

## Ethics for Court Clerks and Staff

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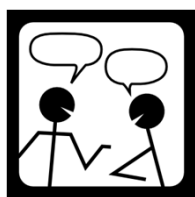
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I'd like to do this...



... As a conversation.

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## What We're Going to Talk About

- Unauthorized Practice of Law
  - What the Rules and Statutes Say
  - How it Pertains to You
  - How to Manage UPL issues day to day

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### What We're Going to Talk About

Rules of Professional Conduct  
Overview

Your Day-to-Day interactions  
with Lawyers

- And....

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### What We're Going to Talk About

- How to spot potential problems/what to do
  - With the Public
  - With Bar Members
  - With Judges

And, also, if we have time...

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- Some tips I give to Bar members to help them with their practice that might also be applicable to your very public, very demanding jobs.

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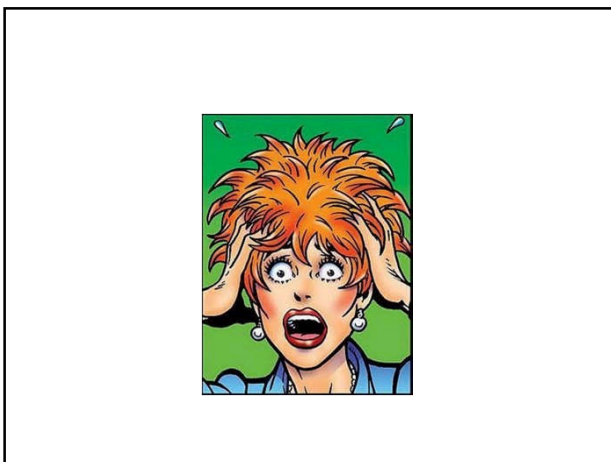
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**Unauthorized Practice of Law  
(UPL)**

- Lawyers are Required to follow Rule 5.5 of the SC Rules of Professional Conduct  
(Rule 407 of the SC Appellate Court Rules)

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RULE 5.5:  
UNAUTHORIZED PRACTICE OF LAW;  
MULTIJURISDICTIONAL PRACTICE OF  
LAW

- (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.

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- (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.

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- (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:

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(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;

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(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraph (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's representation of an existing client in a jurisdiction in which the lawyer is admitted to practice.

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

(1) are provided to the lawyer's employer or its organizational affiliates 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

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(2)...Services that the lawyer is authorized to provide by Federal Law or other law of this jurisdiction...

- Areas within federal law that are covered by Federal Regs:
  - Assistance with a Social Security Disability Case
  - Immigration Assistance

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## Statutory UPL

Applies to everyone not covered under Rule 5.5

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### **SECTION 40-5-310**

- No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the **unauthorized practice of law** by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

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### For Instance?

- Jailhouse Lawyers
- Closing a loan... even a refinance... without a lawyer
- Giving legal advice of any kind

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### What's OK??

- Assisting a person with an activity permitted under a Federal Regulation
  - Veteran's affairs assistance
  - Certain Immigration Assistance

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*BUT*

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- pattern seems to indicate UPL usually included in the “assistance”

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### Also OK

- Engaging in Activities that are related to law practice, but not actually the practice of law
  - Duties of a Notary Public
  - Paralegal, Legal Assistant or Law Clerk acting under the direct supervision of a Lawyer

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### Managing UPL in Your Day-to-Day



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**Be Aware, Be Informed,  
Be Measured**

- Most of the folks who come through your doors, you'll know. Be interested in the ones you don't. Who do they claim to "represent"?
- Be ready with some canned questions and responses.. "and you work with who?"  
"... and your Bar number is?"

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**Keep Yourself out of Trouble**



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**Saying "NO" is OK**

Give yourself permission to NOT answer every question, even if you make someone mad ( and you will)

Err on the side of Caution

Tell them why they need to do some personal research/get a lawyer

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### What do You Do with UPL?

- Talk to someone at your courthouse. Get another opinion to confirm your thoughts.
- Call Me. I am Liaison to Bar's UPL Committee. I will take issue to committee for decision.
- Sometimes, best option is to notify Solicitor directly.

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### QUESTIONS??



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### Rules of Professional Condcut

Rule 407 of the  
SC Appellate Court Rules

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### What's New and Newish

- New Last August ( Aug 22) :
  - Order that significantly modified advertising rules. Testimonials, under certain conditions, now allowed.
- New This Month
  - Modifications to Rule 1.5, Fees. Fees “Earned upon Payment” now allowed. Funds go directly to operating account.

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### Other Rules: Refresher



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### Confidentiality

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a criminal act;
- (2) to prevent reasonably certain death or substantial bodily harm;
- (3) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (4) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (5) to secure legal advice about the lawyer's compliance with these Rules;
- (6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
- (7) to comply with other law or a court order.

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### APPLICATION TO YOU...

- Twofold:
  - Help Lawyers uphold their obligation. You have to ask certain questions. Others, maybe not. Be mindful of a lawyer's responsibility and support their obligations to their clients.

– and

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### Be a Zipper Mouth



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**RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

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

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(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.

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**RULE 4.3: DEALING WITH UNREPRESENTED PERSON**

- In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

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What About the Canons?



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Rules Governing Judiciary,  
Employees of the Judicial  
Department, and Others Assisting  
the Judicial Department

- Rule 501 of the Appellate Court Rules

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**A JUDGE SHALL AVOID  
IMPROPRIETY AND THE  
APPEARANCE OF IMPROPRIETY IN  
ALL OF THE JUDGE'S ACTIVITIES**

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### Broader, Less Defined than Rule 407



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### Bar Programs for Clients

- Client Assistance Program
- Fee Dispute Resolution Program
- Lawyers Fund for Client Protection

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## Formal Grievances

- Not the Bar
- The Commission on Lawyer Conduct/Office of Disciplinary Counsel

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## Pro Bono Lawyers

Potential clients must go through LATIS, the statewide Legal Aid Telephone Intake Service



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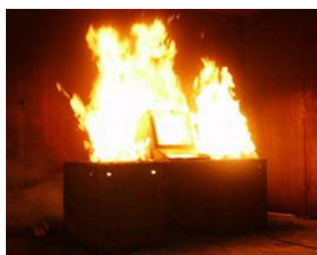
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## A Few Other Reminders

Vacuum Your Computer Fan.



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### Strive for Consistency

- How does everyone answer the phone?
- What's the policy in an emergency?
- What's the rule on personal e-mail?
- What's the policy on turnaround times?

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### Never Sign Anyone's Name

- ...Except your own.

## Why??

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Thanks For Having Me!

- Jill Rothstein
- SC Bar Risk Management Director
- [Jrothstein@sbar.org](mailto:Jrothstein@sbar.org)
- 803-576-3770

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