

Setting Boundaries: Avoiding the Unauthorized Practice of Law



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Disability Rights Education and Defense Fund

Presenters

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Topics to Be Covered

- Definition of “unauthorized practice of law”
- Role of non-attorney advocates in educating and supporting indigent and underrepresented Californians
- Practical strategies for using non-attorney advocates to provide education and support while following the rules on the unauthorized practice of law



Unauthorized Practice of Law

Cal. Bus. & Prof. Code § 6125: “No person shall practice law in California unless the person is an active licensee of the State Bar.”



Unauthorized Practice of Law

- Cal. Bus. & Prof. Code § 6126: “misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars (\$1,000), or by both”
- [State Bar of California, Unauthorized Practice of Law](#)
[Complaint](#): “The State Bar works with other law enforcement agencies to investigate when someone violates the law.”

State Bar of California, California Rules of Professional Conduct

- Rule 1-300: Member of State Bar “shall not aid any person or entity in the unauthorized practice of law”
- Rule 5.3: Responsibilities Regarding Nonlawyer Assistants
 - Lawyers who supervise must make reasonable efforts to ensure that conduct of nonlawyer staff “is compatible with the professional obligations of the lawyer”.
 - Lawyer can be responsible for conduct of nonlawyer staff if it would violate the Rules if it had been done by a lawyer.

Rules of Professional Conduct (Continued)

Together, Rules 1-300 & 5.3 mean that organizations with lawyers and nonlawyers must take reasonable steps to follow these two principles:

- When nonlawyers are **not** helping lawyers practice law – organizations must make sure that the nonlawyers do not engage in unauthorized practice of law.
- When nonlawyers **are** helping lawyers practice law – organizations must make sure that the nonlawyers receive clear instructions so that their actions comply with the rules that apply to lawyers.

So what is it? What is the “unauthorized practice of law”?



- Logically, the unauthorized practice of law means practicing law without having an active California license.
- But what is “practicing law”? No definition in California Code or Rules of Professional Conduct but some guidance in caselaw, see e.g. *Baron v. Los Angeles* (1970) 2 Cal.3d 535, 542:
 - “doing and performing services in a court of justice”
 - “legal advice and counsel”
 - “preparation of legal instruments and contracts by which legal rights are secured”

What is practicing law?

- Giving legal advice and counsel
 - Includes: advice based on the application of legal principles to facts
- Preparing legal instruments like contracts
 - Exception: “Merely clerical” services do not count – “merely clerical” services include making forms available, filling out forms at the specific direction of the client, and delivering forms as directed by the client.
 - *See People v. Landlords Prof'l Servs.* (1989) 215 Cal.App.3d 1599, 1608 [describing permitted activities before finding defendant did engage in UPL].

What is practicing law? (Continued)

Representing someone in court or at a hearing

- **Exceptions** (non-exhaustive)
 - Hearings or depositions conducted by certified law students consistent with Cal. Rules of Court Rule 9.42; see also Rules of State Bar of Cal. Rules 3.3-3.10
 - Certain state administrative proceedings by code or agency rule such as Unemployment Insurance Hearings, [see FAQ: Do I need a lawyer?](#) (“You have the right to be represented by any person at your own expense. The person need not be a lawyer.”); Cal. Unempl. Ins. Code §§ 1951, 1957

What is practicing law? (3/3)

Representing someone in court or at a hearing (continued)

- **Exceptions** (non-exhaustive) (continued)
 - Special education due process hearings if nonlawyer has “special knowledge or training relating to the problems of individuals with exceptional needs,” Cal. Educ. Code § 56505(e)(1)
 - But see [Cal. Atty. Gen. Op. No. 14-101](#) (Sept. 28, 2017) (“By no means do we suggest that consultants and other lay advocates are barred from due process hearings. ... We conclude only that ... a nonlawyer may not engage in the practice of law in special education due process hearings.”)

Role of Non -Attorney Advocates

During the study year, “55 percent of Californians at all income levels experienced at least one civil legal problem in their household, yet nearly 70 percent of them received no legal assistance....

Even when experiencing problems that have a significant impact on them, most do not receive legal help: 27 percent of low-income Californians received some legal help, while 34 percent of middle-income individuals did.”

[2019 California Justice Gap Study](#)

Role of Non -Attorney Advocates (Continued)

Approximately 85 percent of all Californians received no legal help, or inadequate legal help, for the civil legal problems they experienced.

[2019 California Justice Gap Study](#)



Role of Non -Attorney Advocates (Continued)

Less than 10 percent of low-income Americans currently get legal help — from a lawyer or anyone — to resolve critical civil justice problems. ...

Evidence from the United States and other countries suggests that justice workers are as or more effective than lawyers in helping people to resolve their civil justice issues — and that they have the potential to scale to meet the need and empower communities.

[Frontline Justice Website](#)

Example: Parent Advocates

- Employed by Parent Training and Information (PTI) Centers
 - PTIs serve families of infants, toddlers, children, and youth with disabilities, birth to twenty-six
 - At least one PTI in every US state and territory
 - PTIs do not **represent** families but provide resources and support, including modeling effective participation
 - Often peers – themselves parents or family members of children with disabilities
 - Provide youth, parents, other education rights holders, and community supports with free information, trainings, support, and referrals about the education rights of disabled children and youth, and how to advocate and problem solve effectively



Parent Advocates with PTIs (Continued)

Parent advocates work with parents, guardians, youth, and community supports to:

- Understand rights under state and federal laws
- Review and understand options
- Use rights and participate effectively
- Prepare for participation in IEP and other school meetings
- Communicate concerns or disagreement
- Center child, family, and cultural priorities
- Problem solve at the local level
- Refer families to community resources

Purpose: empower parents and youth to participate and advocate for meaningful education in the least restrictive setting based on individual needs of the student, family, and cultural values/priorities

[Read more about Parent Centers Serving Families of Children with Disabilities.](#)

DREDF's PTI Center

- Parent Center for 30 counties in Northern California
- Four advocates, two bilingual Spanish speaking
- Serves 80+ families and community providers per month, 900+ contacts per year
- Provides 60+ trainings per year in person or online on key topics in Spanish and English
- Works with more than 15 state and local partners to improve special education
- Conducts 20+ specialized presentations yearly for hospitals, universities, child welfare, county mental health, social workers, and education training programs

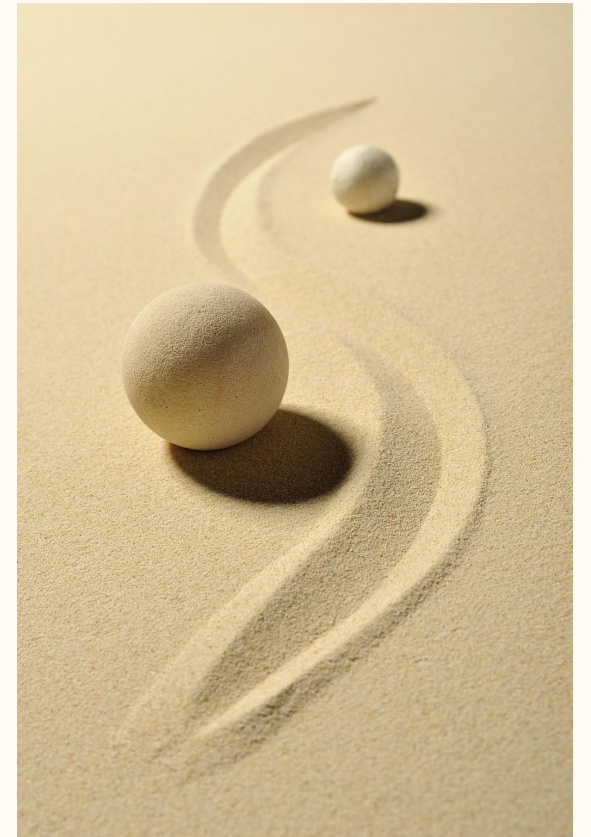


Challenges for Parent Advocates In Setting Boundaries

- Families face cultural, language, and other barriers to effective participation – it may seem easier and more efficient to “take over”.
- Parent Advocates see power differential and want to defend families and students.
- Many Parent Advocates are themselves parents or people with disabilities and want to use their experience and insight.
- Families are desperate for help and will ask the advocate what they recommend.

Challenges for Parent Advocates In Setting Boundaries (Continued)

- Families may choose a course of action (for example, not speaking up, signing a document they don't understand or agree with, or letting an important issue go) that may create risk
- **Tip:** Parent Advocate works to empower and support the parent/youth, not to advocate **for** them!



Practical Steps to Avoid Unauthorized Practice of Law

- Make sure the client knows that the advocate is not a lawyer and is not providing legal advice or any other legal services:
 - During meetings (out loud) and in emails
 - Reiterate each contact
- Make sure the advocate does not “act for” or represent the client
- Make sure that the advocate does not give legal advice – can share legal rules but should not apply them to particular facts
- When in doubt, **do not** guess.
 - Refer to an attorney

Use Disclaimers

- Use oral and written disclaimers:
 - My role here is as the parent's advocate. I am here at the invitation of the family to help them participate effectively in the process today. I am not here as an attorney.
 - Ensure every email to a parent includes a written disclaimer.
 - Ensure every email to a school district includes a written disclaimer.
 - Provide families with a written service agreement stating the role of Parent Advocate and disclaiming any legal advice or service.

No Legal Advice

Legal Advice and Services

- My advice is that you should file a request for an independent educational evaluation
- I think that under the law, your child's behavior was a manifestation of their disability
- Drafting a complaint **for** a parent
- Speaking **for** the parent at the IEP meeting

Not Legal Advice or Legal Services

- Sharing rules of law (without applying them to facts)
- Identifying available options
- Supporting client in identifying their own values and preferences
- Speaking from experience
- Role playing an IEP meeting
- Transcribing a parent's complaint

Sticky Situation?

Call the State Bar Ethics Hotline

1-800-238-4427 (in California) or 415-538-2150



Wrap Up

- Your role is to support, not to advocate.
- Your presence itself changes the temperature of the room.
- Teach a parent to fish.
- Help parents develop lasting collaboration and relationships.

Questions and Answers