be performed by nonlawyers, and subject to the Rule's requirements, will not constitute the unauthorized practice of law. LAWCLERK goes further: work must be performed by Remote Associates who are licensed attorneys and in good standing in their barred jurisdiction; and unlike the Licensed Paralegal Professional (and other nonlawyers) referred to in the Rule, Hiring Attorneys must supervise and ultimately are responsible for the Remote Associate's work product.

⁴²¹ Rule 14-802 (Code of Judicial Administration), Authorization to Practice Law, found at <https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=14-802>

■ 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 in the practice of law.”⁴²² 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.”⁴²³ [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.”⁴²⁴ 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.⁴²⁵

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;⁴²⁶ (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;⁴²⁷ (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;⁴²⁸ (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;⁴²⁹ (v) a nonlawyer surveyor, who, for

⁴²² *In re Welch*, 185 A.2d 458, 459–60 (Vt. 1962).

⁴²³ *In re Morales*, 151 A.3d 333, 335–36 (Vt. 2016).

⁴²⁴ *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.”)).

⁴²⁵ *Id.* at 336. (The Court noted, however, that the outcome may vary if a fee had been charged for such services).

⁴²⁶ *In re Morse*, 126 A. 550, 553 (Vt. 1924).

⁴²⁷ *In re Ripley*, 191 A. 918 (Vt. 1937).

⁴²⁸ *In re Flint*, 8 A.2d 655, 657 (Vt. 1937).

⁴²⁹ *In re Pilini*, 173 A.2d 828 (Vt. 1961).

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;⁴³⁰ and (vi) a nonlawyer stockholder and officer appeared in court to represent a corporation.⁴³¹

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 Hiring Attorney is responsible for the attorney-client relationship and all legal advice provided to the client. Unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, the Remote Associate has no client contact and may not appear in court or any other administrative proceeding, and the Hiring Attorney maintains sole responsibility for the services provided by the Remote Associate to the Hiring Attorney.

There are Vermont Bar Association advisory ethics opinions in the UPL area, and these activities do not constitute the unauthorized practice of law: (i) with client consent, a supervising attorney may permit a paralegal to conduct a loan closing on behalf of a lender client where the client consents, the paralegal’s role is ministerial in nature, and the attorney is available for questions, at least by telephone⁴³²; and (ii) a suspended attorney may be employed as a law clerk, paralegal, investigator or in any capacity as a lay person, by a licensed lawyer or law firm on an hourly or salaried basis, but may not share in legal fees. Such employment should be restricted to activities that are performed for the employing attorney, as opposed to direct services to clients; must be supervised by the employing attorney; and must not be activities that constitute the practice of law; nor should the employment arrangement give the appearance to the public or to clients that the suspended attorney is permitted to practice law.⁴³³

Those 2 examples are much broader than what LAWCLERK permits. Unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, Remote Associate would not be permitted to have direct client contact, nor conduct a loan closing with the Hiring Attorney “on standby”; only the Hiring Attorney has direct client contact and must supervise the Remote Associate. Similarly, LAWCLERK does not permit suspended attorneys to participate in the LAWCLERK platform, because every Remote Associate must be a licensed attorney in good standing. Further, LAWCLERK’s Work is on a fixed-fee basis, and a Remote Associate would never share in the Hiring Attorney’s legal fees.

⁴³⁰ *In re Welch*, 185 A.2d 458 (Vt. 1962).

⁴³¹ *LaBrie, Inc. v. Vermont Dep’t of Envtl. Conservation*, 596 A.2d 354, 354 (Vt. 1991).

⁴³² VBA Advisory Ethics Opinion 1999-03, found at https://www.vtbar.org/advisory_ethics/unauthorized-practice-of-law/

⁴³³ VBA Advisory Ethics Opinion 1997-11, found at https://www.vtbar.org/advisory_ethics/unauthorized-practice-of-law/

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**⁴³⁴

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.^[435]

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

⁴³⁴ Va. Sup. Ct. R. PT 6, § 1 Introduction.

⁴³⁵ Va. Sup. Ct. R. PT 6, § 1 UPR 4 (emphasis added).

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.

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.^[436]

Thus, LAWCLERK serves to preserve and protect the attorney-client relationship by precluding the Remote Associate from having any client contact unless done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed while allowing Hiring Attorneys to obtain necessary and cost-effective assistance for specific, delegated services from ABA accredited law school graduates who are 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.

An older 2008 Virginia ethics opinion recognized the growing use of outside resources:

Lawyers may outsource "legal or non-legal support" services as long as they bear various ethics requirements in mind -- mentioning outsourcing to foreign lawyers as only one example of outsourcing, along with "the use of a local photocopy shop" to copy documents, retaining a "document management company" in litigation, using third party vendors "to provide and maintain a law firm's computer system" and reliance on a "legal research service" to conduct research. Lawyers arranging for such outsourcing must ultimately assure competent service by anyone assisting in the lawyer's work for the client. Lawyers' duties under ABA Model Rule 5.1 and 5.3 "apply regardless of whether the other lawyer or the nonlawyer is directly affiliated with the supervising lawyer's firm" -- despite the reference to "a firm" in ABA Model Rule 5.1 Comment [1]^[437]

LAWCLERK goes much further: the Hiring Attorney evaluates and selects the Remote Associate, and both Hiring Attorney and Remote Associate agree to abide by LAWCLERK's rigorous requirements to comport with ethics rules.

⁴³⁶ Va. Sup. Ct. R. PT 6, § 1 Practice of Law.

⁴³⁷ Virginia Legal Ethics Opinion Summary, referring to ABA-451, July 9, 2008 (found at <https://leo.mcguirewoods.com/Default.aspx>).

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 never admitted to the bar.⁴³⁸ 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.⁴³⁹ 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.⁴⁴⁰

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 committee advised that such conduct will be compliant with Rules 5.3 and 5.5 of the Washington Rules of Professional Conduct.⁴⁴¹ 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

⁴³⁸ 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)).

⁴³⁹ Tegman v. Accident & Med. Investigations, Inc., 30 P.3d 8, 14 (Ct. App. Wash. 2001).

⁴⁴⁰ 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.)

⁴⁴¹ 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>.

complaint would then be 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.^[442]

The foregoing cases and ethics opinions illustrate why LAWCLERK does not violate Washington's rules against the unauthorized practice of law. While the Remote Associate will draft documents and/or conduct research in accordance with the directives provided by the Hiring Attorney, unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed the Remote Associate will never appear in court, will never have any client contact, and the Hiring Attorney is responsible in all respects for the attorney-client relationship and for the Remote Associate's work product.

In June 2020, Washington announced the end of its licensed paraprofessional program.⁴⁴³ The existence of a program that expanded the limits of what non-lawyers could do without supervision made it even more clear that platforms that do require the supervision of non-lawyers pose no ethical issues. However, the termination of the paraprofessional program does not change the analysis in the foregoing paragraphs that explains why – even without a paraprofessional program - LAWCLERK conforms to the ethical rules in the state.

In a 2022 Advisory Opinion, Washington recognized the need to keep pace with modern practice, particularly in light of the COVID-19 pandemic: 'virtual offices' and remotely working in another jurisdiction. The Opinion introduces the topics as follows:

Many lawyers are choosing to do some or all their work remotely, from home or other remote locations. Advances in the reliability and accessibility of on-line resources, cloud computing, video conferencing, and email services have allowed the development of the virtual law office, by which the lawyer does not maintain a physical office. The COVID-19 pandemic accelerated this trend, causing many lawyers to work remotely (virtually),

⁴⁴² 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>.

⁴⁴³ Washington State Bar, Decision to Sunset LLLT Program (updated Oct. 8, 2021), <https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/limited-license-legal-technicians/decision-to-sunset-lllt-program>.

⁴⁴⁴ Washington State Bar Association Advisory Opinion: 201601, Issued: 2022 (found at <https://ao.wsba.org/print.aspx?ID=1700>)

or to split their time between a traditional office and a remote office (a hybrid office).[n.2]

Although this modern business model may appear radically different from the traditional brick and mortar law office model, the underlying principles of an ethical law practice remain the same. The core duties of diligence, loyalty, and confidentiality apply whether the office is virtual or physical. For the most part, the Rules of Professional Conduct (RPC) apply no differently in the virtual office context. However, there are areas that raise special considerations in the virtual law office.⁴⁴⁴

LAWCLERK envisioned these types of arrangements, which are pivotal to its successful marketplace: linking Hiring Attorneys and Remote Associates barred and in good standing, who comply with their state's respective ethics and rules of professional conduct. Washington requires a mailing address, not necessarily a physical presence; and does not object to a Washington attorney conducting its work in another state, so long as the attorney complies with the other's state's requirements (e.g., not holding himself out, or having the indicia, of being a licensed attorney in the other state). LAWCLERK's Terms of Service assure the Hiring Attorney and Remote Associate comply with the most stringent rules, regulations, and requirements.

■ 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. ^[445]

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 corporation⁴⁴⁶ or third-party.⁴⁴⁷

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.⁴⁴⁸ 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.⁴⁴⁹ 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.⁴⁵⁰

LAWCLERK meets the objectives of the prohibition on the unauthorized practice of law as only the Hiring Attorney, not the Remote Associate, has contact with the Hiring Attorney's client and the Hiring Attorney is responsible for the legal advice and services provided to the client unless otherwise done in a manner that is expressly permitted

⁴⁴⁵ *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)).

⁴⁴⁶ *Shenandoah Sales & Serv., Inc. v. Assessor of Jefferson Cty.*, 724 S.E.2d 733, 737 (W. Va. 2012).

⁴⁴⁷ *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.").

⁴⁴⁸ *Office of Disciplinary Counsel v. Battistelli*, 465 S.E.2d 644 (W. Va. 1995).

⁴⁴⁹ *Id.* at 646-47.

⁴⁵⁰ *Id.* at 648.

under the laws of the jurisdiction in which the communication is governed. Further, unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed Remote Associates do not have any client contact, Remote Associates only act at the direction of, and under the supervision of, the Hiring Attorney, and the Remote Associates never appear in any tribunal or sign, serve, or file documents on behalf of a Hiring Attorney's client.

In a 2018 West Virginia Legal Ethics Opinion, the Lawyer Disciplinary Board issued an Advisory Opinion regarding attorney-client matching services. The Board strongly cautioned that:

A lawyer must ensure that the lawyer's participation in the referral service is consistent with the lawyer's ethical obligations owed to clients. The Lawyer Disciplinary Board cautions that the Attorney-Client Matching Service (ACMS) model is rife with ethical pitfalls for lawyers. These include, but are not limited to, interference with the lawyer's professional judgment, failing to properly safeguard legal fees, fee-splitting with non-lawyers, and improper payments to a business for recommending the lawyer's services. Lawyers have an affirmative obligations to ensure that their relationships with entities are conducted in accord with the Rules of Professional Conduct.⁴⁵¹

LAWCLERK guards against any of the concerns expressed in that Opinion, LAWCLERK is not a "matching service", but rather, a marketplace. Hiring Attorneys and Remote Associates decide whom they want to work with and set their own Work prices (fees). "Fee splitting" is prohibited, and the Hiring Attorney maintains sole control at all times, thus ensuring the Hiring Attorney's independent professional judgment is not interfered with. Only barred attorneys in good standing are permitted to use LAWCLERK; non-lawyers are not permitted to use the platform. LAWCLERK goes far beyond any concerns expressed in that Advisory Opinion.

In a 2019 decision, the West Virginia Supreme Court acknowledged, with approval, that a formerly disbarred attorney had successfully worked as a paralegal during his disbarment.⁴⁵² The factor weighed in favor of reinstatement. LAWCLERK's standards are stricter than this guidance. While case law demonstrates that disbarred West Virginia lawyers may work as paralegals under supervision, LAWCLERK does not permit disbarred or suspended attorneys to serve as Remote Associates. Thus, LAWCLERK comports with West Virginia law.

⁴⁵¹ West Virginia Legal Ethics Opinion, 2018-01 Participation in Attorney-Client Matching Services (found at <http://www.wvdc.org/chrono.html>).

⁴⁵² In re Petition for Reinstatement Drake, 242 W.Va. 109, 829 S.E.2d 267 (W. Va. 2019)..

■ 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.⁴⁵³ 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.⁴⁵⁴

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,⁴⁵⁵ a trust,⁴⁵⁶ or a third-party. Conversely, in *LAWCLERK*, unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the representation or communication is governed, the Remote Associate has no contact with the client, cannot appear in court, and only acts under the direct supervision of the Hiring Attorney.

⁴⁵³ *Matter of Disciplinary Proceedings Against Gehl*, 571 N.W.2d 673, 674 (Wis. 1997).

⁴⁵⁴ *Matter of Disciplinary Proceedings Against Gibson*, 570 N.W.2d 249, 250-51 (Wis. 1997).

⁴⁵⁵ *Life Sci. Church, Bible Camp & Christian Liberty Acad. v. Shawano Cty.*, 585 N.W.2d 625, 626 (Wis. Ct. App. 1998).

⁴⁵⁶ *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.")).

■ 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.⁴⁵⁷ 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.⁴⁵⁸

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 typing 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.⁴⁵⁹ Unlike in *Hardy* and *Herren*, in *LAWCLERK*, unless otherwise done in a manner that is expressly permitted under the laws of the jurisdiction in which the communication is governed, the Remote Associate shall have no client contact, the Hiring Attorney shall maintain the client relationship and determine the scope of the assignments to be completed by the Remote Associate, and the Hiring Attorney maintains full responsibility for the services provided by the Remote Associate.

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.⁴⁶⁰ Because *LAWCLERK* requires the Hiring Attorney to retain full responsibility for the work performed by the Remote Associate, 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.

⁴⁵⁷ State ex rel. Wyoming State Bar v. Hardy, 156 P.2d 309 (Wyo. 1945).

⁴⁵⁸ Id. at 188-89.

⁴⁵⁹ In re Herren, 138 B.R. 989, 994 (Bankr. D. Wyo. 1992).

⁴⁶⁰ Wyoming State Bar, Discipline Summary, updated October 2016, pp. 68-69, available at https://www.wyomingbar.org/wp-content/uploads/Disciplinary_Summary.pdf.

The Wyoming Bar's Discipline Summary further described a situation of inadequate supervision as follows:

Attorney had supervisory authority over an associate in the law firm who was licensed in another jurisdiction. The associate moved to Wyoming and began full-time employment but delayed for more than a year applying for admission to the Wyoming State Bar. Attorney and associate both believed such practice was permissible as long as all work performed by associate was under the supervision and with the active participation of a licensed Wyoming lawyer in the law firm. Following commencement of a disciplinary investigation, attorney admitted that associate's conduct was not consistent with the requirements of Rule 5.5 (unauthorized practice of law) and that supervisory attorney had thus violated Rule 5.1(a) by failing to make reasonable efforts to ensure that associate's conduct conformed to the Rules of Professional Conduct. Discipline: Private Reprimand. Attorney agreed to the private reprimand

....⁴⁶¹

Although the associate was a licensed lawyer in another jurisdiction, both the young lawyer and the supervising attorney mistakenly believed the conduct was permissible because the unadmitted attorney was under the supervision of a licensed Wyoming lawyer. Their mistaken belief did not shield the attorney from discipline (private reprimand). That misconduct would not occur with LAWCLERK, because both the Hiring Attorney and Remote Associate must be familiar with and comply with all rules and laws; it is not sufficient to merely "believe" they comply, but rather, both must comply.

⁴⁶¹ Wyoming State Bar, Disciplinary Summary, updated December, 2022, p. 101, available at <https://www.wyomingbar.org/for-lawyers/lawyer-resources/ethics-help/>

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