



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

Legal Practitioners

February 2011

When you have a legal matter, it is easy to be wooed by individuals who promise to do the work for you for less, but it is a mistake to hire a non-lawyer to handle a legal matter for you. It is a crime for a person to practice law without being a lawyer. Unfortunately, there are many people who solicit for legal work who are not licensed to practice law and who do great harm to those who hire them.

This newsletter sets forth the laws that govern the practice of law, including laws governing paralegals, legal document assistants, unlawful detainer assistants and immigration consultants.

LAWYERS MUST BE LICENSED:

Only lawyers admitted to the State Bar of California may practice law. It is a misdemeanor to violate this law, and anyone who has been a member of the State Bar and has been disbarred or suspended, who continues to practice law, commits a felony.

This law is intended to protect consumers who hire others to assist them with legal matters. Poor legal work can result in the loss of a customer's liberty, life savings, home, and even may lead to deportation in immigration matters.

The State Bar issues licenses to practice law. It is a public corporation that is part of the judicial branch of California state government.

Individuals who are licensed by the State Bar must complete an undergraduate education and graduate from a law school. They must also take and pass a three-day test on various legal subjects and procedures and a separate test on ethics.

The State Bar has a court that hears complaints against attorneys. If the court determines that an attorney has violated the law or the ethics rules governing lawyers, it can suspend an attorney or disbar him/her. A suspension is a prohibition on practicing law for a period of time. Disbarment is a permanent prohibition on practicing law. The State Bar can

also publicly or privately reprimand attorneys for conduct that does not warrant a suspension. The State Bar maintains a website where consumers can check out whether the person they wish to hire is a licensed attorney:

www.calbar.ca.gov.

LAWYERS MUST PROPERLY HANDLE MONEY:

Attorneys must keep all money they receive in a trust fund until they earn the money by providing legal work. If they spend money in the trust fund improperly, they face felony prosecution.

If an attorney takes a case on a contingent fee basis (agreeing to be paid for services from the successful completion of the case and agreeing to receive nothing if the client does not win) then the attorney cannot provide in his/her contract that he will receive greater than specified amounts from the money recovered. This limit is 40% of the first \$50,000; 33.33% of the next \$500,000, and 15 % of any amount over \$600,000. Lower percentage limits apply to contracts

with merchants to collect money for them.

OTHER LAWS GOVERNING LAWYERS:

Contracts must be in writing and the client must receive a copy. If the contract is not contingent, the law provides that the contract must clearly indicate how the services are to be rendered and what the charges will be.

Attorneys cannot use others to solicit clients for them. This prevents the classic “ambulance chaser” that follows people who have been in an accident to the hospital to solicit them to hire the attorney to represent them.

Attorneys cannot help another person practice law without a license. Attorneys may hire paralegals to assist them, but they are prohibited from allowing others to engage in the practice of law. Thus, attorneys have been disbarred for allowing non-lawyers to solicit customers, meet with them and give them legal advice using the attorney’s name, but where the attorney has taken no active role in handling the legal matters. Unfortunately, there are unscrupulous attorneys who lend their names to untrained individuals who take advantage of consumers.

Attorneys are required to follow strict rules of advertising. They cannot guarantee a result if you hire them and they must be truthful and not misleading.

If an attorney becomes unable to practice law, the courts can take over his/her practice.

DEFINING “PRACTICE OF LAW”:

The practice of law includes giving legal advice, the preparation of legal documents and contracts

which affect legal rights, even when they are not presented in a court of law. If a person holds himself out as entitled to practice law, that is the practice of law, even if the person lets the customer know that he is not a licensed attorney.

When someone offers advice on which form legal document should be prepared and filed with the court, this is the practice of law.

Of course, a person has a right to represent himself/herself in legal proceedings and to prepare legal documents for his/her own use. The practice of law involves doing such work on behalf of another person.

OTHER LEGAL PRACTITIONERS:

California law regulates other legal professionals as well. These professionals either work for lawyers and are supervised by them (e.g. paralegals) or they assist people to prepare documents (e.g. immigration consultants, legal document assistants, and unlawful detainer assistants).

These businesses and individuals are prohibited from practicing law.

PARALEGALS:

A paralegal is a person employed by or who contracts with a lawyer and who performs legal work under the direction and supervision of a lawyer. Paralegals can plan case development, do legal research, interview clients of the attorney, gather facts, draft and analyze documents, and make recommendations to their attorneys. They also can appear in a state or federal administrative matter when allowed by the agency holding the hearing.

Paralegals are prohibited from:

- Providing legal advice
- Representing a client in court
- Selecting, explaining, drafting or recommending the use of any legal document to another other than the supervising attorney
- Contracting with or being employed by someone other than an attorney to perform paralegal services.
- Charging a client for services. (The supervising attorney does this.)

Paralegals must meet either complete a paralegal program approved by the American Bar Association; complete a paralegal program at a college; complete a baccalaureate degree and have one year of experience supervised by an attorney; or complete high school and have 3 years of experience supervised by an attorney.

DOCUMENT PREPARERS:

There are three types of businesses that are regulated by the State of California, which prepare legal documents. It is important to note that these businesses can fill out forms or translate documents for people to use for legal purposes, but they are prohibited from providing any legal advice, including advising which form to fill out.

Immigration Consultants are required to pass a background check; must provide a written contract in the language of the consumer to each consumer which sets forth the services they agree to perform and the costs; and must post a bond of \$50,000 with the Secretary of State. Consumers can verify that a person has posted such a bond at the following website:

http://www.sos.ca.gov/business/sf/bond_search

Immigration consultants are prohibited from retaining the original documents of their customers when they are no longer needed. They must also post notices in their places of business which advise the customer of his/her rights and that the consultants are not attorneys. They cannot refer to themselves as “notaries,” or other terms that imply they are attorneys.

Much harm has been done by individuals offering immigration assistance under the guise of being immigration consultants. The largest number of complaints for the unlicensed practice of law involves immigration matters. When unscrupulous individuals take money from consumers to file immigration paperwork for them, they often file false or forged documents which can lead to the deportation of the consumer.

Legal document assistants can offer self-help services to a member of the public who is representing himself/herself in a legal matter, for a fee. The legal document assistant can help a person fill out a document; provide general factual information written or approved by an attorney about legal procedures; get published legal documents for the customer (like a copy of a law or a case); and file legal forms and documents on behalf of someone who is representing himself/herself. The assistant is not to choose which legal form the customer should use because that would be practicing law.

Legal document assistants must register with the county clerk in all counties where they do business. The assistant must have a high school diploma and 2 years of experience for an attorney or self-

help service; a baccalaureate degree and one year of experience, or a paralegal certificate. The assistant must have a \$25,000- \$100,000 bond on file with the county clerk, depending on the number of people he/she employs. The San Diego County Clerk can be reached at (619) 531-5507, to verify that an assistant is registered and bonded.

Legal document assistants must also have written contracts that comply with specific legal provisions. If a person engages in this business without complying with these laws, he/she commits a misdemeanor.

An **unlawful detainer assistant** is a person who charges a fee to assist or advise a person involved in unlawful detainer claims and bankruptcy petitions when they involve unlawful detainers. An unlawful detainer action is one that involves eviction of a tenant from property. These assistants must also register with the County Clerk, post a bond, and meet the same minimum requirements that legal document assistants must meet. They also must have a written contract and are prohibited from selecting legal forms for their customers.

Both legal document assistants and unlawful detainer assistants are prohibited from giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. These activities are the practice of law.

CONSUMER TIPS:

When you need help with a legal matter, it is best to speak to an attorney. If the matter is a relatively small matter and you believe you are competent to represent yourself, non-lawyer

professionals may be of help in completing paperwork, translating documents, or providing general information about the procedures at the court. Paralegals work for attorneys and you should not hire a paralegal to do legal work for you.

If you hire an attorney and never meet the attorney, but only meet with his/her assistants, ask to see the attorney. Sometimes, attorneys allow others to use their name but are not affiliated with the business and do not review the work that is done. Sometimes, non-attorneys say they are affiliated with an attorney but the attorney knows nothing of their activities.

Check out attorneys on the State Bar website to make sure they are licensed to practice in California. Attorneys licensed in other states must be licensed in California to practice here. Only deal with licensed and bonded non-lawyer assistants.

The San Diego City Attorney’s Office investigates and prosecutes individuals who violate the laws set forth in this newsletter in the City of San Diego. Let us know if you observe someone violating these laws, by calling our hotline number below.

**San Diego
City Attorney’s Office
Consumer and Environmental
Protection Unit
(619) 533-5600**

Newsletter written by Assistant City Attorney Tricia Pummill

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Sources: Business and Professions Code sections 6126-6159.2; 6400-6456; and 22440-22448.

The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

