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IS YOUR ARTIFICIAL INTELLIGENCE GUILTY OF THE UNAUTHORIZED PRACTICE OF LAW?

Thomas E. Spahn, Esq.*

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* Thomas E. Spahn, Esq. earned his B.A. and J.D. from Yale University. He is a Partner at the Tyson's Corner location of McGuireWoods in Virginia, where he represents his clients as a commercial litigator. His extensive experience spans advising clients on work-product protections, to authoring publications regarding ethical dilemmas within modern legal practices.

I. INTRODUCTION

[1] As with other technological advances, artificial intelligence (AI) will dramatically affect law practice in coming years. Among other things, AI implicates several ethics issues with which our profession will have to wrestle.

[2] One basic question involves AI's essential nature. Is it the practice of law? If so, non-lawyers relying on AI to advise third parties may be committing the criminal unauthorized practice of law, and lawyers insufficiently involved in such a process may be guilty of assisting in such unauthorized practice of law (UPL).

II. UNAUTHORIZED PRACTICE OF LAW

[3] An obvious initial question implicated by AI is whether such a process constitutes the "practice of law" for unauthorized practice of law purposes.

[4] Knowing whether use of AI to provide legal advice amounts to the unauthorized practice of law underlies the UPL assessment of (1) non-lawyers using AI without any lawyers' involvement, and (2) lawyers working with non-lawyers (not under their supervision) in those non-lawyers' use of AI.[1]

†These analyses primarily rely on the ABA Model Rules, which represent a voluntary organization's suggested guidelines. Every state has adopted its own unique set of mandatory ethics rules and you should check those when seeking ethics guidance. For ease of use, these analyses and citations use the generic term "legal ethics opinion" rather than the formal categories of the ABA's and state authorities' opinions, including advisory, formal, and informal.

[1] Melissa Maleske, *Artificial Intelligence Raises Ethical Concerns for Attys*, LAW360 (Mar. 3, 2017, 8:39 PM), https://www.law360.com/articles/897965/artificial-intelligence-raises-ethical-concerns-for-attys, https://perma.cc/4ZRB-UQ62 (last visited May 31, 2018).

A. Defining the Practice of Law

[5] Although it may be difficult for self-absorbed lawyers to accept, both the phrase "unauthorized practice of law" and the concept are hazy and uncertain at best–yet can form the basis for severe penalties.[2]

[6] The Restatement explains this strange dichotomy of uncertain definitions yet great stakes:

> [t]o some, the expression 'unauthorized practice of law' by a nonlawyer is incongruous, because it can be taken to imply that nonlawyers may engage in some aspects of law practice, but not others. The phrase has gained near-universal usage in the courts, ethics-committee opinions, and scholarly writing, and it is well understood not to imply any necessary area of permissible practice by a nonlawyer. Moreover, a nonlawyer undoubtedly may engage in some limited forms of law practice, such as self-representation in a civil or criminal matter . . . . It thus would not be accurate for the black letter to state flatly that a nonlawyer may not engage in law practice . . . . A nonlawyer who impermissibly engages in the practice of law may be subject to several sanctions, including injunction, contempt, and conviction for crime.[3]

[7] The Restatement also offers an understated explanation of the great difficulties courts and other state institutions have had in actually defining the practice of law. The simple truth is that it can be nearly impossible to

[2] *See, e.g.*, ALA. CODE § 34-3-1 (LexisNexis 2018) (noting that the penalty for unlawful practice of law is a fine up to $500 or imprisonment up to six months, or both); S.C. CODE ANN. § 40-5-310 (2018) (noting that practicing law without admittance to the South Carolina Bar entails a fine up to $5,000 or imprisonment up to five years, or both).

[3] RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 cmt. a (AM. LAW INST. 2000).

precisely define the practice of law. The Restatement recognizes this awkward reality:

> Courts have occasionally attempted to define unauthorized practice by general formulations, none of which seems adequately to describe the line between permissible and impermissible non-lawyer services, such as a definition based on application of difficult areas of the law to specific situations . . . . Many courts refuse to propound comprehensive definitions, preferring to deal with situations on their individual facts.[4]

[9] As one court similarly explained, it is often "difficult, if not impossible, to lay down a formula or definition of what constitutes the practice of law."[5] Other courts have expressed similar sentiments.[6]

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[4] RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 cmt. c (AM. LAW INST. 2000).

[5] People *ex rel.* Ill. State Bar Ass'n v. Schafer, 404 Ill. 45, 50, 87 N.E.2d 773, 776 (1949).

[6] *See In re* Dissolving Comm'n on Unauthorized Prac. of Law, 242 P.3d 1282, 1283 (Mont. 2010) (dissolving the Bar's Commission on the unauthorized practice of law) After explaining that the Attorney General will now handle any UPL matters, the court stated:

> [W]e conclude that the array of persons and institutions that provide legal or legally-related services to members of the public are, literally, too numerous to list. To name but a very few, by way of example, these include bankers, realtors, vehicle sales and finance persons, mortgage companies, stock brokers, financial planners, insurance agents, health care providers, and accountants. Within the broad definition of § 37-61-201, MCA, it may be that some of these professions and businesses "practice law" in one fashion or another in, for example, filling out legal forms, giving advice about "what this or that means" in a form or contract, in estate and retirement planning, in obtaining informed consent, in buying and selling property, and in giving tax advice. Federal and state administrative agencies regulate many of these professions and businesses via rules and regulations; federal and state consumer protection laws and other statutory schemes may be implicated in the activities of these professions and fields; and individuals and

Perhaps the best evidence of the great difficulty the legal profession has in defining itself involves the ABA's efforts to articulate a proposed definition of practicing law.[7]

[10] The American Bar Association Taskforce on the Model Definition of the Practice of Law offered the following proposed draft definition in September 2002:

> The "practice of law" is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law. . . . A person is presumed to be practicing law when engaging in any of the following conduct on behalf

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> non-human entities may be liable in actions in law and in equity for their conduct. Furthermore, what constitutes the practice of law, not to mention what practice is authorized and what is unauthorized is, by no means, clearly defined. Finally, we are also mindful of the movement towards nationalization and globalization of the practice of law, and with the action taken by federal authorities against state attempts to localize, monopolize, regulate, or restrict the interstate and international provision of legal services.

Id. See also State *ex rel.* State Bar Ass'n v. United Fin. Sys. Corp., 926 N.E.2d 8, 14 (Ind. 2010) (stating that "[a]lthough it is the province of this Court to determine what acts constitute the practice of law, we have not attempted to provide a comprehensive definition because of the infinite variety of fact situations. . . . Nor do we attempt to do so today."); Sudzus v. Dep't of Emp't. Sec., 914 N.E.2d 208, 215 (Ill. App. Ct. 2009) (holding that a non-lawyer's role for his employer in an unemployment compensation hearing did not amount to the unauthorized practice of law and observing, "[r]unning through both contentions is an awareness that it is often difficult, if not impossible, to lay down a formula or definition of what constitutes the practice of law. . . . Hence, definition of the term 'practice of law' defies mechanistic formulation."); Penn. Bar Ass'n Comm. on Legal Ethics and Prof'l Responsibility, Formal Op. 90-02 (1990) (explaining that "[w]hat activity constitutes the 'practice of law' in Pennsylvania is, as in most states, undefined").

[7] *See* ABA Ctr. for Prof'l Responsibility, Task Force on Model Definition of the Practice of Law, Report & Recommendation to the House of Delegates (adopted Mar. 28, 2003) (resolving that each jurisdiction should adopt its own definition of the practice of law).

> of another: (1) Giving advice or counsel to persons as to their legal rights or responsibilities or to those of others; (2) Selecting, drafting, or completing legal documents or agreements that affect the legal rights of a person; (3) Representing a person before an adjudicative body, including, but not limited to, preparing or filing documents or conducting discovery; or (4) Negotiating legal rights or responsibilities on behalf of a person.[8]

[11] Remarkably, the ABA could not agree on the definition of what its members do and abandoned its task on March 28, 2003.[9] The final Task Force suggested, among other things, that jurisdictions should apply their "common sense" when articulating a definition of the practice of law.[10] The ABA Model Rules now contain a fairly sheepish comment, "[t]he definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of

[8] ABA Ctr. for Prof'l Responsibility, Task Force on Model Definition of the Practice of Law, Draft Definition of the Practice of Law (Sept. 18, 2002).

[9] Later that year, the ABA adopted a fairly bland call for each jurisdiction to adopt its own definition, with certain core principles. *See* ABA Ctr. for Prof'l Responsibility, Task Force on Model Definition of the Practice of Law, Report & Recommendation to the House of Delegates (adopted Aug. 11, 2003), https://www.americanbar.org/content/dam/aba/directories/policy/2003_am_100.authcheckdam.pdf ("RESOLVED, [t]hat the American Bar Association recommends that every [jurisdiction] adopt a definition of the practice of law. FURTHER RESOLVED, [t]hat each [jurisdiction's] definition should include the basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity. FURTHER RESOLVED, [t]hat each [jurisdiction] should determine who may provide services that are included within the jurisdiction's definition of the practice of law and under what circumstances, based upon the potential harm and benefit to the public. The determination should include consideration of minimum qualifications, competence and accountability."), https://perma.cc/U5UK-3TPN (last visited May 31, 2018).

[10] *See id.* at 5.

law to members of the bar protects the public against rendition of legal services by unqualified persons."[11]

[12] Some states seem to have floundered more than others in attempting to define the practice of law.[12] For instance, in 2003 the Illinois Bar cited a 1966 case with the remarkably unhelpful guidance that if the acts being analyzed "require legal expertise or knowledge or more than ordinary business intelligence, they constitute the practice of law."[13] It is difficult to imagine a more amorphous and unhelpful definition.

[13] Some states have what could only be called a goofy definition of the practice of law.[14] For instance, the Rules of the Supreme Court of Virginia define the practice of law as someone providing legal advice for a third party who is "not his regular employer."[15] Interestingly, this

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[11] MODEL RULES OF PROF'L CONDUCT r. 5.5 cmt. [2] (AM. BAR. ASS'N 2018).

[12] *See generally* ABA Ctr. for Prof'l Responsibility, Task Force on Model Definition of the Practice of Law, Appendix A: State Definitions of the Practice of Law, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/model_def_statutes.authcheckdam.pdf (providing the differing state definitions of the practice of law), https://perma.cc/HDM5-Z4VK (last visited May 31, 2018).

[13] *See* Illinois State Bar Advisory Opinion on Professional Conduct No. 02-04 (2003) ("In determining whether certain conduct constitutes the practice of law, the courts look to the character of the acts themselves. Chicago Bar Ass'n v. Quinlan & Tyson, Inc., 34 Ill. 2d 116, 120, 214 N.E.2d 771, 774 (1966). If those acts require legal expertise or knowledge or more than ordinary business intelligence, they constitute the practice of law. *Id.*; *In re Howard*, 188 Ill. 2d 423, 438, 721 N.E.2d 1126, 1134 (1999); *In re* Discipio, 163 Ill. 2d 515, 523, 645 N.E.2d 906, 910 (1994). See also [sic] Rotunda, Professional Responsibility 123 (3d ed[sic]) (noting that in general, the courts have held that a person practices law when the person applies the law to the facts of a particular case). While the charge of unauthorized practice of law typically relates to legal work performed by non-attorneys, the Committee recognizes that it also applies to attorneys licensed in other states who perform legal services within the foreign jurisdiction without being licensed or otherwise authorized to do so.").

[14] *See, e.g.*, VA. SUP. CT. R. pt. 6, § I(B)(1).

definition could be read to mean that in-house lawyers are not practicing law at all.

[14] One Virginia state court actually pointed to this definition in finding that the attorney-client privilege did not protect communications between in-house lawyers and their clients.[16] The court explained that:

> [A]ttorney-client privileges in Virginia regardless of what it is in other jurisdictions is clearly defined in the Rules of Court, Part Six, Integration of the State Bar, Section I. Unauthorized Practice Rules and Consideration. . . . Whatever the law may be elsewhere, the relationship of attorney and client is defined in Virginia by the preceding rules of court, and that relationship as defined must be the predicate for determining whether or not the attorney-client privilege exists. In this State under the rules and law of this State and the facts of this case, *the privilege does not exist because the relationship of attorney-client does not exist between the lawyers and the OCF legal department and the corporation by which they are employed*."[17]

[15] Even the Virginia Bar seems to have made this mistake on one occasion.[18] However, the Virginia Bar soon corrected itself.[19]

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[15] *Id.*

[16] *See* Belvin v. H.K. Porter Co., 17 Va. Cir. 303, 306–07 (Va. Cir. Ct. 1989).

[17] *Id.* at 307–08 (emphasis added).

[18] *See* Virginia Legal Ethics Opinion, Op. 1172 (Dec. 19, 1988, clarified Apr. 19, 1990).

[19] *See* Virginia Legal Ethics Opinion, Op. 1211 (Apr. 19, 1989) (explaining that in-house lawyers do have an attorney-client relationship with employer, and therefore may not ask for an indemnity agreement).

[16] This weird approach reached a crescendo in 1994, when the Virginia Bar held that a non-lawyer could provide legal advice to a company, and even call herself "general counsel":

> The Committee is of the opinion that it does not constitute the unauthorized practice of law for a non-lawyer to provide legal advice to or prepare legal instruments for his regular corporate employer *since the definition of the practice of law does not encompass one who undertakes to provide such services to a regular employer*. The Committee is of the further opinion that *it is not improper for a non-lawyer to use the title "General Counsel" when employed by a corporation and performing such permissible tasks as described below*.[20]

[17] The Virginia Supreme Court ultimately adopted a rule requiring all in-house lawyers (not fully admitted in Virginia) to either register with the bar or obtain a certification.[21] That rule implicitly acknowledges that in-house lawyers are actually practicing law.[22]

[18] Although every state defines the practice of law in a slightly different way, most identify certain core activities as constituting the practice of law–appearing in court; preparing pleadings; drafting other documents that define people's rights (such as deeds, wills, etc.); and providing legal advice.[23]

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[20] Virginia UPL Op. 178 (Aug. 12, 1994) (emphasis added), http://www.vsb.org/site/regulation/virginia-upl-opinion-178, https://perma.cc/4F8R-UCW6 (last visited May 31, 2018) (describing an Unauthorized Practice of Law advisory opinion dealing with the employment of a non-lawyer as in-house general counsel to a Virginia corporation).

[21] *See* VA. SUP. CT. R. 1A:5 (2004), http://www.vsb.org/pro-guidelines/index.php/corp-council/, https://perma.cc/7E7R-UHJP (last visited May 31, 2018).

[22] *See id.*

[19] Several state courts and bars have used essentially the same words. Specific examples of those wordings include:

1. Ohio UPL Advisory Op. 11-01 (Oct. 7, 2011):

> The court has defined the unauthorized practice of law as "the rendering of legal services for another by any person not admitted [or otherwise registered or certified] to practice [law] in Ohio." Gov. Bar R. VII(2)(A). Although "rendering of legal services" is not defined by statute or rule in Ohio, it has been addressed in a body of Supreme Court decisions dating back to the 1930's. In the seminal *Dworken* case, the court held, "the practice of law is not limited to the conduct of cases in court. It embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law."[24]

2. *In re Wolf*:

> We think that in 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*

[23] *See* Juliet Katz, *Legal Document Services: Dangerous Alternatives to Attorneys?*, 2 J. LEGAL ADVOC. & PRAC. 122, 122 (2000).

[24] Ohio UPL Advisory Op. 11-01 (Oct. 7, 2011) (quoting Land Title Abstract & Tr. Co. v. Dworken, 193 N.E. 650, 652 (Ohio St. 1934)).

> *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.[25]

3. *In re Wiles*:

> The focus of the hearing panel's conclusions regarding McKinney's complaint was Wiles' use of professional letterhead that portrayed him as an "Attorney At Law" who was "Licensed in Missouri and Kansas" after his Missouri law license had been suspended. . . . finding that Wiles violated KRPC 5.5(a) by engaging in the unauthorized practice of law. . . . A general definition of the "practice of law" has been quoted with approval as follows: "As the term is generally understood, the 'practice' of law is the *doing or performing of services in a court of justice, in any matter depending therein, throughout its various stages, and in*

[25] *In re* Wolf, 21 So. 3d 15, 17–18 (Fla. 2009) (emphasis added) (quoting State *ex rel*. Florida Bar v. Sperry, 140 So. 2d 587, 591 (Fla. 1962), *vacated on other grounds*, 373 U.S. 379 (1963)) (explaining the court's definition of the practice of law and refusing to reinstate a suspended Florida lawyer (Wolf), who had engaged in the practice of law during his suspension and had violated this UPL standard. "We agree with the Bar that Wolf should not be reinstated because he practiced law while under suspension and, therefore, was not in strict compliance with this Court's suspension order. . . . [A]lthough Wolf informed his clients that he could not dispense legal advice, he was not simply identifying applicable statutes and ordinances with regard to opening arcades. In fact, Wolf testified that he would find the ordinances applicable to the jurisdiction in which an arcade was located and admittedly provided this advice based on his legal skill, which is greater than that possessed by the average citizen. Further, as stated above, Wolf gave advice on opening arcades, reported on changes in the law applicable to this area, reviewed leases, researched ordinances applicable to new arcade sites, and consulted with a representative of a state attorney's office on the proper interpretation of gaming law for an attorney's criminal client. Based on the definition in *Sperry*, trading on one's enhanced legal skill and knowledge to advise clients on how to legally proceed with a business transaction and on changes in the law based on statutory research and legal interpretation is the province of licensed attorneys. Accordingly, the referee's conclusion that Wolf's actions did not constitute the practice of law is erroneous and is disapproved.").

> *conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in a court*."[26]

4. *In re Garas*:

> Respondent formed Resale Closing Services, LLC (RCS), for the purpose of bidding on a contract with the United States Department of Housing and Urban Development (HUD) for the provision of closing agent services on the sale of previously foreclosed properties. The HUD contract required the designation as "key personnel" of an admitted attorney. RCS consisted of two members: respondent and a nonlawyer. The nonlawyer member owned a majority share of the corporation, and the two members shared in profits and losses according to their membership interests. The nonlawyer was paid an annual salary as general manager of RCS, and respondent received an annual fee for his services as general counsel. HUD accepted the bid of RCS, and the nonlawyer member established an office in Buffalo. The services provided by nonlawyer employees of RCS included the preparation of deeds. Although respondent reviewed the prepared deeds and title searches, he had no involvement in the day-to-day operations of RCS, and he exercised no supervisory authority over the nonlawyer member, who administered the services provided under the HUD contract. In addition, respondent and the nonlawyer member opened a noninterest-bearing trust account as joint signatories, through which the proceeds of each sale were disbursed. Nonlawyer employees of RCS attended closings for which RCS provided services. . . . While the applicable statutes

[26] *In re* Wiles, 210 P.3d 613, 617–18 (Kan. 2009) (emphasis added) (quoting State *ex rel.* Boynton v. Perkins, 28 P.2d 765, 769–70 (Kan. 1934)) (disbarring a lawyer for engaging in the unauthorized practice of law after his license was suspended).

> make it clear that *the provision of closing services such as the preparation of deeds constitutes the practice of law*, an exception has been recognized for a single transaction that occurred incident to otherwise authorized business and did not involve the rendering of legal advice. . . . We find that the services provided by RCS and GLF pursuant to the HUD contracts constituted the practice of law. . . . We thus find that respondent has committed professional misconduct by forming a corporation with a nonlawyer for the provision of those services, failing to exercise oversight of its activities or employees and failing to safeguard sale proceeds in an adequate manner.[27]

5. ISBA Advisory Opinion on Professional Conduct, No. 94-5 (July 1994):

> The threshold issue presented is whether the representation of a party to an arbitration proceeding is the practice of law. In general, the courts have held that a *person practices law when the person applies the law to the facts of a particular case*. Rotunda, Professional Responsibility 123 (3d ed. 1992). The Illinois position is consistent with the general rule. The supreme court has held that the practice of law involves more than the representation of parties in litigation and includes the giving of advice or the rendering of any services requiring the use of legal skill or knowledge. *People v. Schafer*, 404 Ill. 45, 87 N.E.2d 773, 776 (1949). In a case directly relevant to the present inquiry, the supreme court held that the representation of parties in contested workers' compensation matters before an arbitrator of the Illinois Industrial Commission constituted the practice of law. *People v. Goodman*, 366 Ill. 346, 8 N.E. 2d 941 (1937). The respondent in *Goodman* had argued that he was not

[27] *In re* Garas v. Grievance Comm. of the Eighth Judicial Dist., 881 N.Y.S.2d 744, 747 (N.Y. App. Div. 2009) (emphasis added) (explaining that "*the provision of closing services such as the preparation of deeds constitutes the practice of law* . . . .").

> practicing law because he was representing parties before an administrative agency rather than a court. The supreme court responded that the "character of the act done, and not the place where it is committed" is the decisive factor. 8 N.E.2d at 947. In view of these authorities, the Committee concludes that the representation of a party in a contested arbitration proceeding would be considered the practice of law.[28]

6. ISBA Advisory Opinion on Professional Conduct, No. 93-15 (Mar. 1994):

> The practice of law has been defined generally as *giving of advice* or rendering any sort of service by any person, firm or corporation when the giving of advice or rendering of such service requires the use of any degree of legal knowledge or skill. It has been defined as *appearing in court or before tribunals* representing one of the parties, *counseling, advising such parties and preparing evidence, documents and pleadings to be presented*. It has been defined as *preparing documents the legal effect of which must be carefully determined according to law*. It has been defined as referral to attorneys for service; *advising or filling out of forms; negotiations with third parties* and, in short, engaging in any activities which require the skill, knowledge, training and responsibility of an attorney.[29]

[28] ISBA Advisory Op. on Prof'l Conduct, No. 93-15 (Ill. 1994) (emphasis added); *see also* People *ex rel.* Illinois State Bar Ass'n v. Schafer, 87 N.E.2d 773, 776 (Ill. 1949); People *ex rel.* Chicago Bar Ass'n v. Goodman, 8 N.E.2d 941, 947 (Ill. 1937).

[29] ISBA Advisory Op. on Prof'l Conduct, No. 93-15 (Ill. 1994) (emphasis added) (citing People *ex rel.* Chicago Bar Association v. Barasch, 94 N.E.2d 148 (Ill. 1950) (discussing the definition of the practice of law).

B. Nonlawyers' Preparation of Documents for Third Parties' Use

[20] Bars and courts routinely condemn (and usually punish) non-lawyers who prepare documents for third parties, absent some statutory or regulatory exception.[30] Specific examples of these rulings include:

1. Florida Bar Advisory Opinion, No. SC14-211 (2015):

> It is the opinion of the Standing Committee that it constitutes the unlicensed practice of law for a non-lawyer to draft a personal service contract and to determine the need for, prepare, and execute a Qualified Income Trust including gathering the information necessary to complete the trust. Moreover, a non-lawyer should not be authorized to sell personal service or Qualified Income Trust forms or kits in the area of Medicaid planning.
>
> It is also the opinion of the Standing Committee that it constitutes the unlicensed practice of law for a nonlawyer to render legal advice regarding the implementation of Florida law to obtain Medicaid benefits. This includes advising an individual on the appropriate legal strategies available for spending down and restructuring assets and the need for a personal service contract or Qualified Income Trust.
>
> It is the position of the Standing Committee that a nonlawyer's preparation of the Medicaid application itself would not constitute the unlicensed practice of law as it is authorized by federal law. As noted earlier, it is also not the unlicensed practice of law for DCF [Department of Children & Families] staff to tell Medicaid applicants about Medicaid trusts and other eligibility laws and policies governing the structuring of income and assets when relevant to the

[30] *See* MODEL RULES OF PROF'L CONDUCT R. 5.3 (AM. BAR ASS'N 2017).

> applicant's facts and financial situation. This proposed advisory opinion is the Standing Committee on Unlicensed Practice of Law's interpretation of the law.[31]

2. Norfolk U.S. Bankruptcy Court Stops Nonlawyer Bankruptcy Prep Firm:

> A Hampton woman who prepared paperwork for people who thought they could not afford to hire a bankruptcy lawyer has been put out of business by a Norfolk bankruptcy judge.
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> The June 26 order banning petitions prepared by Sonya Skinner is part of a national trend of bankruptcy officials cracking down on non-lawyers who purport to help people get out from under their debts.
>
> A new study shows that, while many people file for bankruptcy without a lawyer, a substantial number of those filers get help behind the scenes from unlicensed "bankruptcy petition preparers (BPPs)." The law allows non-lawyers to prepare bankruptcy petitions and accompanying paperwork, but BPPs are not permitted to advise debtors on their legal options or prepare later pleadings for their cases, according to the study released last month by the United States Courts Administrative Office.
>
> "Dedicated to helping you improve the health of your credit profile," her Facebook page reads. Through her "A1 Credit Services" in Hampton, she offered Chapter 7 Bankruptcy and Living Wills & Trusts, among other services. Besides

[31] Florida Bar Advisory Op., No. SC14-211 (2015) (discussing Medicaid planning activities by non-lawyers).

> her Facebook advertising, she used lawn signs to drum up business, according to one lawyer's observation.[32]

3. *In re* Amendments to Rules Regulating Fla. Bar:

> (b) Forms Which Have Not Been Approved by the Supreme Court of Florida.
>
> (1) It shall not constitute the unlicensed practice of law for a nonlawyer to engage in a secretarial service, typing forms for self-represented persons by copying information given in writing by the self-represented person into the blanks on the form. The nonlawyer must transcribe the information exactly as provided in writing by the self-represented person without addition, deletion, correction, or editorial comment. The nonlawyer may not engage in oral communication with the self-represented person to discuss the form or assist the self-represented person in completing the form.
>
> (2) It shall constitute the unlicensed practice of law for a nonlawyer to give legal advice, to give advice on remedies or courses of action, or to draft a legal document for a particular self-represented person. It also constitutes the unlicensed practice of law for a nonlawyer to offer to provide legal services directly to the public.
>
> (c) As to All Legal Forms.
>
> (1) Except for forms filed by the petitioner in an action for an injunction for protection against domestic or repeat violence, the following language shall appear on any form completed by a nonlawyer and any individuals assisting in

[32] Peter Vieth, *Norfolk U.S. Bankruptcy Court Stops Nonlawyer Bankruptcy Prep Firm*, VA. LAW. WKLY., July 6, 2012.

> the completion of the form shall provide their name, business name, address, and telephone number on the form:
>
> This form was completed with the assistance of: (Name of Individual)(Name of Business)(Address)(Telephone Number).[33]

4. *Disciplinary Counsel v. Alexicole, Inc.*:

> 1. Respondents will not represent Ohio residents in securities arbitration matters and/or activities, including but not limited to providing legal advice as to securities and/or securities-arbitration claims, preparing statements of claims, preparing discovery, participating in prehearing conferences, participating in settlement negotiations, and attending mediation and/or arbitration hearings with or on behalf of claimants.
>
> 2. Unless [Respondent Bandali] Dahdah becomes an attorney at law licensed and in good standing to practice law in the state of Ohio, Dahdah will not provide legal advice to any person in Ohio, including but not limited to advice regarding the filing of a claim for a securities violation and advice regarding a person's right as a claimant or defendant in securities arbitration, a lawsuit, or other legal or quasi-legal proceeding, including any terms and conditions of a settlement of any dispute.
>
> 3. Unless Dahdah becomes an attorney at law licensed and in good standing to practice law in the state of Ohio, Dahdah will not represent the interests or legal position of Alexicole, Inc., or any corporation before any legal or quasi-legal body,

[33] *In re* Amendments to Rules Regulating Fla. Bar, 101 So. 3d 807, 837–38 (Fla. 2012) (defining the impermissible activity by a non-lawyer completing various forms in Rule 10-2.2(b)–(c)).

> or in any legal action, settlement, or dispute in the state of Ohio.[34]

[21] If non-lawyers rely on artificial intelligence to assist third parties, the UPL issue can be dispositive of whether such conduct violates states' UPL laws (most of which make non-lawyers' practice of law criminal).[35]

[22] If lawyers involve themselves with a non-lawyer's use of artificial intelligence, they may also face allegations that they are assisting in the unauthorized practice of law by not adequately supervising and approving such non-lawyer efforts.[36]

C. Lawyers' Involvement in the Unauthorized Practice of Law

[23] Lawyers can face liability (or worse) for assisting non-lawyers in the unauthorized practice of law.[37] Licensed lawyers can run afoul of a state's unauthorized practice of law principles in three ways.[38] First, lawyers can improperly assist a non-lawyer in committing the

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[34] Disciplinary Counsel v. Alexicole, Inc., 822 N.E.2d 348, 349–50 (2004) (holding that the respondents had engaged in the unauthorized practice of law in Ohio and enjoined respondents from any further conduct that constituted the unauthorized practice of law); *see also* OHIO RULES OF PROF'L CONDUCT r. 5.5 (2018). Effective Feb. 1, 2007, Ohio adopted new ethics rules, including Rule 5.5(c)(3), allowing out-of-state lawyers to engage in services 'reasonably related' to Ohio arbitrations.

[35] *See* Attorneys' Liability Assurance Society, Inc., *Statutes and Rules Limiting Multijurisdictional Law Practice from 51 United States Jurisdictions* (2000), https://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission_on_multijurisditional_practice/mjp_uplrules.html, https://perma.cc/FK3N-5ZBV (last visited May 31, 2018) (providing a survey of court rules and statutes regarding the unauthorized practice of law).

[36] MODEL RULES OF PROF'L CONDUCT r. 5.3 (AM. BAR ASS'N 2018).

[37] MODEL RULES OF PROF'L CONDUCT r. 5.5 (AM. BAR ASS'N 2018).

[38] *See* RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 5 (AM. LAW INST. 2000) (defining the violations of unauthorized practice according to a lawyer's own actions, actions that assist another lawyer, and actions done through a third party).

unauthorized practice of law.[39] The Restatement articulates this principle.[40] A comment following the Restatement provides some guidance.[41]

[24] Second, lawyers can engage in activities constituting the practice of law in states where they are not licensed or otherwise permitted to practice law.[42] This involves what is called "multijurisdictional practice," lawyers engaging in activities outside the states where they are licensed.[43]

[25] Third, a lawyer can improperly assist out-of-state lawyers in committing the unauthorized practice of law in states where those lawyers

[39] *See generally In re* Charges of Unprofessional Conduct in Panel Case No. 23236, 728 N.W.2d 254, 256–60 (Minn. 2007) (holding that the supervising lawyer had violated ethical rules for not informing the client that the subordinate lawyer was unauthorized to practice law and subsequently billing the client for legal services performed by a lawyer).

[40] *See* RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 (AM. LAW INST. 2000) (stating "[a] person not admitted to practice as a lawyer . . . may not engage in the unauthorized practice of law, and a lawyer may not assist a person to do so.").

[41] RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 cmt. f (AM. LAW. INST. 2000) (stating "[t]he lawyer codes have traditionally prohibited lawyers from assisting nonlawyers in activities that constitute the unauthorized practice of law. That prohibition is stated in the Section. The limitation supplements requirements that lawyers provide adequate supervision to nonlawyer employees and agents. . . . By the same token, it has prevented lawyers from sponsoring non-law-firm enterprises in which legal services are provided mainly or entirely by nonlawyers and in which the lawyer gains the profits.").

[42] *See* MODEL RULES OF PROF'L CONDUCT r. 5.5(a) (AM. BAR. ASS'N 2018) (amended 2016).

[43] *See id.* (stating that "[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."); *see also* MODEL RULES OF PROF'L CONDUCT r. 5.5 cmt. [1] (AM. BAR ASS'N 2018) (amended 2016) (stating that "[a] lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. . . .").

are not licensed, creating a problem because they are assisting non-lawyers in practicing law.[44]

[26] The following deals with the first type of violation, assisting non-lawyers in practicing law: In a 2009 Ohio case, a court imposed over $6 million in penalties against two companies engaged in the described process.[45]

1. *Columbus Bar Ass'n v. Am. Family Prepaid Legal Corp.*:

> [W]e have repeatedly held that these enterprises, in which the laypersons associated with licensed practitioners in various minimally distinguishable ways as a means to superficially legitimize sales of living-trust packages, are engaged in the unauthorized practice of law. We have also repeatedly held that by facilitating such sales, licensed lawyers violate professional standards of competence and ethics, including the prohibition against aiding others in the unauthorized practice of law. Today, we reaffirm these holdings and admonish those temped to profit by such schemes that these enterprises are unacceptable in any configuration. . . .
>
> Here, American Family's sales agents, in the guise of selling prepaid legal plans, advised prospects on the benefits of its estate-planning tools. After signing up the prospect, the agents obtained sensitive financial information from the customer and delivered the agreement and the information to the Ohio office. The resident attorney (a virtual captive of American Family) sent a letter to the customer and the

[44] *See id.*

[45] *See* Columbus Bar Ass'n v. Am. Family Prepaid Legal Corp., 916 N.E.2d 784, 787 (Ohio 2009) (imposing over $6,000,000 in penalties against two companies who advertised in Ohio for customers seeking wills, trusts and other estate planning tools, despite the involvement of lawyers in preparing the documents).

> customer's information to the California home office for document preparation. The resident attorney rarely, if ever, communicated with the customer; if he did, he communicated by telephone.
>
> The California office prepared the documents and returned them to the Ohio office for delivery to the customers. The resident attorney spent little time reviewing the documents. Without any personal contact with the customer, the attorney could not possibly have given the customer the individualized legal advice that it was his professional and ethical duty to give. He could not determine whether the estate-planning products suited the customers, and he could not determine whether the customer was competent to enter into the estate-planning arrangements.
>
> The attorney left it to Heritage's insurance agents to explain the documents as they secured the signatures of the customers. These agents had no incentive to deliver the documents other than to solicit additional insurance business from the customer, which provided the agent with the only compensation he would receive in the transaction. The agent's objective was to obtain the signatures through whatever means he could, including pressure tactics, so he could then sell annuities.
>
> All of the foregoing establishes by a preponderance of the evidence that respondents engaged in the unauthorized practice of law.[46]

[27] Other courts have reached the same conclusion about similar arrangements.[47]

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[46] *Id*. at 786, 796–97.

[47] *See* State *ex rel.* State Bar Ass'n v. United Fin. Sys. Corp., 926 N.E.2d 8, 11, 14, 19 (Ind. 2010) (finding that an insurance marketing agency had engaged in the unauthorized

2. *State ex rel. State Bar Ass'n v. United Fin. Sys. Corp.*:

> Once a sale was made, the Estate Planning Assistant or Health Planning Assistant secured full or partial payment from the client on the spot. The forms containing the client's personal and financial information were routed to UFSC's in-house counsel, David McInerney, who then provided the information to one of the panel attorneys with whom UFSC has contracted. The estate plans sold by UFSC throughout the country were all processed in Indianapolis and routed to panel attorneys in Indiana and other states to draft documents for the plans. . . .
>
> Upon receiving a client's information, the panel attorney called the client, knowing the client had already paid for a certain estate plan. . . . UFSC insists that the panel attorneys had the freedom to exercise their own independent judgment in ensuring that the client had an estate plan suitable for his or her interests. Notably though, of the 1,306 estate plans sold in Indiana from October 2006 to May 2009, only nine of these clients downgraded to a less expensive plan following consultation with a panel attorney. Further, because a panel attorney was paid a flat fee of only $225 for drafting the estate planning documents, any consultation between the panel attorney and the client above and beyond the initial phone call generally was not financially feasible.
>
> The documents prepared by the panel attorney were then sent back to UFSC and bound. A Financial Planning Assistant was paid $75 to deliver the documents and assist the client in executing them.[48]

practice of law because its marketing process did not sufficiently involve a lawyer in a preparation of documents).

> The disparity of fees earned, between the Estate Planning Assistants and Health Planning Assistants on the one hand (between $750 and $900 per sale of the most expensive estate plan package) and the panel attorneys on the other hand ($225 for drafting the documents and consulting with the client by phone), is indicative of an emphasis on sales and revenue rather than the provision of objective, disinterested legal advice. So too is the fact that an estate plan is sold to the client prior to any attorney involvement whatsoever.[49]
>
> Several panel attorneys utilized standardized estate planning documents and forms that had been prepared and provided by UFSC, and the letters sent by the panel attorneys to the Financial Planning Assistants regarding the execution of the estate planning instruments also were prepared by UFSC. . . . Explanation to the client of the relevance and purposes of the documents being executed typically was delegated to the Financial Planning Assistants.[50]
>
> Although it is the province of this Court to determine what acts constitute the practice of law, we have not attempted to provide a comprehensive definition because of the infinite variety of fact situations. . . . Nor do we attempt to do so today.[51]

[48] *Id.* at 12 (explaining the insurance marketing agency's way of doing business).

[49] *Id.* at 13 (enjoining the respondents from engaging in the practice described above and also ordering them to pay attorneys' fees).

[50] *Id.* at 13 (describing the minimal involvement of a lawyer in the process).

[51] *Id.* at 14.

3. New Jersey Advisory Comm. on Prof'l Ethics, Op. 716:

> The inquiries presented to the hotline generally involve three scenarios. In the first scenario, a for-profit loan modification company approaches homeowners directly and indicates that it is working with an attorney. The homeowner either: (1) pays one fee to the company, a portion of which the company pays over to the attorney; (2) pays one fee to the attorney named by the company, a portion of which the attorney pays over to the company; or (3) pays separate fees to the company and to the attorney.[52]
>
> [A] New Jersey attorney is prohibited from paying monies to a for-profit loan modification company that farms legal work to the attorney or recommends the attorney's services.[53]
>
> In the second scenario, the attorney works as in-house counsel to the for-profit loan modification company and provides legal services to the company's customers. A variation of this scenario is an attorney . . . formally affiliating or partnering with the [loan modification] company, or [an attorney] being separately retained by the company to re-negotiate loans with its customers' lenders. In each of these situations, the [loan modification] company approaches homeowners directly and solicits the work.[54]
> A New Jersey attorney may not provide legal advice to customers of a for-profit loan modification company, whether the attorney be considered in-house counsel to the

[52] New Jersey Advisory Comm. on Prof'l Ethics, Op. 716 (June 26, 2009); New Jersey Comm. on the Unauthorized Practice of Law, Op. 45 (June 26, 2009) (condemning New Jersey lawyers' involvement with loan modification companies).

[53] *Id.* at p. 3 (finding the first scenario improper).

[54] *Id.* at p. 2 (explaining in more detail the second scenario).

> company, formally affiliated or in partnership with the company, or separately retained by the company.[55]
>
> In the third scenario, the attorney or law firm brings a financial or mortgage analyst in-house or contracts with an analyst, who processes the homeowner's paperwork and may take initial steps in renegotiating the loan under the supervision of the attorney. The attorney or law firm solicits the work in accordance with the attorney advertising rules and the homeowners approach and retain the attorney directly.[56]
>
> A New Jersey attorney may use an in-firm financial or mortgage analyst or contract with an analyst in the course of providing loan or mortgage modification services for homeowners who have directly retained the law firm. Just as an attorney may contract with a certified public accountant or other person with specialized knowledge to assist the attorney in the provision of legal services, an attorney may use, either within the firm or as a contractor, a financial or mortgage analyst to assist in mortgage modification work. The attorney is responsible for and must supervise the work performed by the analyst employee or contractor. The client homeowner must retain the attorney directly and the solicitation of the homeowner for mortgage modification services must be done by the law firm in accordance with the attorney advertising rules. The compensation paid for services by an analyst must, however, not be improper fee-sharing.[57]

[55] *Id.* at p. 3 (finding this scenario improper).

[56] *Id*. at p. 2 (providing more detail about the third scenario).

[57] *Id.* at p. 7 (finding this scenario acceptable under certain circumstances).

> [W]hile an attorney may hire a financial or mortgage analyst as employee or contract consultant, payments for the work cannot directly or indirectly be based on the number of clients the analyst brings to the firm.[58]

4. Missouri Bar, Informal Op. 930172:

> Attorney accepts referrals for estate planning from insurance agents. Attorney is available in person or by telephone to answer legal questions. The agent is not obligated to recommend Attorney. The agent obtains basic estate planning information using a form and sends it to Attorney. Attorney is paid directly by the client and pays no part of the fee to the agent. Attorney reviews the information and contacts the client. Attorney prepares estate planning documents. Attorney gives the documents to the agent for delivery to the client. The agent assists the client with execution and transfer of assets. Clients are told to contact Attorney with questions. [Answer]: It appears the agent is engaging in in[-]person solicitation on Attorney's behalf in violation of Rule 4-7.3(b). Based on a review of the forms, it appears legal advice would be needed to fill them out. Since they are filled out by the agent and the client, it appears the agent is engaged in the unauthorized practice of law and Attorney is violating Rule 4-5.5 by assisting the unauthorized practice. Because the agent does not have a relationship with Attorney and is not supervised by Attorney, giving the documents to the agent for delivery would create problems with confidentiality under Rule 4-1.6 and would further involve the unauthorized practice of law.[59]

[58] *Id.* at p. 8.

[59] Missouri Bar, Informal Op. 930172 (1993) (providing a situational inquiry into whether an agent is violating the professional ethics Rule 4-7.3(b)).

[28] Not every state would be this harsh, but lawyers worried about committing UPL violations must avoid essentially forfeiting the attorney-client relationship to non-lawyers.[60]

III. ARTIFICIAL INTELLIGENCE AS THE PRACTICE OF LAW

[29] Artificial Intelligence represents the latest and perhaps the most advanced step in a continuum of non-human processes for providing what could be seen as legal advice.[61]

[30] Given the uncertain definition of the "practice of law," it should come as no surprise that entrepreneurs have occasionally attempted to market mechanisms for customers to prepare their own documents such as wills, divorce pleadings, articles of incorporation, etc.[62] Predictably, bars

[60] *See, e.g.*, Daniel Fisher, *Non-Lawyers Find It Hard Avoiding Breaking Bar's Vague Rules*, FORBES (July 25, 2011, 10:06 AM), https://www.forbes.com/sites/danielfisher/2011/07/25/non-lawyers-find-it-hard-avoid-breaking-bars-vague-rules/#69b2ac0163b0, https://perma.cc/RU6G-8DYJ (discussing how an increasing number of non-lawyers are running afoul of States' unauthorized practice of law rules).

[61] *See Global Perspectives and Insights: Artificial Intelligence – Considerations for the Profession of Internal Auditing*, INST. OF INTERNAL AUDITORS, p. 2 (2017), https://na.theiia.org/periodicals/Public%20Documents/GPI-Artificial-Intelligence.pdf, https://perma.cc/N4GV-JUQ7 (stating that "AI can be viewed as the latest significant advancement on a continuum of advancements that have occurred due to technology improvements. What *is* new is the advancement and scalability of technologies that have unleashed the practical application of AI.").

[62] *See* Federal Trade Commission, *Comments on the American Bar Association's Proposed Model Definition of the Practice of Law*, DEPT. OF JUSTICE (Dec. 20, 2002), https://www.justice.gov/atr/comments-american-bar-associations-proposed-model-definition-practice-law, https://perma.cc/2DQH-W7DC (last visited June 24, 2018) ("The boundaries of the practice of law are unclear and have been prone to vary over time and geography."); *see also The Rise of Virtual Law Practices and "E-Lawyering,"* U.S.C. GOULD SCH. OF L., https://onlinellm.usc.edu/resources/articles/elawyering-and-virtual-law-practices/, https://perma.cc/K86N-YBHC (last visited June 24, 2018) ("This push towards 'e-lawyering' is something that today's legal professionals will have to contend with as the internet grows even more in its use.").

usually have resisted such efforts, and targeted those entrepreneurs and the lawyers assisting them.[63] The Restatement notes that:

> [c]ontroversy has surrounded many out-of-court activities such as advising on estate planning by bank trust officers, advising on estate planning by insurance agents, stock brokers, or benefit-plan and similar consultants, filling out or providing guidance on forms for property transactions by real-estate agents, title companies, and closing-service companies, and *selling books or individual forms containing instructions on self-help legal services or accompanied by personal, non-lawyer assistance on filling them out in connection with legal procedures such as obtaining a marriage dissolution*.[64]

[31] This "controversy" has spanned decades.[65] For instance, in the 1960s, non-lawyer Norman Dacey was convicted of a misdemeanor and faced jail time in 1968 for publishing a book entitled *How to Avoid Probate*.[66]

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[63] *See* Isaac Figueras, *The LegalZoom Identity Crisis: Legal Form Provider or Lawyer in Sheep's Clothing?*, 63 CASE W. RES. L. REV. 1419, 1420 (2013) ("Now that more consumers and bar associations are challenging LegalZoom in court and more states are addressing these issues, there is a clearer picture of the problems associated with the services provided by LegalZoom") (citing Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053, 1065 (W.D. Mo. 2011)) (holding that LegalZoom's services constituted the unauthorized practice of law).

[64] RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 cmt. c (AM. LAW INST. 2000) (emphasis added).

[65] *See* Catherine J. Lanctot, *Does LegalZoom Have First Amendment Rights? Some Thoughts About Freedom of Speech and the Unauthorized Practice of Law*, VILL. PUB. L. & LEGAL THEORY WORKING PAPER SERIES, June 2011, at 101, 111–20.

[66] *Id.* at 112–14 (discussing how a non-lawyer named Norman Dacey was convicted of a misdemeanor and faced thirty days in jail in 1968 for publishing the book *How to Avoid Probate* and explaining that his constitutional claim was eventually upheld by the New York Court of Appeals in December 1967).

[32] One author has noted that in 1966 Dacey's book outsold another book published in the same year–Masters and Johnson's Human Sexual Response.[67] Dacey ultimately won his fight; a New York appellate court eventually upheld Dacey's claim that he had the constitutional right to publish such a book.[68]

[33] Just a few years later, Texas dealt with a similar issue.[69]

> In the 1969 case of *Palmer v. Unauthorized Practice Committee of the State Bar of Texas*, the court enjoined the sale of blank will forms by a lay person, on the theory that a form is "almost a will itself" and is "misleading and certainly will lead to unfortunate consequences for any layman who might rely upon the 'form' and the definitions attached."[70] *Palmer* briefly acknowledged and then dismissed a possible free speech challenge to its holding, noting that "[c]onstitutional rights of speech, publication and obligation of contract are not absolute, and in a given case where the public interest is involved, courts are entitled to strike a balance between fundamental constitutional freedoms and the state's interest in the welfare of its citizens."[71]

[34] Texas dealt with this issue again about 30 years later.[72] The Texas Bar's Unauthorized Practice of Law Committee successfully obtained summary judgment in its claim that the software "Quicken Family Lawyer"

[67] *See id.* at 112.

[68] *See id.*

[69] *See id.* at 127.

[70] *Id.* at 125 (quoting Palmer v. Unauthorized Prac. Comm. Of the State Bar of Tex., 438 S.W.2d 374, 376–77 (Tex. Civ. App. 1969)).

[71] *Id.*

[72] *See id.* at 126.

violated Texas law.[73] The bar might have won the battle, but ultimately lost the war because the Texas legislature simply changed Texas law while the case was on appeal to the Fifth Circuit.[74]

[35] The controversy over such software products has continued to involve state bars. Some states, such as New Jersey, have taken a fairly forgiving attitude.[75] New Jersey allows for nonlawyers to be involved in preparing certain kinds of corporate documents:

> The Committee, however, differentiates between drafting corporate operating agreements, by-laws, resolutions, and similar legal documents and drafting routine certificates. These certificates follow a prepared form that is readily available to the public. The New Jersey Department of the Treasury, Division of Revenue, offers an online fill-in-the-blank form for the formation of various corporations, including professional corporations, limited liability companies, and limited liability partnerships. Many accountants use these prepared forms, and the Committee is aware that various Internet business service providers also

[73] *See id.*

[74] *See* Unauthorized Practice of Law Comm. v. Parsons Tech., Inc., 179 F.3d 956, 956 (5th Cir. 1999) (granting summary judgment for the bar in its allegation that "Quicken Family Lawyer" violated the UPL laws. It was reversed by the Fifth Circuit 5 months later: "[s]ubsequent to the filing of this appeal, however, the Texas Legislature enacted an amendment to § 81.101 providing that 'the "practice of law" does not include the design, creation, publication, distribution, display, or sale . . . [of] computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney,' effective immediately. H.B. 1507, 76th Leg., Reg. Sess. (Tex. 1999). We therefore VACATE the injunction and judgment in favor of plaintiff-appellee and REMAND to the district court for further proceedings, if any should be necessary, in light of the amended statute.").

[75] *See* New Jersey Advisory Comm. on Prof'l Ethics, *Accountants: Drafting Corporate Documents–Modifying Opinion 2*, 204 N.J.L.J 851 (2011).

> offer fill-in-the-blank forms of certificates for a minimal charge. . . .
>
> The Committee finds that the public does not need to be protected by a rule that prohibits nonlawyers from offering customers fill-in-the-blank prepared certificates. . . .
>
> [N]onlawyers may provide customers with fill-in-the-blank prepared forms for certificates and may type, transcribe, or translate the information provided by the customers onto the form, but they may not counsel, advise, analyze, or otherwise help the customer fill out the form. . . .
>
> [C]orporate operating agreements, by-laws, resolutions, and similar legal documents require legal expertise and may only be drafted by a lawyer. Nonlawyers, however, may present to customers prepared, fill-in-the-blank certificates of incorporation, certificates of formation, statements of qualification, and certificates of limited partnership and type, transcribe, or translate the customers' information in the form documents. Nonlawyers may not advise or counsel the customer as to the appropriate contents of the forms, but certified public accountants may advise clients as to the appropriate contents of certificates provided they inform their clients that assistance of counsel in the drafting of such documents is advisable.[76]

[36] Most states have taken a far more restrictive view; given the ubiquity of Internet services, one could safely have predicted that this issue would come to a head when a well-financed company chose to vigorously resist state efforts to restrict the sale of such software.

[76] *See id.* at p. 2–3.

[37] LegalZoom eventually picked up the baton of such online services and fought in some states for the right to sell its online services.[78] LegalZoom's disclaimer describes what it does and does not do:

> *LegalZoom is not a law firm, and the employees of LegalZoom are not acting as your attorney. LegalZoom's document service is not a substitute for the advice of an attorney.*
>
> LegalZoom cannot provide legal advice and can only provide self-help services at your specific direction.
>
> LegalZoom is not permitted to engage in the practice of law. LegalZoom is prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms or strategies.
>
> This site is not intended to create an attorney-client relationship, and by using LegalZoom, no attorney-client relationship will be created with LegalZoom. Instead, you are representing yourself in any legal matter you undertake through LegalZoom's legal document service. Accordingly, while communications between you and LegalZoom are protected by our Privacy Policy, they are not protected by the attorney-client privilege or work product doctrine.
>
> LegalZoom provides an online legal portal to give visitors a general understanding of the law, as well as to provide an automated software solution to individuals who choose to

[78] *See* Daniel Fisher, *LegalZoom Sees Supreme Court Ruling as Tool to Challenge N.C. Bar*, FORBES (June 6, 2015, 8:32 AM), https://www.forbes.com/sites/danielfisher/2015/06/06/legalzoom-sees-supreme-court-ruling-as-tool-to-challenge-n-c-bar/#1db29fdc5f5f, https://perma.cc/ZT3A-4QDR (last visited May 30, 2018).

> prepare their own legal documents. To that extent, the site publishes general information on legal issues commonly encountered.
>
> LegalZoom's document services also includes a review of your answers for completeness, spelling, and grammar, as well as internal consistency of names, addresses and the like. At no time do we review your answers for legal sufficiency, draw legal conclusions, provide legal advice or apply the law to the facts of your particular situation. LegalZoom and its services are not a substitute for the advice of an attorney.
>
> Although LegalZoom takes every reasonable effort to ensure that the information on our website and documents are up-to-date and legally sufficient, the legal information on this site is not legal advice and is not guaranteed to be correct, complete or up-to-date. Because the law changes rapidly, is different from jurisdiction to jurisdiction, and is also subject to varying interpretations by different courts and certain government and administrative bodies, LegalZoom cannot guarantee that all of the information on the site is completely current. The law is a personal matter, and no general information or legal tool like the kind LegalZoom provides can fit every circumstance.
>
> Therefore, if you need legal advice for your specific problem, or if your specific problem is too complex to be addressed by our tools, you should consult a licensed attorney in your area. Visitors to our site may obtain information regarding free or low cost representation through your state bar association or local legal aid office.
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> This site and some of the articles on this site contain links to other resources and businesses on the Internet. Those links are provided as citations and aids to help you identify and locate other Internet resources that may be of interest, and

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> LegalZoom is not responsible for any loss, injury, claim, liability, or damage related to your use of this site or any site linked to this site, whether from errors or omissions in the content of our site or any other linked sites from the site being down or from any other use of the site. In short, your use of the site is at your own risk.[77]

[38] LegalZoom has carefully articulated a defense to state restrictive efforts, citing historical examples.[78] A September 2010 LegalZoom response to an unfavorable Pennsylvania Bar opinion about its activities presented its argument against unauthorized practice of law restrictions[79]:

> The [unfavorable Pennsylvania legal ethics] Opinion fails to acknowledge that LegalZoom's website repeatedly informs its customers that it is not a law firm, does not give legal advice, and is not the substitute for the advice of an attorney. In fact, this disclaimer appears on virtually every page of the website. LegalZoom does not select or individually draft documents for its customers; its customers select their own

[77] LEGALZOOM DISCLAIMER (emphasis added), https://www.legalzoom.com/disclaimer.html, https://perma.cc/QE9L-QKW7 (last visited June 25, 2018).

[78] *See* Fisher, *supra* note 78.

[79] *See* Letter from Charles Rampenthal, Vice President & Gen. Counsel, LegalZoom, to Gretchen Mundorff, President, Pa. Bar Ass'n (Sept. 29, 2010), [https://web.archive.org/web/20130116011352/http://www.legalzoom.com/perspectives/legalzoom-responds-pennsylvania-upl] (discussing dissatisfaction with the Pennsylvania Bar Unauthorized Practice of Law Committee Formal Opinion 2010-01, which claimed LegalZoom practiced law).

> forms by browsing the website and choosing which form or document they believe will meet their needs. There is no in-person consultation or meeting. LegalZoom specifically prohibits its employees from suggesting or recommending any particular legal form for its customers, and the Opinion cites no evidence that it has ever done so.
>
> Rather, LegalZoom's website operates using document assembly software, based on branching technologies. The LegalZoom documents are generated based solely on the consumer's input and decisions in answering an online questionnaire by auto-populating preexisting fill-in-the-blank forms and documents. Many of the form documents available through LegalZoom are based on standard forms published by governmental agencies; the rest of the form documents were drafted by attorneys. While LegalZoom believes that its documents are high-quality products, before-the-fact drafting and selection of standardized forms to offer for sale is no different than the decisions made by the publishers of legal form books, do-it-yourself legal kits, and legal document software, all of which are available throughout Pennsylvania in public libraries, bookstores and office supply stores such as Staples and OfficeMax. . . .
>
> While citing selected out-of-state informal UPL opinions and inapplicable Pennsylvania case law, the Opinion entirely fails to address or analyze the long and well-established line of cases holding that the publication of information about the law, as well as self-help legal books, forms with instructions, and do-it-yourself kits is not the practice of law and is, in fact, protected by the First Amendment. *See, e.g., New York County Lawyers' Ass'n v. Dacey*, 21 N.Y. 2d 694, 234 N.E. 2d 459 (N.Y. 1967), *aff'ing on grounds in dissenting opinion*, 283 N.Y.S.2d 984 (N.Y. App. 1967); *Oregon State Bar v. Gilchrist*, 538 P.2d 913 (Or. 1975); *State Bar of*

> *Michigan v. Cramer*, 249 N.W.2d 1 (Mich. 1976); *The Florida Bar v. Brumbaugh*, 355 So.2d 1186 (Fla. 1978); *People v. Landlords Professional Services*, 215 Cal. App. 3d 1599, 264 Cal. Rptr. 548 (Cal. 1989). Many other states have reached the same conclusion, holding that providing *pro se* litigants with resources and clerical services does not constitute UPL, in the absence of personal representation or individualized legal advice. *See, e.g.,* Oregon Ethics Opinion 1994-137, 1994 WL 455098 (Or. State Bar Ass'n Bd. of Gov. 1994) (online legal information system that provides interactive answers to user's questions without the direct participation of an employee does not constitute the practice of law); *In re Thompson*, 574 S.W.2d 365, 367-69 (Mo. 1978) (sale of forms, instructions on how to prepare forms, and instructions as to how to file forms to obtain an uncontested divorce is not the practice of law, so long as sellers "refrain from giving personal advice as to legal remedies or the consequences flowing therefrom"); *State ex rel. Schneider v. Hill*, 573 P.2d 1078, 1078-79 (Kan. 1978) (sale by non-attorney of kits purporting to contain all forms needed for the filing and obtaining of a divorce in Kansas, including sample forms filled out and instructions, both written and via tape recording, does not constitute practice of law); *People ex Rel. Att'y Gen. v. Bennett*, 74 P.2d 671, 672 (Colo. 1937) (sale of legal forms for quit claim deeds, warranty deeds, deeds of trust, bill of sale and chattel mortgage not the practice of law).[80]

[39] Some states seemed unconvinced and declared LegalZoom's activity illegal:

[80] *Id.*

1. Pennsylvania:

> While the PBA UPL committee clearly recognizes that anyone may sell "forms" or provide solely clerical assistance in completing them, it is clear from the advertising and the fees being charged by LDPS that [they] are offering more than rote forms to be typed upon by a clerk. It is the PBA UPL Committee's opinion that there is a reasonable factual basis that legal document preparation services, whether online or in person at a specific site, are engaging in the unauthorized practice of law in Pennsylvania. This conclusion is based upon such services, and public descriptions of their own activities. Clearly their conduct goes beyond merely clerical or rote completion of form documents provided by a customer. . . .
>
> It is the opinion of the Pennsylvania Bar Association Unauthorized Practice of Law Committee that the offering or providing [in Pennsylvania] of legal document preparation services as described herein (beyond the supply of preprinted forms selected by the consumer not the legal document preparation service), either online or at a site in Pennsylvania is the unauthorized practice of law and thus prohibited, unless such services are provided by a person who is duly licensed to practice law in Pennsylvania retained directly for the subject of the legal services.[81]

2. Ohio:

> [I]t is the Board's opinion that an online service that prepares a legal document or instrument for a customer by selecting an appropriate legal form, makes choices for inclusion of

[81] Pennsylvania Bar Ass'n Unauthorized Practice of Law Comm., Formal Op. 2010-01 (2010) (finding that LegalZoom violated Pennsylvania's UPL rules and agreeing with other courts that LegalZoom was committing the unauthorized practice of law).

> certain provisions in the form, and generally aids in the preparation of the document or instrument is not a scrivener service and is prohibited in Ohio. Legal document preparation without the direct supervision of an Ohio licensed attorney, whether by completing forms selected by an unlicensed individual, or through the creative drafting of documents, unavoidably leads to the unlicensed individual or entity engaging in the rendering of a legal service that involves the giving of legal advice. Gov. Bar R. VII(2)(A). Unless a preprinted legal form is chosen by the consumer, without assistance, guidance, selection, or direction from the online service, and the consumer provides all information for the form without prompting for key or relevant information, the combined activities of an online service will normally constitute the unauthorized practice of law in Ohio.[82]

3. Connecticut:

> It is the Committee's opinion that there is a reasonable factual basis for believing that LegalZoom, and We the People are engaged in the unauthorized practice of law in Connecticut. This conclusion is based on the services' public descriptions of their own activities. Their conduct goes well beyond mere stenographic completion of documents provided by a customer. These services design, craft, and select the documents based on legal research and legal experience and hold the documents out as suitable to a particular customer's needs. Supervising attorneys or experts are also 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. Lawyers, whether admitted in this state or elsewhere, are prohibited from engaging in the

[82] Bd. on the Unauthorized Practice of Law of the Supreme Court of Ohio, UPL 2008-03 (Dec. 12. 2008).

> unauthorized practice of law in Connecticut including assisting another in doing so in this state.[83]

[40] Some states likewise declined to dismiss actions against LegalZoom that alleged it engaged in the unauthorized practice of law.[84]

1. *Janson v. LegalZoom.com*:

> When the customer has completed the online questionnaire, LegalZoom's software creates a completed data file containing the customer's responses. A LegalZoom employee then reviews that data file for completeness, spelling and grammatical errors, and consistency of names, addresses, and other factual information. If the employee spots a factual error or inconsistency, the customer is contacted and may choose to correct or clarify the answer. . . .
>
> After the customer's data has been input into the template, a LegalZoom employee reviews the final document for quality in formatting–e.g., correcting word processing "widows," "orphans," page breaks, and the like. The employee then prints and ships the final, unsigned document to the customer. In rare cases, upon request, the document is emailed to the customer. A customer does not see the purchased document until it is delivered. All Missouri customers who select a given document and provide the same information will receive an identical final product. . . .

[83] Connecticut Unauthorized Practice of Law Comm., Informal Op. 2008-01 (2008).

[84] *See* Robert Ambrogi, *Latest Legal Victory Has LegalZoom Poised for Growth*, A.B.A. J., Aug. 2014, at ¶ 1, http://www.abajournal.com/magazine/article/latest_legal_victory_has_legalzoom_poised_for_growth, https://perma.cc/Z2AN-UALJ (last visited June 26, 2018).

> There is little or no difference between this and a lawyer in Missouri asking a client a series of questions and then preparing a legal document based on the answers provided and applicable Missouri law. That the Missouri lawyer may also give legal advice does not undermine the analogy because legal advice and document preparation are two different ways in which a person engages in the practice of law.[85]

[85] Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053, 1054–56, 1065 (W.D. Mo. 2011) (denying LegalZoom's motion for summary judgment, a class action of clients against LegalZoom, claiming it had engaged in the unauthorized practice of law and explaining that LegalZoom's website offered blank legal forms that customers could download and use, and that plaintiffs were not asserting a claim based on those forms. Subsequently, explaining that LegalZoom has another service in which clients can complete an "online questionnaire." Also, noting that plaintiff asserted a private cause of action for unauthorized practice of law and asserted a claim for "money had and received," and an additional claim under various Missouri consumer statues); Janson v. LegalZoom.com, Inc., 727 F. Supp. 2d 782, 784–87, 789 (W.D. Mo. 2010) (denying defendant LegalZoom's effort to transfer an action to California or dismissing improper venue and noting that plaintiff had prepared a legal document using LegalZoom, and that the Terms of Service indicated that California courts had "exclusive jurisdiction" over any dispute. "Plaintiffs seek to represent a class of 'all persons or entities in the state of Missouri that paid fees to LegalZoom for the preparation of legal documents from December 18, 2004 to the present.' Count I of their Petition alleges that LegalZoom engaged in the unlawful practice of law in the state of Missouri. Count II alleges a claim for money had and received. Counts III and IV allege claims under the Missouri Merchandising Practices Act." The court ultimately concluded that "[n]either California nor Missouri will enforce forum selection clauses where there is a strong state interest in regulating the conduct at issue. . . . Here, both states have articulated a policy of prohibiting the unauthorized practice of law in their statutes and case law. . . . Missouri has a strong public policy—expressed in its statute—against the unauthorized practice of law. The documents produced by LegalZoom here will impact legal issues—such as corporate and estate matters—that will likely need to be addressed by Missouri courts under Missouri law for the benefit of Missouri citizens. Under either California or Missouri law, forcing litigation to a foreign forum under these circumstances would run contrary to a state's interest in resolving matters tied closely to the unauthorized practice of law within its borders. The forum selection clause in this case is invalid because enforcing it would run contrary to a strong public policy." The court rejects other arguments in favor of dismissing for lack of venue and among other things, concluding

[41] LegalZoom settled that case.[86] North Carolina also eventually settled its dispute with LegalZoom.[87]

> LegalZoom and the North Carolina State Bar are no longer at loggerheads over whether the company's offer of personalized legal services to consumers amounts to the unauthorized practice of law. A consent decree entered Oct. 22 ends years of state-court UPL litigation between LegalZoom and the state bar. It also puts to bed a federal antitrust suit the company recently filed against the bar.
>
> The settlement clears the way for LegalZoom to offer not just online document services but also prepaid legal services plans in the Tar Heel state, provided that certain consumer protections are added.

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that "[f]inally, the advantages of having a Missouri court determine issues of Missouri law are pronounced in this case. Plaintiffs' claims do turn on application of Missouri statutes. Again, the documents sold by LegalZoom to Plaintiffs implicate Missouri law issues beyond the sale transaction itself—they are legal documents that may well be considered and interpreted under Missouri law. This factor weighs strongly against transfer. Considering all factors, LegalZoom has not met its burden of showing that the balance of interests weighs in favor of transfer. Accordingly, the Court exercises its discretion and declines transfer.").

[86] *See* Martin Bricketto, *LegalZoom Settles with Class Over Legal Service Fees*, LAW360 (Aug. 22, 2011, 6:28 PM), https://www.law360.com/articles/266603/legalzoom-settles-with-class-over-legal-service-fees, https://perma.cc/L9MV-586Z ("LegalZoom.com Inc. said Monday it had reached a settlement agreement with a class of Missouri consumers accusing the company of unlawfully practicing the law in the state by charging fees for the preparation of legal documents via the Internet. LegalZoom said in a statement that it would continue to offer its services to Missouri residents under the proposed settlement, but with certain 'business modifications.' It added that the agreement included no admission or finding of wrongdoing and that it continued to dispute the basis of the allegations.").

[87] *See* Joan C. Rogers, *Settlement Allows LegalZoom to Offer Legal Services in N.C.*, BNA (Nov. 18, 2015), https://www.bna.com/settlement-allows-legalzoom-n57982063694/, https://perma.cc/27NX-Z3WL (last visited June 26, 2018).

> "We're very pleased that we're able to stop fighting and that we can start providing more legal services to the North Carolinians who really want access," LegalZoom General Counsel Charles E. "Chas" Rampenthal said in an interview with Bloomberg BNA.[88]

2. *LegalZoom.com, Inc., v. N.C. State Bar*:

> The parties agree that the definition of the "practice of law" as set forth in N.C.G.S. § 84-2.1 does not encompass LegalZoom's operation of a website that offers consumers access to interactive software that generates a legal document based on the consumer's answers to questions presented by the software so long as LegalZoom complies with the provisions of Paragraph 2 below.
>
> LegalZoom agrees that it must continue to ensure, for the shorter of a period of two (2) years after the entry of this Consent Judgment or the enactment of legislation in North Carolina revising the statutory definition of the "practice of law", that: *LegalZoom.com, Inc. v. N.C. State Bar*, 2015 NCBC 96.
>
> (a) LegalZoom shall provide to any consumer purchasing a North Carolina product (a North Carolina Consumer) a means to see the blank template or the final, completed document before finalizing a purchase of that document;
>
> (b) An attorney licensed to practice law in the State of North Carolina has reviewed each blank template offered to North Carolina Consumers, including each and every potential part thereof that may appear in the completed document. The name and address of each reviewing attorney must be kept

[88] *Id.*

> on file by LegalZoom and provided to the North Carolina Consumer upon written request;
>
> (c) LegalZoom must communicate to the North Carolina Consumer that the forms or templates are not a substitute for the advice or services of an attorney;
>
> (d) LegalZoom discloses its legal name and physical location and address to the North Carolina Consumer;
>
> (e) LegalZoom does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the North Carolina Consumer; and
>
> (f) LegalZoom does not require any North Carolina Consumer to agree to jurisdiction or venue in any state other than North Carolina for the resolution of disputes between LegalZoom and the North Carolina Consumer.[89]

[42] At about the same time, North Carolina's General Assembly adopted a new statute that defines as outside the practice of law mechanisms such as LegalZoom—but with various requirements[90] :

> An act to further define the term "practice law" for the purpose of protecting members of the public from harm resulting from the unauthorized practice of law by a person who is not a trained and licensed attorney.
>
> The General Assembly of North Carolina enacts: Section 1. G.S. 84-2.1 reads as rewritten:
>
> § 84-2.1. "Practice law" defined.

[89] LegalZoom.com, Inc., v. N.C. State Bar, 2015 N.C.B.C. 96, at n. 1–2 (N.C. Super. Ct. Oct. 22, 2015).

[90] *See* H.R. 436, 2015–2016 Gen. Assemb., Reg. Sess. (N.C. 2016).

(a) The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

(b) The phrase "practice law" does not encompass:

(1) The drafting or writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5 or by mediators of employment-related matters for The University of North Carolina or a constituent institution, or for an agency, commission, or board of the State of North Carolina.
(2) The selection or completion of a preprinted form by a real estate broker licensed under Chapter 93A of the General Statues, when the broker is acting as an agent in a real estate transaction and in accordance with rules adopted by the North Carolina Real Estate Commission, or the selection or completion of a preprinted residential lease agreement by

> any person or Web site provider. Nothing in this subdivision or in G.A. 84-2.2 shall be construed to permit any person or Web site provider who is not licensed to practice law in accordance with this Chapter to prepare for any third person any contract or deed conveying any interest in real property, or to abstract or pass upon title to any real property, which is located in this State.
>
> (3) The completion of or assisting a consumer in the completion of various agreements, contracts, forms, or other documents related to the sale or lease of a motor vehicle as defined in G.S. 20-286(10), or of products or services ancillary or related to the sale or lease of a motor vehicle, by a motor vehicle dealer licensed under Article 12 of Chapter 20 of the General Statutes.[91]

[43] However, LegalZoom continues to be no stranger to unauthorized practice of law complaints. A recent case comes from a California IP firm, LegalForce, suing to halt LegalZoom's unauthorized practice of trademark law.[92]

> LegalForce alleges that while LegalZoom is not a law firm and it employs non-attorneys, it is very much engaging in the practice of trademark law. The lawsuit contends that LegalZoom 'eschews' the long-standing client protections provided by lawyers and law firms, and alleges that LegalZoom is not authorized to practice law in any state and is not a registered or bonded legal document assistant under

[91] *Id.* (indicating that the selection or preparation of legal documents does not violate the UPL prohibition as long as the preparer meets certain requirements, including having a North Carolina lawyer review the blank templates and that the form does not disclaim warranties, etc.).

[92] *See* Pls. Compl. 2 (Dec. 19, 2017), https://www.ipethicslaw.com/wp-content/uploads/2017/12/Complaint-LegalForce-RAPC-v-LegalZoom.pdf, https://perma.cc/9WTA-5JD4 (last visited June 26, 2018).

> California law. Furthermore, for its trademark legal services, no client trust fund exists, lawyers are not supervising non-lawyers, and conflicts of interest are not checked.[93]

[44] LegalZoom's vice president of legal and government affairs, Kenneth Friedman, has since spoken out stating the lawsuit is simply the result of an "an aspiring competitor angrily lash out after failing to compete in the marketplace."[94]

[45] As this technological evolution has demonstrated, lawyers often fight rearguard actions in attempts to prohibit laymen from using books, software, etc.–contending that such non-human aids constitute the illegal unauthorized practice of law by their creators.[95] But lawyers ultimately lose each fight.[96] It would be safe to presume that the same outcome will occur with artificial intelligence.

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[93] Michael E. McCabe, Jr., *May the LegalForce Be With You: California IP Firm Sues to Stop LegalZoom's Unauthorized Practice of Trademark Law*, MCCABE LAW (Dec. 19, 2017), https://www.ipethicslaw.com/may-the-legalforce-be-with-you-california-ip-firm-sues-to-stop-legalzooms-unauthorized-practice-of-trademark-law/, https://perma.cc/Z8EX-C8Q8 (last visited June 26, 2018).

[94] Jason Tashea, *Rash of UPL Lawsuits Filed by LegalForce Show its Failure to Compete, Defendants Say*, A.B.A. J. (Jan. 9, 2018, 8:30 AM CST), http://www.abajournal.com/news/article/rash_of_upl_lawsuits_filed_by_legalforce_show_failure_too_compete_defendant, https://perma.cc/HP4R-SPJB (last visited May 24, 2018).

[95] *See, e.g.*, Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053, 1055–59 (W.D. Mo. 2011).

[96] *See, e.g.*, Rogers, *supra* note 89.