

## PARALEGALS AND THE UNAUTHORIZED PRACTICE OF LAW - WHERE IS THE LINE DRAWN?

By Lauren K. Jones, RP

Recent decisions of the Indiana Supreme Court concerning the unauthorized practice of law ("UPL"), together with the enactment of the Revised Rules of Professional Conduct, make it important that legal professionals understand where the line is drawn with respect to utilization of paralegals and non-lawyer assistance in the practice of law.

### **Unauthorized Practice of Law**

The definition of the practice of law and, conversely, the unauthorized practice of law is established by law and varies from one jurisdiction to another. The Indiana Supreme Court has original jurisdiction in matters relating to the unauthorized practice of law. (Art. 7, Sec. 4, Indiana Constitution, In Re: Mittower, 693 N.E. 555 (Ind. 1998).) Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. The Indiana Supreme Court in a recent case involving a non-lawyer engaged in the unauthorized practice of law determined that the practice of law without a license is not a "victimless crime" because the legal interests of people assisted by those who are not qualified to act as attorneys can be irreparably damaged. (State, ex rel. Ind. St. Bar v. Diaz, 838 N.E.2d 433 (Ind. 2005).) This Rule does not prohibit a lawyer from employing the services of paralegals and other paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. (Comment [2] from Rule 5.5)

### **Just what is the Practice of Law?**

In determining what constitutes the practice of law, the Indiana Supreme Court has elected not to attempt a comprehensive definition "because the infinite variety of fact situations each must be judged according to its own specific circumstances. (Diaz, supra. 443.)

For purposes of determining whether a person has engaged in the practice of law, the practice of law includes making it one's business to act for others in legal formalities, negotiations or proceedings. (Matter of Contempt of Mittower, 693 N.E.2d 555.)

A core element of the practice of law is the giving of legal advice to a client, and merely entering into such a relationship constitutes the practice of law. (Noethlich v. State, 676 N.E.2d 1078.)

The production and communication to clients of motions, pleadings and proposed agreed entries, undertaken by law office support staff members who are not

themselves lawyers, without supervision of an attorney licensed to practice in Indiana constitutes the unauthorized practice of law. (Matter of Thonert, 693 N.E.2d 559).

***Next Issue: Legal Advice and Legal Opinions.***