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UNAUTHORIZED PRACTICE OF LAW

by Linda McGrath-Cruz, FRP, CP

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Have you ever committed a 3rd degree felony? You might be surprised. We've all been there... its late on Friday afternoon and you're in a hurry to get started on your weekend, but, you have a pleading which needs to get out and your paralegal hasn't finished revising it yet... Rather than waiting for your paralegal to put the finishing touches on it for your signature, its tempting to just tell her to print it, sign it on your behalf, and send it in... Or, you are out of the office and your newest client is impatiently waiting for your retainer agreement – do you make him wait, or ask your paralegal to sign it and send it over? It may be even more tempting if you've worked together for a long time – but does that make it right?

In the past, a paralegal's involvement with clients and cases was probably more limited. But in our current economy, paralegals and other non lawyers are finding themselves in expanded roles and are handling more than ever. Most of us are familiar with "UPL" or unauthorized practice of law, but how does it apply to your practice? Simply put, UPL is something that happens when a person who is not a licensed attorney engages in the practice of law. This may include accepting cases, giving legal advice, setting fees, signing pleadings, and more. Unauthorized practice of law rules are put into place to protect the general public from the fraudulent practice of law by people who are not qualified to practice law. A licensed attorney receives specialized education and is held to a specific set of rules of discipline, rules of professional conduct, and other specific regulations.

Attorneys are ultimately responsible for preventing unauthorized practice of law in their practice. This requires proper supervision of non-lawyer employees, including paralegals. However, as professionals, paralegals must take responsibility for their own actions as well by educating themselves and ensuring that they do not cross the line. We must work together as a team to ensure that we follow the rules set in place, and remove ourselves from situations which urge us to break the rules.

Through the Florida Constitution, the Florida Supreme Court gives The Florida Bar the responsibility to investigate and deal with matters relating to the unlicensed practice of law and the prosecution of these acts. Each judicial circuit in Florida has its own committee to oversee this important issue.

On October 21, the DCBA FRP Committee hosted Jacquelyn Needelman of the unauthorized practice of law division of The Florida Bar. Ms. Needelman discussed UPL in more detail, including who can use the title "paralegal", pitfalls for paralegals to avoid and what happens when an unlicensed practice of law complaint is filed. It was an informative and important discussion.

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