

Oral Comments to the Supreme Court Rules Committee on Proposed Rule
Establishing a Supreme Court Commission on the Unauthorized Practice of Law .
Hearing held on January 28, 2002 in Chicago, Illinois

Ladies, Gentlemen and honored court members.

My name is Karen Mason. I have been an paralegal practicing Intellectual Property Law for over twenty years. I work for the law firm A&G and am the President of the Illinois Paralegal Association.

This statement is being submitted on behalf of the Illinois Paralegal Association referred to as IPA. The Illinois Paralegal Association is a professional association with over 1400 members throughout the state of Illinois. IPA was incorporated as a not-for-profit association in 1972. The mission of the IPA is to promote and enhance the paralegal profession and support our members in their career development. The IPA is also a founding member of the National Federation of Paralegal Associations abbreviated as NFPA with member associations from 50 states representing over 13,000 paralegals.

Both the IPA and the NFPA have taken an active role in discouraging the Unauthorized Practice of Law by paralegals. IPA adopted its Illinois Code of Paralegal Ethics in 1996. The Code was developed by a committee of lawyers, educators and paralegals. The Code is based on various other codes and cannons, including the Illinois Supreme Court Rules. The IPA stands by this Code as our affirmation of the necessity of maintaining the highest ethical standards in the delivery of legal services. Our members are required to adhere to this Code in their paralegal practices. Many of the paralegal programs in Illinois such as Roosevelt and Loyola use the Illinois Code of Paralegal Ethics in their Ethics classes. One of the goals of this Board of Directors of the IPA has been to continue to educate its members to recognize and avoid actions which would constitute the unauthorized practice of law. We have conducted numerous seminars on this subject and the Association not only urges members not to engage in any unauthorized practice of law but also responds to potential situations of UPL which are brought to our attention. When we are made aware of a paralegal engaging in the UPL we contact them and make it clear that paralegals cannot give legal advice, establish the attorney-client relationship, set fees or appear in court or in an administrative proceedings unless expressly authorized by rule or statute.

Most paralegals in Illinois fall under two categories: (1) those directly employed by law firms, corporations and government bodies and (2) freelance paralegals. In either case the paralegals may only work under the supervision of an attorney. The Association does not support or endorse any document preparers, such as those engaging in practices in California and Florida.

The IPA agrees with the position of the ISBA that the public must be protected from those entities or individuals who lack the educational background, tested competence, ethical obligations and accountability to which attorneys are subject. The Association and the Board of

Directors would like to participate in anyway possible to support efforts to prevent the unauthorized practice of law in Illinois. To that end, the Association would be very interested in participating on the proposed Commission and would be honored to have a delegate appointed from our Association, who could bring the work ethics and perspective of a paralegal to the Commission.

Members of the IPA have previously served on the ISBA Committee on UPL and the ISBA Section on Law Office Economics. The paralegal who served on the Law Office Economics Section also chaired the Committee charged with revising the Guidelines of Paralegals.

The IPA Board of Directors strongly endorses the ISBA's commitment to protect the public. The Illinois Paralegal Association is at the same time committed to assuring that the paralegal profession remains intact and that the expansion of the duties of paralegals is not curtailed.

Thank you for your attention and for the opportunity to provide testimony today.

UNAUTHORIZED PRACTICE OF LAW PROPOSAL

Proposed Rule

Unauthorized Practice of Law Commission

(a) Authority of the Commission. The investigation and prosecution of the unauthorized practice of law shall be under the administrative supervision of an Unauthorized Practice of Law Commission.

(b) Membership and Terms. The Commission shall consist of four members of the Illinois Bar and three nonlawyers appointed by the Supreme Court. One member shall be designated by the Court as chairperson. Unless the Court specifies a shorter term, all members shall be appointed for three-year terms. Any member of the Commission may be removed by the Court at any time, without cause.

(c) Compensation. None of the members of the Commission shall receive compensation for serving as such, but all members shall be reimbursed for their necessary expenses.

(d) Quorum. Four members of the Commission shall constitute a quorum for the transaction of business. The concurrence of four members shall be required for all action taken by the Commission.

(e) Duties. The Commission shall have the following duties:

(1) to propose to the Court such procedural rules from time to time as may be necessary for the efficient and effective operation of the Commission;

(2) to appoint, with the approval of the Supreme Court, a director to serve as chief executive officer of the investigative and prosecutorial system. The Director shall receive such compensation as the Commission authorizes from time to time;

(3) to supervise the activities of the Director;

(4) to authorize the Director to hire attorneys, investigators and clerical personnel and to set the salaries of such persons;

(5) on or before April 30 of each year, to submit an annual report to the Court evaluating the effectiveness of the Commission's activities, recommending any changes it deems desirable, and summarizing unauthorized practice of law developments in Illinois and other jurisdictions during the previous year;

(6) on or before April 30 of each year, file with the Court an accounting of the monies expended for the previous calendar year; and

(7) to seek the elimination of the unauthorized practice of law by action and methods as may be appropriate for that purpose including but not limited to the filing of suits in the name of the Commission.

(f) This shall not preempt the Attorney Act or any other remedy available under the law.

Comment:

The rule is intended to give the Unauthorized Practice of Law Commission broad and liberal authority to investigate and prosecute civilly any individual or organization which practices, attempts to practice, holds himself, herself, or itself out as being able to practice law and/or who charges or receives fees for legal services directly or indirectly when such individual or entity is not authorized to do so. The authority of the judicial branch in the regulation of the practice of law is challenged when those who are not licensed or otherwise under the authority of the Attorney Registration and Disciplinary Commission engage in the practice of law. The responsibility to protect the public through the registration and discipline of attorneys includes a concomitant obligation to ensure that only those lawyers so registered in Illinois as attorneys and counselors at law and subject to discipline perform legal services for the public.

As non-attorneys are not subject to discipline within ARDC's administrative proceedings since they possess no license against which action can be taken, the proposed commission must proceed against such individuals through civil proceedings. The Attorney Act, 705 ILCS 205 authorizes the filing of a complaint in any Circuit Court for contempt of court against "[a]ny person practicing, charging or receiving fees for legal services within this State, either directly or indirectly, without being licensed to practice..."

The rule further affirms the inherent power of the courts "to punish for contempt or to restrain the unauthorized practice of law." The Supreme Court has exercised this authority, e.g., People ex re. Chicago Bar Association v. Goodman, 366 Ill. 346, 8N.E.2d 941 (1937). Thus, a Supreme Court Commission would also have such authority to restrain the unauthorized practice of law.

BACKGROUND INFORMATION

The Illinois Supreme Court has the inherent authority to regulate the practice of law. This authority appears in Articles II and VI of the 1970 Illinois Constitution which states that the Illinois Supreme Court has exclusive jurisdiction over what constitutes the practice of law in Illinois. In Illinois, the Supreme Court enforces its jurisdiction over licensed attorneys through the Attorney Registration and Disciplinary Commission (ARDC) by virtue of Supreme Court Rule 751. Section (a) of this rule currently states "The registration of, and disciplinary proceedings affecting, members of the Illinois bar shall be under the administrative supervision of an Attorney Registration and Disciplinary Commission." As currently written, Supreme Court Rule 751(a) is specifically limited to the registration of and disciplinary action against licensed attorneys.

Regulation of the practice of law benefits the public by upholding the quality of legal services, the competence of law practitioners, and the integrity of the legal profession, allowing for the discipline of licensed professionals, and enhancing clients' recovery for misconduct or negligence.

The public is in need of protection against the unauthorized practice of law by those who lack the educational background, tested competence, ethical obligations, and accountability to which attorneys are subject. While it is necessary to improve affordable access to justice for the public, it is equally important to protect the public from untrained and unethical persons who are legally ineligible to provide legal and law-related services. Those who are indigent and uneducated are especially susceptible to non-attorneys who pose as attorneys but who remain unaccountable for their actions. Moreover, most attorneys and firms carry malpractice insurance which offers the public additional protection against attorney mistakes. Non-attorneys do not and thus the public is at additional peril.

Current statutes and case law are inadequate to deal with the unauthorized practice of law. For example, the Attorney Act, 705 ILCS 205/1, prohibits the practice of law without a license issued by the Illinois Supreme Court. A violation of this section may result in contempt of court. However, State's Attorneys Offices and the Attorney General's Office who are best situated to pursue this remedy are generally unable to devote their limited resources to attack this problem.

The Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, under limited circumstances may offer a remedy upon proof of actual damages; however, the Act fails to recognize the per se public harm inherent in the unauthorized practice of law

The proposed Supreme Court Rule would make it clear that the Unauthorized Practice of Law Commission may investigate and bring actions as a prosecutor in civil court against any individual or entity which practices, attempts to practice, holds himself, herself, or itself out as being able to practice and/or charges or receives fees for legal services directly or indirectly when said individual or entity is not so licensed. This would provide the public with the protection they deserve, as well as affirm the inherent power of the courts "to punish for contempt or to restrain the unauthorized practice of law." See, e.g., People ex re. Chicago Bar Association v. Goodman, 366 Ill. 346, 8 N.E.2d 941 (1937).

Approved by ISBA Board of Governors, April 16, 1999

Revised May 25, 1999 as to grammar only; no substantive changes.

Reaffirmed by ISBA Board of Governors, February 2, 2001